



EVERYTHING YOU NEED TO KNOW ABOUT PROVIDING AN ABORTION IN INDIA

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 (MTP), Act, 1971

In India, the [Medical Termination of Pregnancy \(MTP\) Act 1971](#), legalises abortion until 20 weeks. Prior to the MTP Act, abortion was governed by the [Indian Penal Code \(IPC\)](#), 1860, that criminalised all induced abortions, except to save a woman's life. The MTP Act protects providers from the IPC, empowering them with a tool to ensure women do not approach unqualified providers for abortion services and put their health and well-being at risk.

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; no of mention of unmarried women in the clause for contraceptive failure; the requirement of consent by two medical providers for second trimester abortions; stigma and a lack of awareness among women about the abortion law act as key barriers to access. Cognizant of the various barriers, the Ministry of Health & Family Welfare (MoHFW) drafted the [MTP \(Amendment\) Bill, 2014](#) and sent it to the Prime Minister's Office (PMO). However on 26 May 2017, the PMO sent the Bill back to the MoHFW with the recommendation that the existing MTP Act be strengthened in its current form.

Exception to rule: Section 5

According to the MTP Act, a registered medical provider (RMP) is allowed to terminate a pregnancy at any point if:

"The provisions of section 4, and so much of the provisions of sub-section (2) of section 3 that relate to the length of the pregnancy, and the opinion of not less than two registered medical practitioners, shall not apply to the termination of a pregnancy by a registered medical practitioner in a case where he is of opinion, formed in good faith, that the termination of such pregnancy is immediately necessary to save the life of the pregnant woman".

An RMP is:

- A medical practitioner who possesses any recognised medical qualification as defined in **clause (h) of Section 2** of the Indian Medical Council Act, 1956
- Whose name has been entered in a State Medical Register and
- Who has one or more of the following experience or training in gynaecology and obstetrics
 1. In the case of a medical practitioner, who was registered in a State Medical Register immediately before the commencement of the Act, experience in the practice of gynaecology and Obstetrics for a period not less than three years.
 2. In the case of a medical practitioner, who was registered in a State Medical Register after the commencement of the Act and
 - a. Has completed six months of house surgency in gynaecology and obstetrics or;
 - b. Has experience at any hospital for a period of not less than one year in the practice of obstetrics and gynaecology or;

KEY POINTS TO REMEMBER

1. The **Section 5** of the MTP Act allows the provider to terminate a pregnancy at **any point to save a woman's life**.
2. The MTP Act makes a provision for **medical methods of abortion (MMA)** which are legal up to **7 weeks** of pregnancy.
3. Under the MTP Act, **only a woman's consent** is required 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)**]
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**]

- c. Has experience at any hospital for a period of not less than one year in the practice of obstetrics and gynaecology or;
- d. Holds a post graduate degree or diploma in gynaecology and obstetrics or;
- e. Has assisted an RMP in the performance of 25 cases of MTP of which at least five have been performed independently, in a hospital established or maintained by the government, or a training institute approved for this purpose by the government. This training will enable the RMP to do only first trimester terminations.

Ruling by the Bombay High Court, April 2019

In April, the Bombay High Court, in a landmark ruling, said that a registered medical provider can terminate a pregnancy that has crossed the legal abortion limit of 20 weeks with without consent from the court only if it is to save the life of the woman.

The High Court, however, held that its permission still has to be sought when a pregnancy has exceeded 20 weeks and the woman fears its continuation would involve grave injury to her physical or mental health or where there is substantial risk that if the child were born, it would suffer from such physical or mental abnormalities to be seriously handicapped.

Taking action for women's access to safe abortion under Section 5

Need of the hour:

- Increased awareness about Section 5
- Broader interpretation of Section 5 by the central and state governments to ensure providers are enabled to provide abortions under Section 5
- Provide safe abortions under Section 5 where applicable

What can you do?

- Inform your colleagues about the developments on Section 5
- Advocate for a broader understanding of Section 5 by the courts and the governments

SOURCES

1. The Medical Termination of Pregnancy (MTP) Act, 1971
2. Guidance: Ensuring access to safe abortion and addressing gender biased-sex selection
3. Ministry of Health & Family Welfare

QUICK LINKS

1. The Medical Termination of Pregnancy (MTP) Act, 1971
2. The MTP regulations
3. Comprehensive abortion care training and service delivery guidelines (2010) | MoHFW
4. Guidance: Ensuring access to safe abortion and addressing gender-biased sex-selection
5. Handbook on medical methods of abortion

KEY TAKEAWAYS

1. 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.
2. The MTP Act **legalises abortion up to 20 weeks** of pregnancy under certain conditions.
3. As per the MTP Act, consent for the termination of pregnancy is required only by the woman and the RMP(s).