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MEDICAL TERMINATION OF PREGNANCY (AMENDMENT) ACT, 2021- UNDERSTANDING INDIA' S CHANGING LANDSCAPE OF REPRODUCTIVE RIGHTS

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Historically, in India, the abortions have been regulated by the Medical Termination of Pregnancy Act,1971. However, with the advancement in medical technology and women's growing concern regarding their reproductive rights had highlighted the need to reform the existing framework. Thus, in 2021 , Parliament enacted the Medical Termination of Pregnancy(Amendment) Act (hereinafter referred to as the MTP Amendment Act).

The amendment has brought various significant changes in the abortion law. The amendment performs dual role- first it expands the right of women to access safe and legal abortions and second it balances the interests of the women, medical practitioners and the state. However, the amended framework still shows certain limitations which raise questions concerning reproductive autonomy of the women.

- **KEY CHANGES INTRODUCED BY THE AMENDMENT ACT, 2021**

  Under the MTP Act, 1971[1], termination of pregnancy was permitted up to 12 weeks with the opinion of 1 registered medical practitioner and permitted between 12 to 20 weeks with the opinion of 2 registered medical practitioners and after 24 weeks, opinion of 4 members from the medical board was required if it is important to save the life of women otherwise termination of pregnancy at this stage would be considered as illegal. Here the right of terminating the pregnancy was given only to married women and women who are survivors of rape, minor, women who are physically or mentally ill, women who are widow/ divorced. There is no right person se for unmarried women.

  The amendment has brought a notable change in the gestational limits for termination of pregnancy. The 2021[2] amendment extended the upper limit from 20 weeks to 24 weeks for certain prescribed categories of women. [3]These categories include survivors of rape, minors,

[1]Medical Termination of Pregnancy Act, 1971, No.34 , Acts of Parliament, 1971 (India).
[2]Medical Termination of Pregnancy(Amendment) Act, 2021, No.8, Acts of Parliament, 2021(India)
[3]Veronica Arora, Ishwar C Verma, The Medical Termination of Pregnancy (Amendment) Act, 2021: A step towards liberation, 7 IJME 65, 66-67 (2022).

women whose marital status changes during pregnancy, women with physical or mental disabilities and women who are experiencing any abnormalities in their fetus. Since, the abnormalities in the foetus can be visible at a later stage of pregnancy so the upper gestational limits does not apply in the same manner. However, it requires approval of the medical board to terminate the pregnancy in such stage. This amendment includes women regardless of their marital status.

Section 5A[4]of the amended Act, prohibits the disclosure of the name and other details of the women whose pregnancy has been terminated, except to a person authorized by law. If any person disclose the identity of the women then he will liable for punishment which is imprisonment up to 1 year, fine or both. This provision puts an emphasis on the privacy of women since there still exists social stigma related to the abortion in many parts of India due to which women are often shamed for opting for this service. The protection of the identity of women can encourage other women to seek safe medical care rather than resorting to unsafe procedures. The Supreme Court in the case of *Suchita Srivastava v. Chandigarh Administration*[5] (2009) had recognised that reproductive choices of the women are part of personal liberty which comes under Article 21[6]of the Constitution. In the case of *K.S Puttaswamy v. Union of India (2017)*[7] the Supreme Court had clarified that it is the right of women whether to continue pregnancy or not which comes under the right to privacy.

The Supreme Court has further adopted a more broad approach in the recent case of *X v. Principal Secretary, Health & Family Welfare Department, Government of NCT of Delhi*[8]. The Court held that the Act does not distinguish between married and unmarried women in a manner that would deny unmarried women access to abortion as this would be violative of Art 14[9]that is Right to equality of the Constitution. The Court emphasized that reproductive autonomy cannot depend on the women's marital status. This approach of the Judiciary shows the inclination of Indian law towards recognizing abortion as an issue involving women's reproductive autonomy and dignity rather than merely a matter of criminal jurisprudence.

- **CHALLENGES AND LIMITATIONS**

[4]Medical Termination of Pregnancy (Amendment) Act, 2021, No.8, Acts of Parliament, 2021 (India)
[5]Suchita Srivastava v. Chandigarh Administration, (2009) 9 SCC.,1,21-22 (India).
[6]INDIA CONST. art.21
[7]K.S.Puttaswamy v. Union of India. (2017) 10 SCC 1 (India).
[8]X v. Principal Secretary, Health & Family Welfare Department, Government of NCT Delhi, 2022 SCC OnLine SC 1321.
[9]INDIA CONST. art.14.

Since, every law has its own merits and demerits, this act has also some limitations. The accessibility of abortion services depend substantially on the availability of registered medical practitioners. To opt for this service, [10]there should be appropriate medical facilities available to the women. In rural areas, women do not know about their rights due to which they may not be able to get timely medical services. In those areas, abortion is considered as a taboo so to make them aware of their legal rights is one of the most important task and for this several legal awareness camps should be organised so that they also get equal opportunity to know about their legal rights.

The major limitation of this amendment is that the amendment improves access but does not establish abortion as an unconditional right. For pregnancies between 20 and 24 weeks and beyond permission of 2 registered medical practitioners and opinion of medical board is required which can cause delays when the practitioners are not available or where there is delay in constituting the medical board. Thus to implement the act effectively ,there is a need to resolve the limitations .

- **CONCLUSION**

The MTP (Amendment) Act, 2021 marks an important step in the evolution of abortion law. The Act legally transformed abortion from a criminal act into a regulated public health measure simultaneously offering opportunities to motivate women towards safe contraception. However, only the legislation cannot guarantee reproductive freedom, there should be effective implementation which requires affordable and accessible healthcare facilities , trained medical practitioners and timely constituted medical boards. Overall, the Amendment Act, tries to balance women's reproductive rights with the need for safe and regulated medical care.

[10]Manishita Bhattacharjee, The Medical Termination of Pregnancy (Amendment) Act, 2021- Critical Analysis on Protecting Reproductive and Abortion Rights of Women in India, 2 IJLRA 5, 13-14 (2023).