

MTP ACT @50- A Move on the ‘Right’ Track?

Spotlight Series: Webinar 1

The MTP Act (Amendment) 2021- Fulfilling a Promise

28th September 2021

A Brief

Background

The Medical Termination of Pregnancy (MTP) Act (1971) is an Act of Parliament that allows termination of a pregnancy to be carried out by a qualified person in an approved facility. Although it is not a rights-based law it is liberal in its intent and allows pregnancy termination under a wide range of conditions. An unprecedented and progressive law, the Act has had constitutional provisions for women to have access to safe and legal abortions since 1971. In 2021 it was amended to enhance its reach to larger number of service seekers. This five-decade journey of the Act has had many partners, the government of India, civil society, and community voices play an important role.

In September 2021, Family Planning Association of India (FPAI) collaborated with twelve partners¹ to launch an innovative platform, for policy makers, programme planners, subject matter experts, feminists and representatives of the civil society, to come together and deliberate on a series of spotlight themes around the changing abortion landscape in India, over the last 50 years. The series, titled “**MTP Act @ 50 - A move on the ‘Right’ track?**” was conducted through six webinars at fortnightly intervals. The first of these series was launched on the occasion of International Safe Abortion Day, September 28, 2021.

The inaugural webinar focused on the MTP Act of 1971 and the MTP Act (Amendment) 2021. It looked at how successful was the journey till date, what promises do the current amendments hold and what have been / and are the potential challenges in the process of fulfilling intent of the Act. Additional Commissioner in Charge of Child Health, Adolescent Health, Ministry of Health and Family Welfare laid the context for the webinar by describing the intent and process of formulation of the Act and its amended version. Expert panellists followed up with discussion on the potential of amendments to fulfil promise of making service provision and service seeking easier and with a wider reach; the likely challenges faced in the process of implementation and the opportunities to make the Act more meaningful and helpful. This brief provides the gist of the discussions in the first webinar.

MTP Act: A journey rooted in good intentions

The journey to bring an act to regulate abortion started in 1965, with the constitution of the “Abortion law” committee also widely known as the “Shantilal Shah” committee of the Government of India. In response to concerns about maternal mortality resulting from illegal abortion conducted under unhygienic conditions by unqualified people, the committee was set up to

“This is a very important piece of history that we hold, and we have come 50 years with such a progressive act, and we are moving forward with some more amendments here”. Secretary General, FPAI

¹ CommonHealth, FOGSI, FRSH India, Global Health Strategies, IIPS (International Institute of Population Studies), IPAS, Love Matters, MASUM, Parivar Seva Sanstha, PHSI, Population Council and Pratigya campaign.

examine legalization of abortion. Report of this committee was the precursor to the MTP Act. Before 1971, both service seeker and provider were legally liable under the Indian Penal Code (IPC, 1860) for undergoing and providing abortion. The MTP Act provided legal sanction to abortion upto 20 weeks of gestation for a range of socio-economic, humanitarian, therapeutic and eugenic conditions. It offered protection from being penalized under the IPC for both the provider and to a limited extent to the woman seeking these services.

*“In the last two years close to 24% of cases that landed up in the court were below 20 weeks, most were between eight to 12 weeks. Well within the legally permitted gestation period of pregnancy. Courts took up these cases and passed judgments.”,
Practicing Lawyer*

Formulation of the MTP Act did bring about reduction in maternal mortality and morbidity due to abortions. However, despite its reformist provisions and liberal interpretation by service providers, field level evidence showed that women continued to find access to safe and legal abortion services a challenge, especially marginalized women and those in remote areas. There was mounting evidence of a lot of women landing up in Courts.

In view of the concerns about access issues, preventable maternal mortality, court cases and advances in medical technology that made later gestation (second trimester) terminations safe, amendment of the provisions to increase the ambit of legal services was an inevitable next step. The Amended MTP Act was finally notified for commencement on 24th September 2021. The specific amendments undertaken and justifications for the same are as follows:

MTP Act, 1971	MTP Act (Amendment) 2021	Justification
Requirement for opinion of 1 RMP ² for MTP upto 12 weeks and 2 RMPs from 12-20 weeks	Requirement for opinion of 1 RMP for MTP upto 20 weeks and 2 RMP from 20-24 weeks	More facilities especially in public sector such as Primary Health Centres with 1 Medical Officers will be eligible for providing services till 20 weeks
Provision for MTP beyond 20 weeks only if necessary to save the pregnant woman's life	Provision for MTP upto 24 weeks for special categories of pregnant women	It will increase access to safe and legal services for vulnerable women who often seek services beyond legal limit either from illegal providers or go to court. It will reduce unsafe abortion and maternal mortality
Provision of MTP of pregnancy with substantial foetal anomaly upto 20 weeks	No upper gestational limit for pregnancy with substantial foetal anomaly diagnosed and approved for termination by a Medical Board as prescribed under the rules made for the Act	It will increase access to safe and legal services for women with late diagnosis of substantial foetal anomalies. It will also reduce court cases
Provision of MTP for pregnancy resulting from contraceptive failure in married woman	Provision of MTP for pregnancy resulting from contraceptive failure in any woman irrespective of marital status	It will increase access to safe and legal services for unmarried women
Information about woman who had MTP is not be disclosed except under authority of law	Name and other particulars of the woman who had MTP not to be revealed except to person authorised by any law in force at that time	It will safeguard privacy, confidentiality, rights and dignity of women seeking MTP in spirit of ICPD conventions of CAIRO & Nairobi

² Registered Medical Practitioner

Nature of Amendments

“Safety or Rights”- The core concern: The provisions in both the original and the amended Act appear restrictive as they specify place, provider and reasons for termination. However, a closer analysis of prevailing health system environment at the time of formulation had made the committee give primacy to safety and therefore define who, where and under what conditions can provide services. “Safety” remained the core concern even during the deliberations for the 2021 amendments. It was felt that for women with multiple socio-economic, cultural and health vulnerabilities and seeking terminations in the second trimester, in absence of clear specifications as in the original Act, health risks were likely to be higher.

Transformative and Challenging - A mixed bag: The amendment raising the gestational age limit from 12 to 20 weeks for termination of pregnancy with opinion of one service provider is transformative and women centric. It accommodates delays in women seeking abortion and provides an opportunity to create an ecosystem where they are able to access safe abortions easily. It simultaneously makes it less onerous for service provider as the compulsion of seeking another opinion does not exist upto 20 weeks of gestation.

On the other hand, amendment related to legal sanction for abortion after 24 weeks rests on exceptions based on women’s vulnerability and on foetal anomalies as they are understood by the Medical Board. Translation of this amendment in terms of availability of services is likely to be challenging as it rests on standard setting, specialized training and nuanced language to ensure that it does not compromise on women’s right to health services or further disability stigma.

“Any law that rests on permission and exceptions poses a challenge to rights based approach to health services”.
Women’s Rights Champion

Intent to reality: Making most of the opportunity

Numerous possibilities exist within existing legal framework and service delivery system to capitalise on the 2021 amendments and use the momentum generated to advocate for further reforms.

Simplification of training: With the advent of medical methods and surgical techniques such as vacuum aspirations, the training requirements for service providers can now safely be less stringent. Evidence corroborates this assertion. Rules formation for the amended Act offer an opportunity for incorporating a simpler and curtailed training programme for service providers of first trimester abortions.

“As advocates we need to think about the amendments as not yet settled law. As technologies evolve and health services improve, we need to think about what improvements need to be brought in the regulatory framework such as the MTP Act”,
Reproductive Rights Activist

Enhanced reach: Similarly, revised training to conduct first trimester abortions to service providers without extended training or experience in obstetrics and gynaecology has the potential

to ensure that trained MBBS doctors or medical officers are available at Primary Health Centres and Community Health Centres that are closer to service seekers' residence.

Flexible and germane stipulations: While these amendments are the first step in the right direction, a more transformative approach that goes beyond 'safety' and centres around women's 'unconditional' access as is currently under proposed under the discussions on decriminalization of abortion needs to gain traction.

Safer alternatives: The COVID19 pandemic has brought to the forefront the need to innovate service delivery. To ensure that amendments to enhance safe and legal service reach upto 20 weeks do not remain on paper, leveraging of telemedicine route and use of safer, less invasive and more effective methods such as medical abortion pills needs to be explored and advanced.

These discussions on extended gestational limit paved the way for the second webinar led by Federation of Obstetrician and Gynaecologist Society of India on "Providing MTP services after 20 weeks: The Way Forward" on 21st October 2021.

Launch of a Webinar Series MTP ACT @50- A Move on the 'Right' Track?
On International Safe Abortion Day, 2021
Inaugural Webinar
Date: Tuesday, September 28, 2021
Time: 04.00 – 05.00 PM
Zoom Link: (to be shared)
The MTP Act (Amendment) 2021- Fulfilling a Promise
INAUGURAL ADDRESS Dr. Rathnamala Desai, President, FPA India
KEYNOTE ADDRESS Dr. Sumita Ghosh, Addl Commissioner, In Charge (Child Health, RBSK, AH, CAC &AD) , MoHFW
DISCUSSANTS Mr. Vinoj Manning, CEO, IDF Ms. Rupsa Mallik, Director Programmes and Innovation, CREA
HOST AND MODERATOR Dr. Kalpana Apte, Secretary General, FPA India