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

Spotlight Series: Webinar 6

MTP Amendment Act and Rules: The Way Forward

14 December 2021

A Brief

Background

The Medical Termination of Pregnancy (MTP) Act (1971) permits termination of a pregnancy under a wide range of conditions so long as it is 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. 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 play important role including the government of India, civil society, academicians, researchers, service providers, professional bodies, activists, and community voices.

In September 2021, FPA India worked with twelve partners[1] 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 previous five 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; on the ground reality of abortion access and journey of MTP Law and Amendments.

The sixth and final webinar focused on the MTP Amendment Act and Rules of 2021 and way forward. Expert panellists followed up with a discussion on conflicts and conflation of the MTP Act and deliberated on the MTP Act and Abortion Services – Who is at the centre. This brief provides a gist of the discussions in the sixth and final webinar of the series.

MTP Amendment and Act Rules, 2021: What do the Rules say?

The MTP Amendment, 2021 has been hailed as a progressive step towards making abortion liberal and accessible to women. It aims to provide universal access to reproductive health services and empower women by giving them comprehensive abortion care. It expands access to safe and legal abortion on therapeutic, eugenic, humanitarian and social grounds.
salient points in the Rules of the 2021 Amendment are:

Extension of gestational limit from 20 to 24 weeks: This applies to special categories of women and includes minors, rape survivors, victims of incest and other vulnerable women (minors, differently abled etc) as they may delay accessing early abortion. Women whose marital status (widow, divorce) changes during on-going pregnancy are also included in this category. Rules recognise the barriers faced by differently abled and mentally ill women where both access to

[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.

services and recognition of pregnancy may be delayed. In case fetal anomaly or malformation is detected before 24 weeks of gestation age, the woman is eligible to undergo a termination.

Extension of gestational limit beyond 24 weeks: In case, of fetal anomalies detected after 24 weeks of gestation, a medical board will be constituted with at least five experts - gynecologist, pediatrician and a radiologist or sonologist and two other specialists depending on the case. The final decision on permitting the woman to terminate a pregnancy of this nature will be determined by the state level medical board who will decide if the fetal malformation has a substantial risk of it being incompatible with life or if the child is born it may suffer from serious physical or mental abnormalities. The board will decide the termination procedure within five days of the request for termination of pregnancy.

Contraceptive failure: The Amendment extends contraceptive failure clause for abortion to include any woman or her partner in an effort to include unmarried women.

Changes in provider norms: Reduction in number of providers authorizing abortion from two to one for pregnancy of up to 20 weeks aims to increase access to services. Provider training requirements have been modified to increase the number of trained abortion providers. The minimum requirement is three months experience and to complete 10 cases. This number has been reduced from the earlier requirement of 25 cases taking in cognizance that the number of cases requiring vacuum aspiration has reduced due to an increase in medical methods of abortion. Those service providers who are trained to provide abortion up to 20 weeks are now eligible to provide abortion up to 24 weeks as the experience and training required is more or less the same. However, terminations beyond 24 weeks will be governed by the medical board who will decide the procedure and two registered medical practitioners with experience will perform the termination.

The Act has tried to make access to abortion services more liberal, easier for women to access, and the rules have tried to make it clearer, taking the intent of the act further.

Missed opportunities in the Amendment 2021 and way forward

Though a step forward, there are gaps that need to be addressed:

Decriminalise abortion: Abortion continues to be an offense under Indian Penal Code (IPC) Section 312 -316. The MTP Act was crafted to protect the providers form IPC rather than acknowledge that it is about a woman's right over her body. A woman faced with an unintended pregnancy will have an abortion – whether legal or not. One needs to provide safe and legal services to her rather than tie up the conversation around penalties. A way forward would be to think about either removing or reading down the sections.

She doesn't get counseling, she doesn't get contraception, she doesn't get the right advice and we have to give her a good alternative.

Make abortion on demand: The Act continues to be provider centric and not woman centric. The decision on whether to terminate an unintended pregnancy or continue is taken by the providers – she does not have a say in the decision. Abortion on demand for up to 12 weeks of pregnancy was proposed in the 2014 amendments and one needs to bring it back.

Increase the pool of providers: Though the Rules have reduced the training requirements, the service provision is limited to only allopathic doctors. 2014 recommendations suggested widening the provider base to include doctors trained in Indian System of Medicine, nurses, and medical officers after training them and permit them to provide medical abortion for up to 12 weeks of gestation.

Facilitate medical board decision-making: For abortions for pregnancies beyond 24 weeks, medical boards are the deciding agency. Seeking permissions is a challenge for those in rural, remote and hard to reach geographies as well as vulnerable population as most specialists are concentrated in urban areas. A way out could be providing the doctors/medical boards with a list of 10-20 abnormalities commonly encountered wherein the approval for termination is automatic. This would be an efficient way of getting approval without the cumbersome process of convening medical board meetings, will avoid waiting period and avoid delays the abortion.

Expand gestational limit beyond 24 weeks and for all women: Women whose pregnancies result from sexual violence and other categories as defined by the Rules are permitted to terminate a pregnancy up to 24 weeks. However, if they have crossed 24 weeks of gestation, they are forced to carry on the pregnancy to full term which is a violation of their rights and bodily autonomy. The courts in India have been approached to get permission for late abortions by women and girls who have experienced sexual violence. There is a need to permit them to terminate a pregnancy beyond 24 weeks without accessing the medical board.

Clarify the conflation Acts: Both PCPNDT and POCSO Acts have had a negative impact on access to safe and legal abortion services. Authorities come down heavily on abortion providers because of declining sex ratios. Providers refuse second trimester abortions because of fear of being threatened and harassment under the PCPNDT Act. Consequences are similar with the POCSO Act which was enacted to protect the girls. It makes it mandatory for a doctor to report if a girl below 18 years comes seeking an abortion. The Act forgets that this girl has autonomy, can be in a consensual sexual relation. Services are either denied or confidentiality is broken by reporting the case to authorities forcing the young girl to access unsafe or illegal abortion care.

The consequences are every time the census happens and the numbers come out, there will be a backlash by local authorities and doctors have become wary of doing abortions after 12 weeks, pills go off the market. And then we come to the over protective POCSO Act which protects the girl but forgets that this girl also has a certain amount of autonomy.

Increase awareness about legality of abortion: Women and to an extent providers continue to be unaware of the legality of abortion in India. To an extent, the conflation between PCPNDT Act and MTP Act are responsible for this confusion. Disseminate information, grounds on which abortion is legal, where can a woman access safe and legal services is the need of the day. Simultaneously, work on destigmatising abortion to enable women seeking timely and safe abortion options.

There's no point having law if it doesn't penetrate to the people and then no one will use it. So, I would always advocate for a lighter way to reach audience because this topic is really heavy and working on this topic also makes it very overwhelming and tiring for everyone.

Recognise evolving consent Evolving consent does not feature in the conversations around abortion access. Access is largely restricted and young girls access unsafe abortion services because of refusal or fear of parents or stigma. Rather than having a mandatory clause for guardian consent for mentally ill persons or minors, one needs to talk about evolving consent recognizing whether the person is able to provide her consent or not depending on the situation. While the MTP form requires only the woman's consent, the practice is to get an accompanying person's signature also. The argument is that someone needs to be responsible in case there is an unforeseen complication. However, this is yet another way of undermining a woman's bodily autonomy.

We must have some latitude between the ages of 16 and 18. We must allow the girl to have a say because otherwise it is keeping her away from safe providers and a desperate young person may do something dangerous.

Self managed abortion: Medical abortion is increasingly used as a preferred method. There is overwhelming evidence that women can manage a medical abortion on their own. Using experience and data from other countries like Australia and United Kingdom, one needs to advocate for abortion provision on-line. Systems and processes need to be put in place to ensure that the self managed abortion is within the legal purview and that gestation assessment and complications are diagnosed appropriately.

The sixth webinar was the last of the series under the series MTP ACT @50- A Move on the 'Right' Track? Emphasis was on the need of everyone to work together – doctors, lawyers, activists, NGOs, academicians –to make safe and legal abortion become a reality for women in India. Some salient points for future action:

- Identify actionable legal strategies to put the pregnant woman at the centre of the Act
- Document the extent to which the Amendments have made a difference in access to safe and legal services
- Gather evidence on adolescents and young people's access to abortion services and what is the impact of POCSO Act and mandatory reporting clause in the Act from providers' and service seekers' perspective
- Undertake evidence based advocacy and give regular feedback on the rules to the Ministry of Health and Family Welfare

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Spotlight series webinar 6:

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Hosted by:
Pratigya Campaign for Gender Equality and Safe Abortion
and
Foundation for Reproductive Health Services India

Tuesday, December 14, 2021 03.00 – 04.30 PM IST

Zoom Registration Link (https://us06web.zoom.us/webinar/register/WN_Uxmtz3pYRo6jcBtQZFDegg)

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Agenda

3:00-3:40 PM: Inaugural Session

3:00 – 3:10 PM	**Welcome Address**	**Mr. Ashutosh Kaushik,** Interim CEO, FRHS India & Pratigya Campaign Advisory Group Member
3:10 – 3:25 PM	**Unpacking the MTP Rules**	**Dr. Sumita Ghosh**, Additional Commissioner, Comprehensive Abortion Care, Child Health and Adolescent Health, Ministry of Health and Family Welfare (MoHFW), Government of India
3:25 – 3:40 PM	**MTP Act - Conflicts & Conflation**	**Dr. Nozer Sheriar,** Consultant OB-GYN and Co-Chairperson Medical Advisory Panel, FPA India

3:40-4:15 PM: Panel Discussion

MTP Act and Abortion Services – Who is at the centre?

Moderator	**Mr. Manak Matiyani,** Executive Director – Management, The YP Foundation
Experts	**Adv. Anubha Rastogi,** Pratigya Campaign Advisory Group Member
	Ms. Aisha Lovely George, Executive Coordinator, Hidden Pockets Collective

4:15-4:25 PM: Q & A, Invite comments from other experts and round up

Mr. Manak Matiyani, Executive Director – Management, The YP Foundation

4:25-4:30 PM: Closing Remarks & Vote of Thanks

Ms. Debanjana Choudhuri, Asia Advocacy and Partnerships Advisor, MSI Reproductive Choices & Pratigya Campaign