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BLOG

ANALYSIS OF THE MEDICAL TERMINATION OF PREGNANCY ACT

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INTRODUCTION

Abortion refers to the termination of a pregnancy before the foetus can survive independently outside the uterus. It is a deeply contentious issue that lies at the intersection between law and morality. Debates have been ignited across cultures and religions to determine when life begins and who has the authority to decide whether a pregnancy continues. In India, abortion is a pressing matter as unsafe abortions are a leading cause of maternal mortality, particularly among women in vulnerable socio-economic conditions. Against this backdrop, the Medical Termination of Pregnancy Act, 1971 was introduced as a legal measure. The Act currently stands as a cornerstone in the recognition of reproductive rights.

HISTORICAL EVOLUTION

Prior to the enactment of the Act, abortion was criminalised under Sections 312-316 of the Indian Penal Code, except in circumstances where it is required to save the life of the woman. In 1964, the Shantilal Shah Committee was constituted to aid in decreasing the high maternal mortality rates, with a special emphasis on mortality associated with illegal abortions. The Committee's findings paved the way for the Medical Termination of Pregnancy Act.

KEY PROVISIONS AND AMENDMENTS

The Act originally allowed abortion up to 20 weeks of gestation, subject to conditions and medical opinion. For pregnancies up to 12 weeks, the opinion of a single registered medical practitioner (RMP) was required. The concurrent opinions of two registered medical practitioners was required

for pregnancies between 12 and 20 weeks. These provisions are often criticised as it creates barriers to access, especially in rural areas where chronic shortage of qualified medical professionals persist. Abortions were permitted under specific grounds such as continuation of pregnancy posing a risk to the life of the woman, grave injury to her physical or mental health and if the child would suffer from serious physical or mental abnormalities. Pregnancies resulting from rape or contraceptive failure were presumed to cause grave mental anguish and hence qualified as valid grounds for termination. Minors and women with mental illnesses required consent from their guardian which again disproportionately affected vulnerable groups. Unmarried women were explicitly excluded. The Act frames abortion as an exception rather than a right due to which it is criticised. Further, the power to make the final decision is in the hands of the registered medical practitioner and not the women which perpetuates a paternalistic approach.

The Medical Termination of Pregnancy (Amendment) Act, 2021 introduced several reforms. The gestational limit was extended to 20 weeks with the opinion of one registered medical practitioner and 24 weeks with the opinion of two registered medical practitioners. Medical Boards comprising specialists in gynecology, pediatrics and relevant fields were constituted in each state to decide cases beyond 24 weeks. The 1971 Act's marital status based discrimination was removed with the inclusion of unmarried women as eligible for abortion on the ground of contraceptive failure. The strengthened confidentiality provisions represent an alignment with constitutional values of privacy and dignity.

JUDICIAL INTERPRETATION AND EXPANSION

The judiciary has played a transformative role in moulding the MTP Act and protecting the reproductive rights of women. In the landmark case of *Suchita Srivastava v. Chandigarh Administration*, the Supreme Court held that a woman's right to make reproductive choices falls within the ambit of personal liberty as under Article 21 of the Constitution. The apex court emphasised that the autonomy of women should be respected and reproductive choices cannot be unduly restricted. In cases involving pregnancies beyond the statutory gestational limit, the Indian judiciary has adopted a liberal approach. In *Meera Santosh Pal v. Union of India*, the Supreme Court allowed termination of a 24 week pregnancy as the foetus suffered from a fatal abnormality that would make life outside the womb impossible. Courts are known to prioritise maternal health and dignity. In *X v. Principal Secretary, Health and Family Welfare Department*, the Supreme Court struck down the distinction between married and unmarried women in accessing abortion.

It was held that this classification violated the fundamental right to equality and non-discrimination.

CHALLENGES AND PROPOSED REFORMS

While the judiciary and legislative reforms have been progressive in nature, there are myriad challenges in the path of effectively realising reproductive rights. The requirement for opinion of one or two registered medical practitioners makes abortion a conditional privilege, as opposed to a woman's autonomous right. The Act prescribed a doctor-centric model that disregards the experiences and choices of women. Constitution of a Medical Board for termination of pregnancies past the 24 week mark has become a major procedural hurdle. These delays and associated red-tapism force women to continue with unwanted or medically risky pregnancies. Inadequate healthcare facilities in rural and semi urban areas have several reduced the efficacy of the Act in practice.

To address these challenges, the law must centre the woman's decision making power by minimising procedural barriers and reducing reliance on authorisations from doctors. A woman's autonomous choice must be her own and not subject to medical discretion except in cases involving medical complications. While the Medical Board currently operates at the state level, it must be decentralised to operate at the district level in order to ensure reduction in delays. Training more registered medical practitioners and other such investments in healthcare infrastructure are essential to ensure that abortions are performed safely and in time.

CONCLUSION

The future of reproductive rights in India depends on whether the law can move beyond its paternalistic roots. The Medical Termination of Pregnancy Act, although enacted to protect the lives of women, will never fulfill its objective so long as women are kept in external control. True protection lies in guaranteeing access to abortions with dignity, safety and without judgement. There must be an incremental shift to a rights based approach without which the promise of the Act will remain an illusion.