



# EVERYTHING YOU NEED TO KNOW ABOUT ABORTION IN INDIA

**Co-editors: Dr Sanjay Gupte, Former President, FOGSI; Mr Amit Karkhanis, Founding Partner, Kaylegal & Associates LLP**  
**Editors: Dr Jaydeep Tank, Secretary General, FOGSI; Dr Bharti Maheshwari, Chair, MTP Committee, FOGSI**

The provision of safe and legal abortion is a crucial aspect of women's reproductive rights. Providers play a critical role in ensuring that women have accurate information about the choices available to them, in providing a safe environment for procedures like abortion and in improving access to safe services. This e-newsletter will provide you with information on the law that regulates abortion in India as well as the processes and formalities associated with it.

## ***The Medical Termination of Pregnancy Act, 1971***

In India, the Medical Termination of Pregnancy (MTP) Act 1971, legalises abortion until 20 weeks. It functions on the background of the Indian Penal Code (IPC), 1860, that criminalised all induced abortions, except to save a woman's life. The MTP Act creates an exception to this and protects providers from the IPC, empowering them with a tool to ensure women do not approach unqualified providers for abortion services, thereby putting their health and wellbeing at risk.

*Under the Act, a pregnancy can be terminated given that*

- **One registered medical practitioner (RMP)** is of the opinion that a pregnancy under **12 weeks** satisfies at least one of the conditions listed under the Act
- **Two RMPs are of the opinion that a pregnancy between 12 to 20 weeks** satisfies at least one of the conditions listed under the Act

## ***Current Scenario***

Under the MTP Act, abortion can be provided within the first 20 weeks of pregnancy under certain conditions. However, limitations in the current law and gaps in its implementation continue to hinder access to safe abortion services for women. The 20-week gestation limit; mention of only married women in the clause for contraceptive failure; the requirement of opinion by two medical providers for second trimester abortions; stigma and a lack of awareness among women and providers about the abortion law act as key barriers to access.

One crucial manifestation of these barriers occurs when women are denied abortion services due to lack of consent from their husbands, partners, or other family members. Adult women of sound mind do not require consent from anyone to terminate their pregnancy. However, minors and mentally ill women require the consent of legal guardians.

## **Consent Requirement in the Act**

Section (4) of the MTP Act states that:

- a) No pregnancy of a woman, who has not attained the age of eighteen years, or, who, having attained the age of eighteen years, is a mentally ill person, shall be terminated except with the consent in writing of her guardian.
- (b) Save as otherwise provided in C1.(a), no pregnancy shall be terminated except with the consent of the pregnant woman.



*Thus Section 4 clearly states that while consent is a prerequisite, adult women of sound mind do not require consent from anyone to terminate the pregnancy under the existing MTP Act. Minors and mentally ill women require the consent of their guardians*

- Mentally ill person means a person who is in need of treatment by reason of any mental disorder other than mental retardation.
- Guardian under the MTP Act means a person having the care of a minor or a mentally ill person. This person does not necessarily have to be the legal guardian.
- A minor is any individual who is under 18 years of age.

### **How do you take consent?**

The consent for an MTP, according to the Act, is to be recorded in **Form C**. Form C is a unique consent form that only requires the signature of a woman - no signature of an accompanying person or witness is required. The Comprehensive Abortion Care: Training and Service Delivery Guidelines (2018) by the Ministry of Health and Family Welfare additionally recommend that abortion providers should ensure that **informed consent** is taken before the procedure, during the pre-procedure counselling stage.

The pre-procedure counselling ensures that women are consenting to the procedure after receiving complete information about the procedure and after clarifying all their doubts and questions.

### **Why Pre-Procedure Counselling?**

The Comprehensive Abortion Care: Training and Service Delivery Guidelines (2018) emphasise on the importance of informed consent from the women and, therefore, highlight the importance of pre-procedure counselling:

- It helps the woman to decide about the termination of pregnancy.
- It helps the woman to choose the method of termination.
- It ensures that the consent for the procedure is given after receiving complete information about the procedure and understanding its implications.
- It helps the woman to adopt a contraceptive method after the procedure.
- It is crucial that privacy is ensured during the pre-procedure counselling.
- It is necessary to be non-judgmental while interacting with the woman and be sensitive to her needs.

#### **Reporting Requirements and Record Keeping:**

**Form C** : This form records consent of the woman or her guardian (if she a minor / mentally ill).

*In addition to the consent form, maintenance of the following records are obligatory for all facilities (government and private) under the MTP Act*

**Form I** This form records the condition(s) the procedure fulfils.

**Form III** This is the Admission Register and is used to record details of women whose pregnancy is terminated. This needs to be kept for a period of five years from the end of the calendar year it relates to.

*All records under this Act, Rules and Regulations, need to be preserved for five years.  
Full compliance with the requirements of the POCSO Act*

### ***Need of the hour:***

- Increased awareness on consent requirements under MTP Act
- Provision of safe abortion services under the MTP Act

### ***What can you do?***

- Raise awareness among your colleagues that the MTP Act stipulates that only the woman is required to give consent for the procedure (and guardian in the cases of minors and mentally ill women).
- Ensure that women and girls are not asked to provide unwarranted consent forms by anyone in the health facility or clinic and abortion services are denied due to misinterpretation of the MTP Act.
- Provide women with information and empower women to make the right decision for themselves.

#### **Key Points to Remember:**

1. Under the MTP Act, only an adult woman of sound mind needs to provide consent to terminate her pregnancy. In the case of a minor (below 18 years of age) the consent of a parent or a legal guardian is required. [MTP Act: Section 4 (a)]
2. Up to 12 weeks of gestation, opinion of only one RMP is required to assess whether the woman meets at least one of the conditions listed under the Act.
3. Between 12-20 weeks, opinion of two RMPs is required.
4. Records regarding induced abortion / MTP services are confidential. They are not open for inspection by any person except under the authority of the law. [Regulation 6]

#### **Key Takeaways:**

1. Adult women do not require the consent of any family member or partner to receive abortion services.
2. The MTP Act legalises abortion up to 20 weeks of pregnancy under certain conditions.
3. Access to safe abortion is a critical aspect of sexual and reproductive health and rights of women, and providers play a critical role in ensuring women can access these services without facing any challenges.

#### **Quick Links**

1. [The Medical Termination of Pregnancy \(MTP\) Act, 1971](#)
2. [The MTP regulations](#)
3. [Comprehensive abortion care: Training and service delivery guidelines \(2018\) | MoHFW](#)
4. [Guidance: Ensuring access to safe abortion and addressing gender-biased sex-selection](#)
5. [Handbook on medical methods of abortion](#)