

January - June 2022

Volume 31

Issue 1

PRINT ISSN: 2277-1867

ONLINE ISSN: 2277-8853



JOURNAL OF FORENSIC MEDICINE SCIENCE AND LAW

Official Publication of Medicolegal Association of Maharashtra

Editor-in-chief

Dr Ravindra Deokar

Associate Editors

Dr Sadanand Bhise

Dr Sachin Patil

**MULTISPECIALITY, MULTIDISCIPLINARY, NATIONAL
PEER REVIEWED, OPEN ACCESS, MLAM (SOCIETY) JOURNAL
Indexed with Scopus (Elsevier) & Index Copernicus (Poland)**

Editorial Office Address

Department of Forensic Medicine & Toxicology, Third Floor, Library Building, Seth G S Medical College & KEM Hospital, Parel, Mumbai, Maharashtra, India. Pin-400 012. Email id: mlameditor@gmail.com Phone: 022-24107620 Mobile No. +91-9423016325.



JOURNAL OF FORENSIC MEDICINE SCIENCE AND LAW

(Official Publication of Medicolegal Association of Maharashtra)

Email.id: mlameditor@gmail.com

PRINT ISSN:
2277-1867

ONLINE ISSN:
2277-8853

Editorial

Workplace-based Issues & Challenges in Formulating the Medical Boards Under the MTP Act 2021.

Ravindra B Deokar^{a*}, Sachin S Patil^b

^aProfessor (Additional), Department of Forensic Medicine & Toxicology, Seth G S Medical college & KEM Hospital, Parel, Mumbai-400012.

^bAssociate Professor, Department of Forensic Medicine & Toxicology, Lokmanya Tilak Municipal Medical college & LTMG Hospital, Sion, Mumbai-400022.

1. Introduction

Abortion was being made legal in India under various circumstances with passing the Medical Termination of Pregnancy (MTP) Act, 1971.¹ To facilitate the implementation the rules were also issued under the concerned Act with time to time amendments which enable women for accessing safe and legal abortion services at authorised healthcare centres.

2. Abortion law in India (Fig. 1):

Before 1971, the Indian Penal Code, 1860, section 312 provided for criminal liability related to abortion. Abortion except which was carried out for saving the life of mother i.e. intentionally 'causing miscarriage' was punishable offence. Around 1960, abortion was legal in certain countries which initiated a thought on need of legal framework on abortion in India due to the alarmingly increased number of unsafe abortions. In 1964, the government of India formed a committee under chairmanship of Shantilal Shah for giving suggestions to draft law on abortion in India whose recommendations were accepted in 1970 and the bill passed in 1971.^{1,2}

In early 1990, ultrasound techniques were rampantly used to detect sex of fetus leading to increased female feticide (Sex selective abortion) in India.³ The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994

(PNDDT) was enacted to ban the sex selective techniques after conception and to prevent the misuse of prenatal diagnostic technique for sex selective abortion. This was further amended in 2003 to The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition Of Sex Selection) Act (PCPNDT Act) to facilitate and improve the regulation of the technology used in sex selection.

Later, to facilitate the better implementation of the MTP Act 1971 and to increase access for women especially in the private health sector, the act was amended in 2002. MTP Rules 2003 were provided to facilitate the same. But, there were multiple challenges faced by women to access the safe abortion facilities. Further, after Government's cognizance, experts group was formed to review the exiting provision to suggest further amendments. Later, MoHFW shared the Medical Termination of Pregnancy bill 2014 in public domain for suggestions. MTP Amendment bill 2020 was introduced by Government on 29th January 2020 which was passed by LOK Sabha on 17th March 2020 and passed in Rajya Sabha on 16th March 2021 as MTP Amendment Act 2021.⁴ The MTP Rules 2021 were announced by the Government of India on 12th October 2021 which provided for the which provided for the formation of state

How to cite this article: Deokar RB, Patil SS. Workplace-based Issues & Challenges in Formulating the Medical Boards Under the MTP Act 2021. J For Med Sci Law 2022;31(1):1-2.

***Corresponding author:** Dr Ravindra B Deokar, Professor (Additional), Department of Forensic Medicine, Seth G S Medical College & KEM Hospital, Mumbai, Maharashtra, India. Email: ravindradeokar@kem.edu (M)+91-9423016325.

Article Info: Received on: 07.04.2022; **Accepted on:** 24.06.2022.

level medical boards to evaluate the request for termination of a pregnancy longer than 24 weeks only in the cases of foetal anomalies.

3. Constitution of State-level Medical Boards

The amendments provides for constitution of Medical Boards in all the states and union territories for determining substantial foetal anomalies.⁵ The Board will decide on the necessity of termination of pregnancy after 24 weeks. It is provide in the act under Section 3 (2B) that the length of the pregnancy shall not apply to the termination of pregnancy by the registered medical practitioner if such termination is necessitated as a result of diagnosed substantial foetal abnormalities by a Medical Board constituted under this act for the abovementioned purposes. The Act under Section 3(2C) mandates that every State Government or Union territory shall constitute a Board to be called a Medical Board to facilitate the purposes of this Act. They will have powers to exercise the necessary duties and functions as may be prescribed by rules made under this Act. Such notification should be declared in the Official Gazette.

The constitution of the board will be inclusive of a gynaecologist, radiologist/sonologist, paediatrician and other members as notified by the concerned government. Boards have power to co-opt specialists in the board and even ask for additional investigations, as required on case to case basis. Abiding the MTP Rules 2021, the medical board has authority to determine the request for medical termination of pregnancy after 24 weeks only if there is substantial foetal anomaly.⁶

4. Functions of Medical Board

The board need to examine the woman and her reports, if such request made for termination of pregnancy under section 3 (2B) of the MTP Amendment Act 2021. Within 3 days of such requests, board need to provide an opinion in Form D (as prescribed under the MTP Rules 2021) with regard to the termination of pregnancy or rejection of such request. Board need to ensure that the recommended termination procedure, as advised by the Medical Board, should be carried out within five days of the receipt of the request for termination of pregnancy under section 3 (B) with necessary safety precautions and appropriate counselling.^{5,6}

5. Workplace based issues and challenges

- After the amendment act and the rules still the notification of official formation of such boards is awaiting.

- Aggrieved need to file writ petition in high court.
- Number of persons to be included as a board members are not defined.
- Shortage of specialist expert in certain states.
- Inadequacy of Healthcare availability, Infrastructure as well as specialists for reproductive services.
- Multiple invasive examinations violates fundamental rights of pregnant woman.
- Termination need to be done in higher centres only.
- Consideration of Special circumstances only i.e. those including substantial foetal anomaly only.
- For other cases, writ petition in high court is only option. Need of high level of legal awareness.
- Safe and affordable services and facilities at local level not available.
- Delay in abortions due to bureaucratic process and cost incurred to travel to the board leads to financial burden on the pregnant woman.

6. Recommendations

There is need of official notification on formulation of medical board as prescribed in the act. The government needs to ensure that all norms and standardised protocols in clinical practice to facilitate abortions are followed in health care institutions across the country. Along with that, the question of abortion needs to be decided on the basis of human rights, the principles of solid science, and in step with advancements in technology. There is need of appropriate flexibility in norms.

References:

1. MTP Act, 1971, Ministry of Health and Family Welfare, Government of India. 10 August 1971. (Cited 23 June 2022.) Available from- <https://main.mohfw.gov.in/acts-rules-and-standards-health-sector/acts/mtp-act-1971>
2. Gaur, K.D. "Abortion and the Law in India." 1991. (Cited 20 June 2022) Available from- dSPACE.cusat.ac.in
3. Arnold F, Kishor S, Roy TK. Sex-selective abortions in India. *Population and development review*. 2002 ;28(4):759-85.
4. Nair, SK. "Parliament proceedings. Rajya Sabha passes the Medical Termination of Pregnancy Bill". *The Hindu*. 16 March 2021. (Cited on 23 June 2022) Available from- <https://www.thehindu.com/news/national/parliament-proceedings-rajya-sabha-passes-the-medical-termination-of-pregnancy-bill/article34085993.ece>
5. MTP Amendment Act, 2021. Ministry of Health and Family Welfare, Government of India. 25th March 2021 (Cited on 23 June 2022) Available from: <https://egazette.nic.in/WriteReadData/2021/226130.pdf>
6. MTP Amendment Rule, 2021. Ministry of Health and Family Welfare, Government of India. 14th October 2021. (Cited on 23 June 2022) Available from: <https://egazette.nic.in/WriteReadData/2021/230390.pdf>