**ABORTION LAWS IN INDIA**

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**ABSTRACT**

In 20th and 21st century, the practice of abortion became very prevalent in Indian society. Generally it means aborting the life of foetus or embryo in woman's womb. The term Abortion is derived from the latin word ‘abortus’ which means an object, which had been detached from its proper site. Morally, abortion seems to be sinful act so it is not permitted to follow. Abortion is not unknown practice. It has been carrying out since ancient times. Since 19th century and 20th century, various phases in legality of abortion have been seen. At present, almost every country is endeavoring to provide safe and hygiene access to abortion keeping the health and well-being of women where health is not confined to physical but mental health too. Countries across the world have their own account of abortion laws and affairs. In early time it is found that first 40 days of male foetus and 80-90 days of female foetus were allowed to be aborted, which was further declared as murder with punishment of excommunication. In the year of 1920[[1]](#endnote-1), Soviet Union became the 1st state to legalize abortion. In 1980s, there was series of reforms in existing abortion laws with various fluctuations. India has also made its first progressive and liberal legislation regarding abortion laws in 1971 on recommendation of Shah Committee. It was somewhere also connected with five year plan on population control due to increasing population, meanwhile family planning from 1951 to 1977 was on peak in India but with criminalization of abortion, it was also majorly resulting illegal abortion accompanied by high rate of maternal deaths due to untrained service providers and by using non-recommended, unhygienic and unsafe methods. Since five decades various amendments have been proposed and some of them have been implemented with the need of the time arisen.

**KEYWORDS**

Abortion, The Medical Termination of Pregnancy Act, Miscarriage, Comprehensive Abortion Care,

**BEFORE 1971 (INDIAN PENAL CODE 1860)**

Before 1971, the law of abortion was governed by the British Made Law under Indian Penal Code (IPC) and Criminal Procedure Code (CrPC). Abortion was criminalized under Section 312[[2]](#endnote-2) of the Indian Penal Code, 1860, describing it as intentionally "causing miscarriage". There were some exceptional cases where abortion was carried out to save the life of the woman, it was a punishable offense and criminalized women/providers, with whoever voluntarily caused a woman with child to miscarry facing three years in prison and/or a fine, and the woman availing of the service facing seven years in prison and/or a fine. Along with this, abortion was governed by the Criminal Procedure Code 1893[[3]](#endnote-3). Due to this legislation, illegal and unsafe abortion drive was illegally carried out through untrained service providers which was excessive risky for the health and life of women. After the year of independence 1947, Indian economy was very poor. People’ per capita income was less than required sum and on the other hand Indian population was increasing at high pace and population is the biggest reason for the underdevelopment of the country. Government has introduced the Program of Five Year Plan with distinct aims. From the year 1951 to 1956, First Five Year Plan, Government aims to control population through various actions like Family Planning, to improve health of women and children. With this India became first country in the world to launch such nationwide family planning program. Census 1965 showed the data that rate of increase in population was not easy to control by distributing contraceptive methods such as a diaphragm and jelly, foaming tablets, and condoms. So, in 1964 The Central Family Planning Board recommended the Ministry of Health to create a committee to revise the abortion laws existing in India. Recommendation was brought into effect and a committee was constituted under the chairmanship of Shantilal Shah. The Committee carried out a comprehensive review of the socio-cultural, legal and medical aspects of abortion. On 30th December 1966, the committee has submitted its report to legalize the abortion in the country to prevent the deterioration of women health, to provide safe and hygienic abortion, to save the life of the woman, to preserve physical health, to preserve mental health, to terminate a pregnancy resulting from rape or incest and in cases of fetal impairment. Contraceptive failure was also taken as ground for legal abortion. The Government of India in 1970 accepted the report and drafted the Medical Termination of Pregnancy Bill 1970 and enacted in the year 1971 as The Medical Termination of Pregnancy Act 1971.

**THE MEDICAL TERMINATION OF PREGNANCY ACT 1971 (Act no. 34 of 1971)**

In the year 1970, The Medical Termination of Pregnancy Bill 1970 was laid down before Parliament and in 1971 it was passed. It came into effect on 1st April 1972. It is based on model of United Kingdom law passed ‘Abortion Act 1967’[[4]](#endnote-4). Prior to this enactment, abortion was not unpracticed but illegally carried out every year whereas 15 countries across the world had already legalized the practice of abortion. With increasing illegal abortions with unsafe and untrained services, women were brought to door of poor physical and mental health, risk of death. So it became need of the hour to take action against this illegal practice. The Medical Termination of Pregnancy Act 1971 was extended to whole country except state of Jammu and Kashmir. It provides the legal framework for making Comprehensive Abortion Care (CAC) services available in India to carry out safe and health friendly termination.

Pregnancy can be terminated with approval of one registered medical practitioner (RMP) if feotus is of 12 weeks and approval of two registered medical practitioners if feotus’s age is between 12 to 20 weeks. The person terminating the pregnancy should be registered as medical practitioner otherwise he would be liable for the offence under Indian Penal Code. If any act is done by registered medical practitioner with good faith will not be liable for any offence and no legal proceeding would be constituted against him. Pregnancy is not permitted to abort child as per the will of husband and wife. Government has prescribed some conditions under which abortion is allowed to carry out.

1. If pregnancy involves the risk of injury of either physical health or mental health or both or risk to life of women.

2. If pregnancy may result any kind of mental or physical abnormalities to the child born or even handicap.

3. If pregnancy is conceived due to rape which results to the mental health injury to the women.

4. If pregnancy is conceived due to failure of contraceptive method used by either husband or wife with the purpose of limiting the family size.

For the abortion, prior consent of women is paramount essential but in the case of pregnancy is conceived by minor or lunatic then consent in writing of her guardian is required. All details and information of the pregnant woman must be kept confidential and safe, if someone disclose and breach the woman’s confidentiality would liable for the Rs. 1000 fine. Pregnancy can be terminated only at those places which are approved by this legislation only viz. a hospital which is either maintained or established by the government, other private places which are officially approved for the only purpose of termination of pregnancy[[5]](#endnote-5).

**The Medical Termination of Pregnancy Amendment act 2002 (Act No. 64 of 2002)**

The Medical Termination of Pregnancy amendment act was enacted on 18th December 2002. This amendment brought changes in the section 3, 4 and 5 of the act. The word Lunatic under section sub clause (a) of Clause (3) of Section 4 has been substituted by the words “mentally ill person”. Earlier, hospitals established or maintained by government and places approved by the government were allowed to provide abortion services, but through this amendment government shall set up District level committee of the Chief Medical Officer or the District Level Officer as the chairperson of the committee. It must be assured that members of the committee should not be less than three and more than five including Chairperson. The Medical Termination of Pregnancy Act 1971 made punishable offence if person terminates pregnancy without being registered medical officer but no specified or clear punishment was prescribed means it was totally based on the discretion of the court, so here section 5 is amended to make such person liable for the rigorous imprisonment not less than two years and not more than seven years. It also punishes the owner of the place which is not approved by the government for the rigorous punishment of not less than two years which may extend up to seven years[[6]](#endnote-6).

**The Medical Termination of Pregnancy Rules 2003**

Section 6 of The Medical Termination of Pregnancy Act 1971 empowers the central government to make the rules for the carrying out the provisions of The Medical Termination of Pregnancy Act 1971. The ministry of Health and Family Welfare via notification has released the set of Rules 2003. One member of The District Level Committee shall be Gynecologist/ Surgeon/Anaesthetist and other shall be from the local medical profession, non-governmental organization, and Panchayati Raj Institution of the District among them one member must be woman. Registered medical officer under State Medical Register shall have experience in practice of gynecology and obstetrics for a period of not less than three years, six months of house assurgency in gynecology and obstetrics, experience at any hospital for a period of not less than one year in gynecology and obstetrics, or he has assisted any registered medical practitioner at least 25 cases out of which five must have been done independently by him. Place would be approved for carrying out the practice of termination of pregnancy, if government gets satisfied with the safety and hygiene and all facilities available for the termination of pregnancy up to 12 weeks and 20 weeks such as gynecology examination/labor table, resuscitation and sterilization equipment, drugs and parental fluid, back up facilities for treatment of shock and facilities for transportation and operation table and instruments for performing gynecological surgery, anaesthetic equipment, resuscitation equipment and sterilization equipment, drugs and parental fluids for emergency use respectively. To get approval of place to carry out the pregnancy termination, registered medical practitioner needs to submit **Form A** to Chief Medical Officer (CMO) and after verification, inspection enquiry within two months. Chief Medical Officer will recommend the certificate of approval of place to Committee. Committee will consider the application and issue approval certificate in **Form B** within next two months. Section 7 provides the provision of cancellation of approval certificate is found by CMO that safe and hygiene conditions are not maintained after giving reasonable opportunity to represent[[7]](#endnote-7). Chief Medical Officer after reasonable interval of time keeps inspecting the approved place, whether safe and hygienic conditions are maintained or not. After inspecting, Chief Medical Officer prepares the report and send to the committee. Committee reviews the report and get satisfied then cancel or suspend the certificate of approval given under section 5 of the act. Registered Medical Practitioner (RMP) or owner of the place may make rectification and resubmit that to get grant of certificate again. During the suspension of approved place, the place deems to be not fit to carry out the practice of termination of pregnancy. **Form C** is for taking consent for the pregnancy is given in section 9 of the act. This rules 2003 has been brought after repealing The Medical Termination of Pregnancy Rules 1975.

**The Medical Termination of Pregnancy Regulations 2003**

Section 7 of The Medical Termination of Pregnancy Act 1971 empowers the government to make regulations for better implementation of the law. Ministry of Health and Family Welfare has published The Medical Termination of Pregnancy Regulation 2003. Every Registered Medical Practitioner is required to fill the **Form 1** within the three hours of termination the pregnancy of woman. Before termination, woman has to give consent for the same. Registered Medical Practitioner (RMP) is abide by the duty to seal the consent in envelop which is further sent to owner of the approved place or Chief medical officer. Every envelop shall have name of pregnant woman, serial number assigned to pregnant woman, name and address of the practitioner who performs termination which must be sealed as “SECRET” to keep it confidential. Admission register should be maintained every year. Information and details of pregnant women must be kept secret and shall not be disclosed to anyone. Admission register must be kept for five years. Information would not be opened for inspection except authority under law. Certificate of termination would be given to woman to enable her to get leave[[8]](#endnote-8). The Maternity Benefit Act 1961 states that in case of miscarriage, a woman will be entitled to paid leave for six weeks immediately following the day of her miscarriage. Women are required to submit proof for miscarriage and willful termination of pregnancy (abortion) is excluded. India is the first country to give maternity benefits to woman and legalize miscarriage leave.

**The Medical Termination of Pregnancy Act 2021**

It has been 5 decades of The Medical Pregnancy Act 1971 to be passed and in this 21st century where technology got advanced and everything gets faster than old. Similarly method of abortion has been reached at new way of abortion. Most of the countries across the world have legalized the abortion. Basically aspect of abortion is generally analyzed on the basis of three factors viz. Human Rights, The Principles of Solid Science and advancements in technology. So India also paid attention on old act. On 29th January 2020, The Government of India has introduced The Medical Termination of Pregnancy Amendment Bill 2020 before Lok Sabha and got passed on 17th March 2020. On 16th March 2021, Bill was also passed from Rajya Sabha. There were various shortcomings in old act 1971, Prior to The Medical Termination of Pregnancy Act 2021, women were not independently allowed to have abortion. Since one and half or two decades many human right bodies and women rights commission kept on demanding for amendments in previous act such increase in limit of gestation period, inclusion of unmarried women to have abortion because 1971 act only allowed married woman to have right of abortion. As per Bandhua Mukti Morcha vs. Union of India[[9]](#endnote-9) Supreme Court held that Right to Health[[10]](#endnote-10) is the fundamental right under article 21 right to life and personal liberty of constitution of India, so it is right of unmarried woman too that she can abort her child if she conceived the pregnancy due to failure of contraceptive method. Woman is biologically fit to conceive pregnancy and during pregnancy she has to face and suffer various complexities which may be physical or mental. So if woman doesn’t want to continue the pregnancy due to any grave injury to her she can do. Women have human right, right to health, right to liberty and full right to lead a happy life which permits to terminate her pregnancy. In case of  [State of Punjab & Ors v Mohinder Singh Chawla](https://indiankanoon.org/doc/1569214/)*[[11]](#endnote-11)*it is constitutional obligation of the government to provide health facilities so somewhere it is also an obligation of government to amend The Medical Termination of Pregnancy Act 1971 so that more safe and hygienic abortion would be provided and illegal abortion could be stopped. In Justice K.S. Puttaswamy (Retd.) vs. the Union Of India And Others[[12]](#endnote-12), the court recognized the constitutional right of women to make reproductive choices, as a part of personal liberty under Article 21 of the Indian Constitution, which, despite laying a robust jurisprudence on reproductive rights and the privacy of a woman, does not translate into a fundamental shift in power from the doctor to the woman seeking an abortion.

Basic Amendments brought to The Medical Termination of Pregnancy Act 1971 are following[[13]](#endnote-13):

* Gestation period of termination of pregnancy has been increased from 12 weeks to 20 weeks where only advice of one medical practitioner is required. Along with married woman, now unmarried woman would be able to terminate her pregnancy due to failure of use contraceptive method.
* Termination of pregnancy can be done if period of pregnancy is increased from 20 weeks to 24 weeks in case of survivors of sexual abuse, minors, victims of rape, incest, differently abled women. Woman or couple can also terminate their pregnancy if any anomaly found in foetus during gestation period.
* Government shall establish medical boards in all states and union territories to diagnose the fatal condition of foetus. Each medical board shall consist of a Gynecologist, a Pediatrician, a Radiologist or Sonologist
* Through this amendment, breach of confidentiality is made more stringent. Prior to this amendment breach of confidentiality was punished with only fine but now breach is punished with the one year of imprisonment or fine or both.

With insertion of section 5A, protection of privacy of woman has been kept on priority. Section 5A provides if any person other than authority under law discloses the confidentiality of woman shall be liable for the punishment of the one year imprisonment or fine or both.

**CONCLUSION**

India is considered to be progressive country in regard of abortion legislation. From the year 1971 to 2021 various changes have been brought as per the requirement. But it is found that The Medical Termination of Pregnancy Act 1971 was legislated with the purpose of controlling population from unintended pregnancies and reduction the increasing maternal mortality because of illegal unsafe abortions but it was not the positive path. A 2015 study in the Indian Journal of Medical ethics has observed that 10-13% of maternal deaths in India can be attributed to unsafe abortion, so it can be estimated that roughly six to seven[[14]](#endnote-14) women lose their life due to unsafe abortion every day. Some of them survive but such method compels them to live life of pain compounded by infertility, sepsis and other internal injuries. So this amendment is laudable step for better health, safe abortion of the woman. About 97% countries across the world allowed the termination of pregnancy keeping the rights of women. It is their reproductive right too. Some countries like Australia, Canada, Costa Rica, Ethiopia, Federal Republic, Ghana, Honduras, Isreal, Kenya, Republic of Korea, Mauritius, Morocco and Switzerland allow abortion not only ground of preserving life of women but also their health. Some countries are still left to consider their restrictions on abortion, like Brazil, Chile, Ireland, Nigeria, Iran, Saudi Arabia, Indonesia, Philippines, Argentina are some countries who have more restrictive abortion laws, they provide abortion only on ground of rape, woman’s life which is very stringent to the other basic human rights. Still today some countries need to think about introducing abortion laws in their country. Some South African countries don’t allow abortion. There may be some religious, social reasons of not allowing abortion. Some Islamic countries, their religion doesn’t permit such act. In this case India is progressing. Although India Legislature brought new law but still social awareness is direly needed to be spread. Women need to know about their rights regarding life, complications of termination of pregnancy at uncertified and by untrained and unregistered medical practitioner. In India, large population doesn’t have knowledge of the government schemes and services about termination of pregnancy so people must be reached to make them familiar with such facilities so that people start availing such services. Government also needs to take action to reach the people and promote awareness[[15]](#endnote-15) about complications of unsafe and unhygienic abortion and risk of poor health. With this liberal legislation, government has to keep its eyes over illegal abortion like sex selective abortion too.

1. Journal of Indian Law Institute, Vol 16, No. 4, Symposium on Population Control and law. [↑](#endnote-ref-1)
2. Indian Penal Code 1860 (Act No 45 of 1860) [↑](#endnote-ref-2)
3. Siddhivinayak S Hirve (2004) Abortion Law, Policy and Services in India: A Critical Review, Reproductive Health Matters, 12:sup24, 114-121, DOI: 10.1016/S0968-8080(04)24017-4 [↑](#endnote-ref-3)
4. SCConline.com [↑](#endnote-ref-4)
5. The Medical Termination of Pregnancy Act 1971 (34 of 1971) [↑](#endnote-ref-5)
6. The Medical Termination of Pregnancy Amendment Act 2002 (64 of 2002) [↑](#endnote-ref-6)
7. The Medical Termination of Pregnancy Rules 2003 [↑](#endnote-ref-7)
8. The Medical Termination of Pregnancy Regulation 2003 [↑](#endnote-ref-8)
9. Bandhua Mukti Morcha v. Union of India AIR 1984 SC 802 [↑](#endnote-ref-9)
10. The Constitution of India by P M Bakshi, 16th Edition [↑](#endnote-ref-10)
11. State of Punjab & ors v. Mohinder Singh Chawla Air 1997 SC 1225 [↑](#endnote-ref-11)
12. J. K S Puttuswamy (Retd) v Union of India (2017) 10 SCC 1 [↑](#endnote-ref-12)
13. The Medical Termination of Pregnancy Amendment Act 2021 (Act No 8 of 2021) [↑](#endnote-ref-13)
14. The Indian Journal of Medical ethics 2015 [↑](#endnote-ref-14)
15. Abortion laws and Abortion Situations in India- Malini Karkal [↑](#endnote-ref-15)