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## Ethics, Social, Legal

# Medical Termination of Pregnancy (Amendment) Bill, 2014: A positive note



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## ABSTRACT

This paper is an attempt to analyze the proposed amendment to The Medical Termination of Pregnancy Act, 1971 in the current scenario of reproductive rights and abortion law in India. This is a comparative analysis of abortion laws in India with that of United States, United Kingdom, and South Africa. The paper finds the proposed amendments as radical and gender-sensitive in comparison with its legislative counter parts.

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## 1. Introduction

It is the celebrated goal of United Nations Population Fund (UNFPA), “to deliver a world where every pregnancy is wanted, every birth is safe and every young person's potential is fulfilled.”<sup>1</sup> The proposed amendments to Medical Termination of Pregnancy Act, 1971 (Medical Termination of Pregnancy (Amendment) Bill, 2014) in India is taking steps closer to this goal.

The World Health Organization (WHO) estimates that worldwide 210 million women become pregnant each year and that about two-thirds of them deliver live infants. The remaining one-third end in miscarriage, stillbirth, or induced

abortion.<sup>2</sup> Women seeking abortion, legal or not, is a global phenomenon and has existed throughout recorded history. In spite of this, abortion continues to be the most emotional, philosophical, and legal issue in reproductive health.<sup>3</sup> Since women constitute a political minority, abortion has a long history of being at the receiving end of moral censure by patriarchal, political, and religious authorities.<sup>4</sup>

Medical Termination of Pregnancy is a critical component of Women's' reproductive rights. Political developments in recent years gave a new dimension to this aspect of feminine assertion, encapsulating, right to health, privacy, and autonomy of individual on her own body. Right to abortion at the behest of women has been a major demand of feminist movement, universally, since long.<sup>5</sup>

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## 2. Abortion and law in India

Women in the reproductive age group (15–49 years) constitute almost 20% of Indian population.<sup>6</sup> To what extent these women are exercising their sexual and reproductive rights varies by state, age, marital status, and other socio-economic and demographic factors. There are influences educational, economic, and religious and many other which are significant.<sup>7</sup> This makes the socio-legal aspects of abortion as a choice, intricate.

The Medical Termination of Pregnancy Act, 1971 was the first attempt to decriminalize the erstwhile provisions of Indian Penal code in this regard. The circumstances under which Medical Termination of Pregnancy (MTP) can be performed, the places where it can be conducted, the qualifications, experience, and training of personnel who can conduct the MTP, the conditions for approving places, and recording and reporting procedures, etc., are specified under the Act, and the MTP Rules and Regulations of 1975.<sup>8</sup>

This Act legalized abortions by a registered Medical Practitioner, if the length of the pregnancy is not more than 12 weeks if one is of the opinion that the continuation of the pregnancy will adversely affect the health of the pregnant woman or some mental or physical abnormality is detected in the unborn, which will make the child seriously handicapped, if allowed to be born. Legal protection is extended to termination of pregnancy beyond 12 weeks and not more than 20 weeks, for the same reasons if the opinion is formed by two registered medical practitioners.<sup>9</sup>

Further, the Act allows abortion by a registered medical practitioner, in case if the pregnancy is the result of rape or failure of any method or device used for limiting the number of children by married woman or her husband. Parental consent is essential in case of a minor or a lunatic, and the provision ensures that no pregnancy shall be terminated without the consent of the woman. Amendments were made in the Act, to increase availability of safe abortion services. The MTP Rules 2003 rationalized the criteria for physical standards of abortion facilities. These rules also permit a registered medical practitioner to provide medical abortion services in the case of termination of pregnancy up to 7 weeks, provided the practitioner has access to a facility for offering surgical abortion in the event of a failed or incomplete medical abortion.<sup>10</sup>

Although abortions were made legal in 1971, actually illegal abortions still outnumber legal abortions by a large margin. It is estimated that 10–15 thousand women die every year due to complications resulting from unsafe abortions conducted at unapproved places by untrained providers. One of the weaknesses of the MTP Act, 1971 is that it does not prescribe specific punishments for abortion conducted illegally by persons who are not registered medical practitioners as defined under the Act and in hospitals and clinics not approved for conducting MTPs. The 1971 MTP Act only reiterates that all the offenses under the Act are punishable under the appropriate provisions of IPC. Though there are relevant sections in the Indian Penal Code, which prescribe punishment for various offenses connected with performance of abortion, those committing the categories and types of

offenses as mentioned still escape punishment. The penal provisions of IPC are, therefore, not adequate in the present situation.<sup>8</sup>

As per the provisions of the Act, a pregnancy can be terminated only when a medical practitioner is satisfied that a 'continuance of it involves a risk to the life of the pregnant woman or of grave injury to her physical or mental health' [as per Section 3(2)(i)] or when 'there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped' [as per Section 3(2)(ii)]. While the satisfaction of one medical practitioner is required for terminating a pregnancy within 12 weeks of the gestation period, two medical practitioners must be satisfied about either of these grounds in order to terminate a pregnancy between 12 to 20 weeks of the gestation period. The explanations to this provision have provided for the termination of pregnancy when the same is the result of a rape or a failure of birth-control methods since both of these eventualities have been equated with a 'grave injury to the mental health' of a woman.<sup>8</sup> The Act permits termination of pregnancy of a woman by a registered medical practitioner if the pregnancy would involve risk to the life of the pregnant woman or grave injury to her physical or mental health. Explanation II to Section 3 states that where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.<sup>11</sup>

When the MTP Act was first enacted in 1971 it was largely modeled on the Abortion Act of 1967 which had been passed in the United Kingdom. The legislative intent was to provide a qualified 'right to abortion' and the termination of pregnancy has never been recognized as a normal recourse for expecting mothers.<sup>12</sup> The attitude towards abortion was never favorable in India and women's reproductive choice was understood in its limited sense.

The Supreme Court of India has observed in *Bhupinder Kumars's Case*<sup>12</sup> in 2009, "It is important to recognize that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman's right to privacy, dignity and bodily integrity should be respected. This means that there should be no restriction whatsoever on the exercise of reproductive choices such as a woman's right to refuse participation in sexual activity or alternatively the insistence on use of contraceptive methods. Furthermore, women are also free to choose birth-control methods such as undergoing sterilization procedures. Taken to their logical conclusion, reproductive rights include a woman's entitlement to carry a pregnancy to its full term, to give birth and to subsequently raise children. However, in the case of pregnant women there is also a 'compelling state interest' in protecting the life of the prospective child. Therefore, the termination of a pregnancy is only permitted when the conditions specified in the applicable statute have been fulfilled. Hence, the provisions of the MTP Act, 1971 can also be viewed as reasonable restrictions that have been placed on the exercise of reproductive choices".<sup>13</sup>

In *Sushil Kumar Verma vs. Usha*,<sup>14</sup> a single Judge of the Delhi High Court held that the wife's aborting fetus in her first

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