



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2025

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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ANALYSIS OF THE MEDICAL TERMINATION OF PREGNANCY (AMENDMENT) ACT, 2021

-Harshika Sinha

The Medical Termination of Pregnancy (Amendment) Act, 2021¹, represents a cautious but important stride in India's ongoing negotiation between reproductive autonomy and State regulation. Introduced nearly five decades after the original Medical Termination of Pregnancy Act, 1971², the Amendment arrives at a time when conversations around bodily autonomy, gender justice, and constitutional freedoms are gaining much-needed ground³. The reform falls short of acknowledging reproductive rights as absolute and unconditional, even though it makes an effort to modernise the legislation in light of social realities and medical advancements. Rather, it places them inside a framework that still gives priority to bureaucratic control and medical authority.

At the core of the amendment lies the extension of the permissible gestational limit for abortion from 20 to 24 weeks for a few categories of women. These include survivors of rape, incest, minors, and other "vulnerable women," as notified by the Government. On the surface, this appears to show compassion for the lived realities of women who might experience coercion, social stigma, or delays in decision-making due to trauma⁴. Significant concerns are raised, though, by the fact that this extension is not available to everyone and is instead filtered through category-based eligibility. Depending on a woman's social identity or the circumstances of her

¹The.medical.termination.of.pregnancy.(amendment).act?8687?&MjTjPj.(AjMjEjNjDjMjEjNjTj).AjCjTj?8687.(Lexis.Nexis.8687);

²The.medical.termination.of.pregnancy.act?7637?90.MjTjPj.AjCjTj?7637.(Lexis.Nexis.7637);

³Medical. Termination. of. Pregnancy. (MTP). Amendment. Act?. 8687?. (Aug. 02 8687)? https://www.drishtiias.com/daily_news_analysis/medical_termination_of_pregnancy_mtp_amendment_act_8687;

⁴Veronica.Arora™.Ishwar.C.Verma?The.Medical.Termination.of.Pregnancy.(Amendment).Act?8687?&A.Step.Towards.Liberation?&Indian.Journal.of.Medical.Ethics.(8686);

pregnancy, it establishes a hierarchy of reproductive autonomy⁵. This brings to mind the legal reasoning in *X v. Union of India (2017)*⁶, where the Supreme Court decided that, because of the severe trauma involved, a rape survivor could have an abortion at 24 weeks. Yet, the court's compassionate lens in individual cases is not mirrored uniformly in legislation, which still leans heavily on medical and legal gatekeeping⁷.

A major area of contention remains the fact that abortion continues to be permitted only under specific grounds, such as, risk to the mother's life, grievous bodily harm to her physical or mental health, or substantial foetal abnormalities. The concept of *choice* as an autonomous legal right does not yet feature explicitly in the statutory language⁸. In *Suchita Srivastava v. Chandigarh Administration (2009)*⁹, the Supreme Court unequivocally stated that a woman's right to make reproductive choices is a dimension of "personal liberty" under Article 21 of the Indian Constitution¹⁰. The Court underlined that this covers the freedom to make choice for themselves, whether terminate or carry a pregnancy to term. Even with its amendments, the MTP Act hasn't fully incorporated this constitutional principle. Instead of enabling a woman to make decisions independently, it imposes thresholds and preconditions, such as requiring the opinion of one medical practitioner for abortions up to 20 weeks and two for those between 20 and 24 weeks. Despite being designed as a safety measure, this medicalised model frequently becomes a barrier, particularly for impoverished, rural, or single women who might not have easy access to several doctors or clinics that allow abortions¹¹.

⁵. Strengthening women's empowerment and gender equality in fragile contexts towards peaceful and inclusive societies; A systematic review and meta-analysis? PMC. <https://pmc.ncbi.nlm.nih.gov/articles/PMC4560636/>

⁶ *X v. Union of India*? (867) 9 SCC 14

⁷ *X and Ors vs Union of India (UOI) and Ors*. (6368;867) SC? (Dec. 22, 8680)? [https://elprj.org/in/wp-content/uploads/8680-78-12-X%20and%20Ors%20vs%20Union%20of%20India%20UOI%20and%20Ors%20\(6368867\)_\(SC86737158737274091COM40874\).pdf](https://elprj.org/in/wp-content/uploads/8680-78-12-X%20and%20Ors%20vs%20Union%20of%20India%20UOI%20and%20Ors%20(6368867)_(SC86737158737274091COM40874).pdf)

⁸ Aryan. Kapoor? Empathy and Justice; Abortion Rights for Minor Rape Victims in India? OHRH. https://ohrh.law.ox.ac.uk/empathy_and_justice_abortion_rights_for_minor_rape_victims_in_india/

⁹ *Suchita Srivastava v. Chandigarh Admn*? (866) 5 SCC 7

¹⁰ *Suchita Srivastava*. Anr. v. Chandigarh Administration. (866) drishti. judiciary. (Mar. 22, 8681)? <https://www.drishtijudiciary.com/landmark-judgement-special-acts-medical-termination-of-pregnancy-act-suchita-srivastava-anr-v-chandigarh-administration-866>

¹¹ Gauri Kashyap? Abortion Law in India; A Step Backward After Going Forward? Supreme Court Observer. (Nov. 7, 8689)? <https://www.scobserver.in/journal-abortion-law-in-india-a-step-backward-after-going-forward/>

The provision that allows a Medical Board to consider requests for terminations beyond 24 weeks in cases of foetal abnormalities is another noteworthy aspect of the amendment. Although this may seem like a progressive move in theory, its practicality is still up for debate. In India's vast and varied healthcare system, it is not always possible or easy to establish such expert boards on short notice¹². As seen in *ABC v. Union of India (2015)*¹³, where the Supreme Court allowed abortion beyond 20 weeks after the foetus was diagnosed with anencephaly, it is the judiciary that often becomes the last-resort space for relief¹⁴. Several High Courts and the Supreme Court have routinely stepped in when the law failed to keep pace with compassionate medical and ethical reasoning. In *Murugan Nayakkar v. Union of India (2017)*¹⁵, the apex court permitted a 13-year-old rape survivor to terminate her 32-week pregnancy based on expert medical opinion¹⁶. In addition to demonstrating the judiciary's readiness to provide relief, these cases reveal the inflexibility of the law, which compels desperate people to turn to extraordinary intervention rather than institutional certainty.

The amendment also makes some gestures in the area of privacy, but they are mainly symbolic. The Act now states that the identity of the woman having an abortion may only be disclosed to those who are legally allowed to know. This is unquestionably a positive move, especially in a country where abortion is still highly stigmatised. But in the absence of robust protections, grievance procedures, and health workers' awareness, this confidentiality clause runs the risk of becoming merely a formality¹⁷. In light of the *Justice K.S. Puttaswamy v. Union of India (2017)*¹⁸ judgment, which recognized the right to privacy as a fundamental right under Article 21, the protection of reproductive and informational privacy becomes all the more critical¹⁹. Yet, there is little in the implementation framework to ensure that this legal right is meaningfully respected on the ground.

¹²The. Medical. Termination. of. Pregnancy. (Amendment). Bill. 8686. (Mar. 8. 8686). https://prsindia.org/billtrack-the_medical_termination_of_pregnancy_amendment_bill_8686;

¹³X7.v.State.(NCT.of.Delhi).(867).76.SCC.7

¹⁴.Case.Brief;ABC.v.Union.of.India.™.Ors?(Apr.8.8686)?https://lawbhoomi.com/ease_brief_abc_v_union_of_india_orst

¹⁵.Murugan.Nayakkar.v.Union.of.India?SCC.Online.(Supreme.Ct;.India.867);

¹⁶.Supreme.Today.AI?Supreme.Today.AI.<https://supremetoday.ai/doc-judgement-6676662778>;

¹⁷India. amended. law. makes. abortion. safer. and. more. accessible? (Apr. 79. 8687)? https://www.who.int-india-news-room-detail-79_60_8687_india_s_amended_law_makes_abortion_safer_and_more_accessible;

¹⁸.K;S;.Puttaswamy.(Aadhaar.™).v.Union.of.India?(867).7.SCC.7

¹⁹Justice. K;S;. Puttaswamy. (Retd;).™. Anr;. vs;. Union. of. India.™. Ors;? https://privacylibrary.org/ccgnlud;org-ease-justice_ks_puttaswamy_orst_vs_union_of_india_orst;

Furthermore, the Amendment does little to address abortions in the context of marital rape. Indian law still does not recognize non-consensual sex within marriage as a crime. As a result, married women facing unwanted pregnancies from abusive relationships are left with limited legal backing. In reality, a lot of people still depend on court pity or postponed medical issues to be eligible for terminations that go beyond the allowed amount. Regardless of marital status, a law that was truly based on rights would have recognised this disparity and included more expansive grounds based on informed consent and agency²⁰.

The Amendment has merit despite its flaws. It reflects an institutional attempt, which is however incomplete, to respond to decades of advocacy by public health experts, lawyers, women's rights groups, and the judiciary itself. It recognizes that a one-size-fits-all framework is insufficient in a country as diverse as India. The law must, however, give up incrementalism and embrace the core principle that a woman's body belongs to her and her alone if it is to be truly transformative. Social acceptance, medical approval, or bureaucratic interpretation cannot serve as the foundation for reproductive decisions. As fundamental elements of human dignity and constitutional freedom, they must be respected.

India must also make investments in awareness, training, and infrastructure if it hopes to fully implement this legislative reform. Just as crucial as the wording of the law is making sure that abortion services are available, reasonably priced, and stigma-free in both urban and rural areas. Legal reform might turn out to be a hollow promise if it is not practically possible. The path ahead demands not only more progressive policies but a shift in mindset, where women are trusted to make decisions about their bodies, without apology or justification.

²⁰.Binitha.Ajith?A.Critical.Analysis.of.the.Medical.Termination.of.Pregnancy.(Amendment).Act.8687.and.Its.Implications.on.Reproductive.Health.Care?78.International.Journal.of.Creative.Research.Thoughts.(IJCRT).09(8680);