

MTP ACT @50- A Move on the ‘Right’ Track?
Spotlight Series: Webinar 5
Historical Perspectives of MTP Act: The Journey So Far
29th November 2021

A Brief

Background

The Medical Termination of Pregnancy (MTP) Act (1971) permits termination of a pregnancy to be carried out by a qualified person in an approved location. An unprecedented and progressive law, the Act has had constitutional provisions for women to have access to safe and legal abortions since 1971 under a range of conditions. The five-decade journey of the Act has had many partners who played an important role including the Government of India, civil society, professional organisations, academicians, and community voices. The journey has been an eventful one that has recognised and acknowledged technological advances made, has debated on expanding gestational age and changing social context. In 2021 the Act was amended to enhance its reach to larger number of service seekers. However, the Act continues to be focused on health outcomes and is not a right based and woman centred law recognising a woman’s right over her reproductive choices. Abortion on demand continues to elude women she needs provider’s permission for termination of an unintended pregnancy.

To celebrate 50 years of the Medical Termination of Pregnancy Act, Family Planning Association India (FPAI) in partnership with twelve partners¹ launched a six-part webinar series on International Safe Abortion Day, 28 September 2021. The first four webinars deliberated upon the 2021 Amendments; system and provider readiness required to translate the amendments into rights based access to legal and safe abortion; use of data and evidence to provide evidence based programmatic direction and on the ground reality of abortion access and unanswered questions that remain in the 2021 Amendments.

The fifth webinar of the series, held on 29 November was hosted by Ipas Development Foundation captures the journey and the historical perspectives of the MTP Act including the compelling situations which led to passing of the Act in 1971 and the latest amendments (1971-2021). An expert panel discussed and deliberated upon the impact of changes over time on technology, access and women’s agency as well as the impact of conflation of MTP Act with other Acts. This brief provides the gist of the discussions in the fifth webinar.

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

MTP Act: Journey so far

Genesis of the MTP Act: An alarming increase in the number of unsafe and illegal abortions in the country and the ensuing maternal mortality and morbidity triggered the conversations around unsafe and illegal abortions that started in India as early as 1964. Shantilal Shah Committee, constituted in 1965, undertook an exhaustive review of data across the world and after series of consultations concluded that women should have the right to take decisions over their own bodies and access abortion when faced with an unintended pregnancy. The Committee's deliberations focused on socio-cultural, moral, medical and legal aspects of pregnancy terminations. Recommendations of the Shah Committee were tabled in the Parliament and the MTP Bill was passed in 1970 and the Act came into being in 1971. The Act permitted a woman to undergo abortion up to 20 weeks of gestation for a range of conditions - to save a woman's life or preserve her physical or mental health; fetal impairment; pregnancy resulting from rape or incest and pregnancy resulting from contraceptive failure for married women. However, this legislation was not woman centered and the stringent requirements for service provision curtailed women's effective access to abortion services.

It's primarily a health care legislation not coming from women's individual rights to seek and access abortion and take decisions. It's basically from the perspective of health care system.

Amendments in 2002 to address gaps in 1971 Act: Around mid-90's, recognizing that access to safe and legal abortion continued to elude most women, meetings and consultations were convened with various professional bodies like Federation of Obstetrics and Gynecologist Society of India (FOGSI), NGOs in service delivery sector and activists as well as government bodies. Commitments made in the National Population Policy (2000) and the National Conference on Making Abortion Safe (2000) were landmark in taking the conversation around safe abortion forward. The 2002 Amendments simplified process of registering facilities as an abortion facility and introduced vacuum aspiration and permitted medical abortion up to seven weeks of gestation.

Draft Amendments of 2014: On-going conversations focused on the continued limited access and quality of abortion services and a need to improve access to safe abortion by considering another set of amendments to the MTP Act. Around mid-2000, the Ministry of Health and Family Welfare (MoHFW) constituted an Expert Group Committee comprising of NGOs providing abortion services, professional bodies like FOGSI and Nursing Council of India, researchers and activists to start talking about gaps, called for further research, and arrive at evidence based set of amendments that would overcome the gaps in the Act given the reality of continued lack of access.

Amendments recommended in 2014 were bold and far-reaching. It recommended permitting abortion on request up to 12 weeks, removing the need for permission from a qualified doctor; removing the word "married" from the clause relating to contraceptive failure as a reason for abortion, increasing the gestational age limit for abortion from 20 weeks to 24 weeks and the inclusion of doctors trained in Indian Systems of Medicine (AYUSH)) as well as nurses who have undergone specific training as abortion providers. These Amendments were uploaded on the MoHFW website inviting comments and suggestions from the public.

Though the recommendations were accepted by the Ministry of Health and Family Welfare as well as by other ministries, there was a strong opposition to including non-MBBS doctors and nurses and

hence the process was stalled. The backlash to the proposed amendments resulted in delays and watering down of some of the bold initiatives proposed in the 2021 Amendments.

Amendments of 2021: The 2021 amendments have been hailed as momentous with a potential to make abortion more easily accessible to women. It has retained some elements of 2014 proposed amendments. For example, it permits abortion up to 20 weeks of gestation, the word “married” has been removed from the provision of contraceptive failure. Yet the focus continues to be health rather than woman’s right to decide her own reproductive health.

Gains in 2021 Amendment

Over the years, Amendments to the MTP Act, 1971 have taken into account technological advances as well as changes in the social fabric of the country. There are a number of positives of the most recent Amendments. From service provision perspective, positive aspects include opinion of one provider for termination up to 20 weeks and two providers for gestation between 20-24 weeks, increasing the upper gestation limit from 20 to 24 weeks for “special categories” of women and no upper gestational limit for pregnancy with substantial foetal anomaly diagnosed by a Medical Board as prescribed under the rules made for the Act. From service seekers’ perspective, increasing gestational age till 24 weeks, removal of the word “married woman” and replacing “husband” with “partner” in case of contraceptive failure has also been hailed as important as it will increase access to safe and legal services for unmarried women.

We are fortunate that we are progressing in the right direction compared to some other countries like the US and others where the regressive laws are creating a lot of trouble for women and I hope we continue in the same direction.

Barriers to accessing legal and safe abortion services

Conflation of MTP Act with Pre-Conception and Pre Natal Diagnostic Techniques (PCPNDT) Act and Protection of Children from Sexual Offences (POCSO) Act:

There is continued conflation between PCPNDT Act and MTP Act, despite the two Acts being distinct in their content, scope and ambit with their own rules and regulations that guide them with no cross referencing or overlap between the two. However, due to unclear canvassing in this regard by various stakeholders, the interface between the PCPNDT Act and MTP Act has been muddled to a great extent with most authorities tending to conflate the two legislations.

We all recognize minors need abortion. But because of the POCSO Act we are having lots of problems because women/ parents don't want to report. Police also creates problems and as a result these women are refused abortion services.

Protection of Children from Sexual Offences (POCSO) Act, 2012 came into force to protect children from offences of sexual assault, sexual harassment and pornography. While 2021 MTP Amendments has a clause on protecting the privacy of women seeking abortion services, POCSO Act requires mandatory reporting of a young woman below 18 years of age seeking abortion services and does not distinguish between consensual and non-consensual sex stipulating a blanket prohibition on all sexual activity with a person below 18 years of age. As a result, young women below age 18 are often denied services even when they are in a consensual relationship. This forces them to access medical abortion drugs over the counter or seek termination from uncertified providers.

Women's rights: What is needed to make abortion available to all women

Critiques of the 2021 Amendments point out that the conversation around abortion access continues to be medical and provider centric and women's rights have not been taken into account. The movement towards creating women centric abortion laws needs to start by revisiting the proposed amendments of 2014 and addressing the following:

Make abortion on demand up to 12 weeks of gestation by thinking strategically and working with technical persons and lawyers.

Put in place accountability mechanisms to ensure that no woman is turned away because of provider bias or stigma. Put in place legal provisions which can be accessed by women who are turned away even when they are within the legal purview of the Act. Remove **third party intervention** through **medical board** for terminations beyond 24 weeks wherein the final decision is not of the woman thereby denying her the right over her body.

Provide information on the difference between PCPNDT Act and MTP Act: Use IEC to inform providers and service seekers about the differences between these two Acts Inform women at the community level about the provisions of the MTP Act amendments to ensure that women get right kind of services at legal facilities and are not turned back by providers.

Expand provider base: For benefits of the amendments to accrue in geographically isolated areas additional efforts are required. In rural and hard to reach geographies, there is a shortage of trained providers and even gynaecologists. In this scenario, and based on positive evidence available on nurses' capacity to provide abortion services, include them as service providers for early abortion using medical abortion.

The discussions on extended gestational limit paved the way for the sixth and final webinar led by Pratigya Campaign for Gender Equality and Safe Abortion and Foundation for Reproductive Health Services India entitled "MTP Amendment Act and Rules: The Way Forward" on 14th December 2021.

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Historical Perspectives of MTP Act: The Journey So Far

Hosted by:
Ipas Development Foundation

Monday, November 29, 2021 **4 pm to 5 pm** PM IST

Zoom Registration Link

3.00 pm: Welcome

Dr. Sangeeta Batra, Ipas Development Foundation

3.00-3.05 pm – Setting the Context

Dr. Kalpana Apte, Secretary General, FPA India

3.05-3.20 pm - The Journey of the Abortion laws in India (1971 – 2021)

A key note Address by **Dr Manisha Malhotra**, Former Deputy Commissioner, Maternal Health (Retd)

3.20 -3.50 pm - Impact of the Changes over time on Technology, Access, and Women's Agency.

A Panel Discussion moderated by **Mr Vinoj Manning**, CEO, Ipas Development Foundation

Expert Panel

Dr R P Soonawala, Patron FPA India

Ms Sudha Tewari, Parivar Seva Sanstha

Ms Ragini Srivastava, Arpan Shiksha Ewam Jan Kalyan Samiti, based at Hardoi, UP

3.50 -4.00 pm - Questions and Comments

4.00 pm – Wrap-up and Vote of Thanks