

COURT NO.4

The Medical Termination of Pregnancy Act, 1971

[Act 34 of 1971]

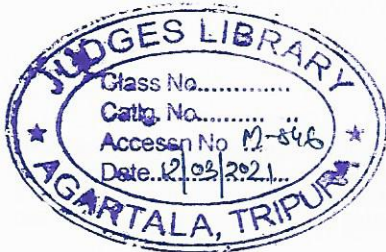
along with

Medical Termination of Pregnancy
Rules, 2003

Medical Termination of Pregnancy
Regulations, 2003

and

Case Law



Book No. 15.....
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With
**complete
legislative
history**

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The Medical Termination of Pregnancy Act, 1971

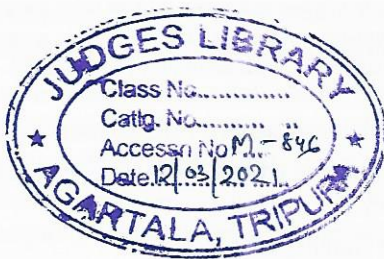
List of Amending Acts

1. Medical Termination of Pregnancy (Amendment) Act, 2002 (64 of 2002)
 2. Delegated Legislation Provisions (Amendment) Act, 2004 (4 of 2005)
 3. Jammu and Kashmir Reorganisation Act, 2019 (34 of 2019)
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The Medical Termination of Pregnancy Act, 1971

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The Medical Termination of Pregnancy Act, 1971¹

[Act 34 of 1971]

[10th August, 1971]

*An Act to provide for the termination of certain pregnancies by
registered medical practitioners and for matters connected
therewith or incidental thereto*

Statement of Objects and Reasons.—(1) The provisions regarding the termination of pregnancy in the Indian Penal Code which were enacted about a century ago were drawn up in keeping with the then British Law on the subject. Abortion was made a crime for which the mother as well as the abortionist could be punished except where it had to be induced in order to save the life of the mother. It has been stated that this very strict law has been observed in the breach in a very large number of cases all over the country. Furthermore, most of these mothers are married women, and are under no particular necessity to conceal their pregnancy.

(2) In recent years, when health services have expanded and hospitals are availed of to the fullest extent by all classes of society, doctors have often been confronted with gravely ill or dying pregnant women whose pregnant uterus has been tampered with a view to causing an abortion and consequently suffered very severely.

(3) There is thus avoidable wastage of the mother's health, strength and, sometimes, life. The proposed measure which seeks to liberalise certain existing provisions relating to termination of pregnancy has been received (1) as a health measure—when there is danger to the life or risk to physical or mental health of the woman; (2) on humanitarian grounds—such as when pregnancy arises from a sex crime like rape or intercourse with a lunatic woman, etc., and (3) eugenic grounds—where there is substantial risk that the child, if born, would suffer from deformities and diseases.—Gazette of India, Pt. II, Section 2, Extra., dated November 17, 1969, p. 880.

Be it enacted by Parliament in the Twenty-second Year of the Republic of India as follows:—

1. Short title, extent and commencement.—(1) This Act may be called the Medical Termination of Pregnancy Act, 1971.

(2) It extends to the whole of India²[* * *].

NOTIFICATION

*Ministry of Health and Family Welfare (Deptt. of Health and Family Welfare), Noti.
No. S.O. 997(E), dated June 19, 2007, published in the Gazette of India,
Extra., Part II, Section 3(ii), dated 19th June, 2007, p. 1, No. 739*

In exercise of the powers conferred by sub-clause (ii) of the Notification Number S.O. 463(E), dated the 29th March, 2007 for extending to the State of Sikkim the Medical Termination of Pregnancy Act, 1971 (34 of 1971), the Central Government hereby appoints the 19th June, 2007 as the date on which the said Act shall come into force in the State of Sikkim.

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1. Received the assent of the President on August 10, 1971, and published in *Gazette of India*, Extra., Part II, Section 1, dated 10th August, 1971, pp. 237-240.
 2. The words "except the State of Jammu and Kashmir" omitted by Act 34 of 2019, Ss. 95, 96 and Sch. V (w.e.f. 31-10-2019).

(3) It shall come into force on such date³ as the Central Government may, by notification in the Official *Gazette*, appoint.

2. Definitions.—In this Act, unless the context otherwise requires,—

- (a) “guardian” means a person having the care of the person of a minor or a ⁴[mentally ill person];
- ⁵[(b) “mentally ill person” means a person who is in need of treatment by reason of any mental disorder other than mental retardation;]
- (c) “minor” means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875), is to be deemed not to have attained his majority;
- (d) “registered medical practitioner” means a medical practitioner who possesses any recognised medical qualification as defined in clause (h) of Section 2 of the Indian Medical Council Act, 1956 (102 of 1956), whose name has been entered in a State Medical Register and who has such experience or training in gynaecology and obstetrics as may be prescribed by rules made under this Act.

CASE LAW ► Lunatic.—Though the Indian Lunacy Act defines “lunatic” as an idiot or a person of unsound mind, the said words have not been defined. Both these words indicate an abnormal state of mind as distinguished from weakness of mind or senility following old age. A man of weak mental strength cannot be called an idiot or a man of unsound mind. The definition does not include dull-witted people but only those who suffer from a mental disorder or derangement of the mind, *Ganga Bhavanamma v. Somaraju*, AIR 1957 AP 938.

No person can have direct experience of the mind of another and the proper test of insanity conduct. A person might conceivably have all kinds of delusions, but if his conduct remains normal there would be no justification for holding him to be lunatic, *Abdul Razak v. Commissioner of Income Tax*, AIR 1935 Pat 425.

► **Unsoundness of mind.**—“Unsoundness of mind” implies some unusual feature of the mind as has tended to make it different from the normal and has in effect impaired the man’s capacity to look after his affairs in a manner in which another person without such mental irregularity would be able to do in the matter of his own. The idea suggests some derangement of the mind and it is not to be confused with or taken as analogous to a mere mental weakness or lack of intelligence, *Sarjug Singh v. Gulabo Kuer*, AIR 1969 Pat 33.

If a man is able to understand and answer questions on various matters except those relating to arithmetical calculations, he cannot be regarded as mentally unsound although he would be held as having a weak or undeveloped mind, *Joshi Ram Krishan v. Rukmini Bai*, AIR 1949 All 449.

► **“Mentally ill” and “mentally retarded” — Distinction.**—Persons in condition of “mental retardation” should ordinarily be treated differently from “mentally ill” persons. Condition of mental retardation or developmental delay can be gauged on basis of parameters such as intelligent quotient (IQ) and mental age (MA) which mostly relate to academic abilities, *Eera v. State (NCT of Delhi)*, (2017) 15 SCC 133.

3. W.e.f. 1-4-1972 (*vide* G.S.R. 285, dt. 19-2-1972).

4. Subs. for “lunatic” by Act 64 of 2002, S. 2 (w.e.f. 18-6-2003).

5. Subs. by Act 64 of 2002, S. 2 (w.e.f. 18-6-2003). Prior to substitution clause (b) read as follows:
“lunatic” has the meaning assigned to it in Section 3 of the Indian Lunacy Act, 1912 (4 of 1912).

3. When pregnancies may be terminated by registered medical practitioners.—(1) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), a registered medical practitioner shall not be guilty of any offence under that Code or under any other law for the time being in force, if any pregnancy is terminated by him in accordance with the provisions of this Act.

(2) Subject to the provisions of sub-section (4), a pregnancy may be terminated by a registered medical practitioner,—

- (a) where the length of the pregnancy does not exceed twelve weeks, if such medical practitioner is, or
- (b) where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioners are,

of opinion, formed in good faith, that—

- (i) the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health; or
- (ii) 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.

Explanation I.—Where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

Explanation II.—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, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

(3) In determining whether the continuance of pregnancy would involve such risk of injury to the health as is mentioned in sub-section (2), account may be taken of the pregnant woman's actual or reasonably foreseeable environment.

(4) (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 ⁶[mentally ill person], shall be terminated except with the consent in writing of her guardian.

(b) Save as otherwise provided in clause (a), no pregnancy shall be terminated except with the consent of the pregnant woman.

CASE LAW ▶ Consent for termination.—Pregnant woman's consent for termination of her pregnancy is also necessary, for the reason that Section 3(4)(a) excludes consent of "mentally ill" woman but not "mentally retarded" woman. "Mentally ill" person, according to definition in Section 2(b) [as amended in 2002], is different from "mentally retarded" person. Hence consent of mentally retarded woman is necessary, *Suchita Srivastava v. Chandigarh Admn.*, (2009) 9 SCC 1 : (2009) 3 SCC (Civ) 570.

▶ Termination of pregnancy of 24 weeks.—Termination of pregnancy of 24 weeks for saving life of woman. When permissible, reiterated, *Tapasya Umesh Pisal v. Union of India*, (2018) 12 SCC 57.

6. Subs. for "lunatic" by Act 64 of 2002, S. 3 (w.e.f. 18-6-2003).

► **Termination of pregnancy.**—As continuation of foetus of 25/26 weeks posed grave danger to mother's life and foetus suffering from incurable medical conditions making it incompatible with life outside womb, medical termination of pregnancy, permitted, *A. v. Union of India*, (2018) 14 SCC 75.

► **"Mental illness".**—Person suffering from mental retardation and not mental illness, can give consent for termination of pregnancy. Mental retardation does not mean that it would be inherited by the child, and it is seen that persons with mental retardation may be good parents, *Z v. State of Bihar*, (2018) 11 SCC 572.

► **Procedure and Grounds.**—Grounds on which pregnancy can be terminated under Section 3 are (a) Danger to life or risk to physical or mental health of woman, (b) humanitarian ground such as when pregnancy arises from a sex crime like rape or intercourse with lunatic woman, and (c) eugenic grounds where there is substantial risk that child born, would suffer from deformities. Section 3(2) Explanation 1 postulates that where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by the same has to be presumed to constitute a grave injury to the mental health of the pregnant woman. Once such a statutory presumption is provided, the same comes within the compartment of grave injury to mental health. While satisfaction of one medical practitioner is required for terminating a pregnancy within twelve weeks of the gestation period, two medical practitioners must be satisfied about either of these grounds in order to terminate a pregnancy between twelve to twenty weeks of the gestation period, *Z v. State of Bihar*, (2018) 11 SCC 572.

► **Woman's right of reproductive choice.**—There is Right to terminate pregnancy on grounds of rape and AIDS. Both government authorities and High Court caused delay due to which pregnancy could not be terminated. State submitted that it should not be made liable because of the fault of the court. Principle that acts of court shall prejudice no man, not applicable as government authorities had failed in their statutory duty to terminate pregnancy, all requirements for the same standing satisfied. Appellant therefore, entitled to compensation, *Z v. State of Bihar*, (2018) 11 SCC 572.

► **Reproductive Freedom and Abortion.**—Petitioner, a rape victim infected with AIDS denied permission to medically terminate pregnancy by High Court. Medical Board examined petitioner and reported fundamentally that at present procedure involved in termination of pregnancy is risky to life of petitioner and foetus in womb. Medical Board also suggested/advised continuation of HAART therapy and routine antenatal care, to reduce risk of HIV transmission to foetus/baby to minimum, it was held, in such circumstances, there cannot be termination of pregnancy, *Indu Devi v. State of Bihar*, (2017) 14 SCC 525 : (2017) 4 SCC (Cri) 916.

► **Mental retardation.**—The decision of Pregnant woman with mild to moderate mental retardation to carry pregnancy to its full term should be respected, *Suchita Srivastava v. Chandigarh Admn.*, (2009) 9 SCC 1 : (2009) 3 SCC (Civ) 570.

► **Pregnant woman's consent.**—Consent is necessary even when pregnancy is to be terminated in the circumstances mentioned in Sections 3(2)(i) and 3(2)(ii). The only exceptions to this rule are Section 3(4) (a) which prescribes for guardian's consent (instead of woman's consent) where the woman is a minor or mentally ill, and Section 5(1) where registered medical practitioner has to form an emergency opinion to save pregnant woman's life, *Suchita Srivastava v. Chandigarh Admn.*, (2009) 9 SCC 1 : (2009) 3 SCC (Civ) 570.

► **Prohibition against termination.**—Prohibition against termination of pregnancy at advanced stage (beyond 20 weeks) is due to medical opinion that abortion performed during later stages of pregnancy



may cause harm to physical health of woman who undergoes abortion, *Suchita Srivastava v. Chandigarh Admn.*, (2009) 9 SCC 1 : (2009) 3 SCC (Civ) 570.

► **Permission for termination of Pregnancy.**—Petitioner aged 26 yrs in 25th week of pregnancy, apprehended danger to her life, having discovered that her foetus was diagnosed with anencephaly, a defect that leaves foetal skull bones unformed and is both untreatable and certain to cause infant's death during or shortly after birth, condition also known to endanger mother's life. Medical Board having affirmed the same, termination of pregnancy permitted, *Mamta Verma v. Union of India*, (2018) 14 SCC 289.

⁷[4. **Place where pregnancy may be terminated.**—No termination of pregnancy shall be made in accordance with this Act at any place other than—

- (a) a hospital established or maintained by Government, or
- (b) a place for the time being approved for the purpose of this Act by Government or a District Level Committee constituted by that Government with the Chief Medical Officer or District Health Officer as the Chairperson of the said Committee:

Provided that the District Level Committee shall consist of not less than three and not more than five members including the Chairperson, as the Government may specify from time to time.]

CASE LAW ► Right to abortion.—The Act imposes reasonable restrictions on reproductive choices of a woman under MTP Act, *Suchita Srivastava v. Chandigarh Admn.*, (2009) 9 SCC 1.

NOTIFICATION

Ministry of Health and Family Welfare (Deptt. of Family Welfare), Noti. No. S.O. 50(E), dated December 30, 2004, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 13th January, 2005, p. 2, No. 39

In exercise of the powers conferred under sub-clause (c), clause (ii), sub-rule (1) of Rule 5 of the Medical Termination of Pregnancy Rules, 2003, to notify the drugs and parenteral fluids for emergency use, Central Government hereby notifies that places approved for conducting termination of pregnancy, under Section 4 of the Medical Termination of Pregnancy (Amendment) Act, 2002 (64 of 2002), shall provide for the following drugs and parenteral fluids for emergency use—

(i) Drugs and parenteral fluid—

- (a) Antibiotic - Ampicillin, amoxycillin trihydrate, cephalixin or a suitable alternative.
- (b) Analgesic - Paracetamol, pentazocine, dicyclomine or a suitable alternative.
- (c) Local anaesthetic - Injection Lignocaine 1 per cent.
- (d) Injection Diazepam.
- (e) Uterotonics - Injection Oxytocin and Injection Methylergometrine maleate. Injection Prostaglandins are optional.
- (f) Injection Atropine suphate.
- (g) 5 per cent Dextrose and Ringer lactate solution with IV sets and cannulae or scalp vein sets.

(ii) Facilities for treatment of emergencies—

7. Subs. by Act 64 of 2002, S. 4 (w.e.f. 18-6-2003). Prior to that substitution Section 4 read as follows:

“4. *Place where pregnancy may be terminated.*—No termination of pregnancy shall be made in accordance with this Act at any place other than—

- (a) a hospital established or maintained by Government, or
- (b) a place for the time being approved for the purpose of this Act by Government.”

- (a) Injection Adrenaline.
- (b) Injection Aminophylline.
- (c) Injection Sodium bicarbonate 7.5 per cent.
- (d) Injection Calcium gluconate 10 per cent.
- (e) Antiemetics - Injection Metaclopramide or a suitable alternative.
- (f) Antihistaminics - Injection Promethazine hydrochloride or a suitable alternative.
- (g) Steroid - Injection Hydrocortisone succinate.
- (h) Injection Frusemide.
- (i) Injection Dopamine.

Additional drugs and parenteral fluids—

- (i) Ethacridine lactate solution with Foley's catheter for instillation.
- (ii) General Anaesthetic drugs.

5. Sections 3 and 4 when not to apply.—(1) The provisions of Section 4, and so much of the provisions of sub-section (2) of Section 3 as 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.

⁸[(2) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), the termination of pregnancy by a person who is not a registered medical practitioner shall be an offence punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years under that Code, and that Code shall, to this extent, stand modified.

(3) Whoever terminates any pregnancy in a place other than that mentioned in Section 4, shall be punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years.

(4) Any person being owner of a place which is not approved under clause (b) of Section 4 shall be punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years.

Explanation 1.—For the purposes of this section, the expression “owner” in relation to a place means any person who is the administrative head or otherwise responsible for the working or maintenance of a hospital or place, by whatever name called, where the pregnancy may be terminated under this Act.

Explanation 2.—For the purposes of this section, so much of the provisions of clause (d) of Section 2 as relate to the possession, by registered medical practitioner, of experience or training in gynaecology and obstetrics shall not apply.]

8. Subs. by Act 64 of 2002, S. 5 (w.e.f. 18-6-2003). Prior to that substitution sub-section (2) and the Explanation read as follows:

“(2) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), the termination of pregnancy by a person who is not a registered medical practitioner shall be an offence punishable under that Code, and that Code shall, to this extent, stand modified.

Explanation.—For the purposes of this section, so much of the provisions of clause (d) of Section 2 as relate to the possession, by a registered medical practitioner, of experience or training in gynaecology and obstetrics shall not apply.”

CASE LAW ► Good faith.—Good faith is defined by Section 52 of the Indian Penal Code. Nothing is said to be done or believed in good faith which is done or believed without due care and attention. Under the General Clauses Act, “A thing shall be deemed to be done in good faith where it is in fact done honestly whether it is done negligently or not”. The element of honesty which is introduced by the definition prescribed by the General Clauses Act is not introduced by the definition prescribed by Section 52 of the Penal Code.

Good faith precludes pretence or deceit and also negligence and recklessness. A lack of diligence which an honest man of ordinary prudence is accustomed to exercise, is, in law, a want of good faith. Once this is shown, good faith does not require a sound judgment, *Harbhajan Singh v. State of Punjab*, AIR 1961 Punj 215.

Good faith requires due care and caution, but there can be no general standard of care and attention applicable to all persons and under all circumstances. The standard of care and caution must be judged according to the capacity and intelligence of the person whose conduct is in question, *State of Orissa v. Ram Bahadur Thapa*, AIR 1960 Ori 161.

► **Absence of personal malice.**—Absence of personal malice may be a relevant fact in dealing with the plea of good faith but its significance or importance cannot be exaggerated. Even in the absence of personal malice it will have to be shown that the act was done with due care and attention, *Harbhajan Singh v. State of Punjab*, AIR 1966 SC 97 : 1966 Cri LJ 82.

► **Due care and attention.**—Due care and attention implies a genuine effort to reach the truth and not the ready acceptance on ill natured belief. The question of good faith is a question of fact and must be gathered from the surrounding circumstances. Mere actual belief without any reasonable grounds for believing is not synonymous with good faith; but good faith does not require logical infallibility but due care and caution, *In re Ganapathia Pillai*, AIR 1953 Mad 936.

► **Reasonable grounds.**—It is not necessary for the surgeon to wait until the patient is in peril of immediate death if he has reasonable grounds to believe that the probable consequence of the continuance of the pregnancy would be to make the patient a physical and mental wreck, (1938) 3 All ER 615.

If the doctor is of opinion, on reasonable grounds and with adequate knowledge, that the probable consequence of the continuance of the pregnancy will be to make the woman a physical or mental wreck the court is entitled to take the view that the doctor who, under those circumstances and in that honest belief, operates, is operating for the purpose of preserving the life of the mother, (1939) 1 KB 687.

► **Consent obtained in good faith.**—A patient who puts himself under the treatment of a medical practitioner qualified or otherwise gives an implied consent to suffer the harm and to take the risk. But where the medical practitioner is not qualified or begins to apply a medicine which no man in his senses would dare to apply, the consent is not a consent obtained in good faith, *Juggankhan Jamshan Khan v. State*, AIR 1963 MP 102.

► **Termination of pregnancy after 20 weeks.**—Termination of pregnancy after 20 weeks to save life of pregnant woman is permissible when there is Grave danger to physical and mental health of pregnant woman, *Meera Santosh Pal v. Union of India*, (2017) 3 SCC 462.

► **Medical termination of pregnancy.**—Right of woman to have reproductive choice is inseparable part of her personal liberty under Article 21 of Constitution and she has sacrosanct right to have her bodily integrity, *Sarmishtha Chakraborty v. Union of India*, (2018) 13 SCC 339.

6. Power to make rules.—(1) The Central Government may, by notification in the Official *Gazette*, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely—

- (a) the experience or training, or both, which a registered medical practitioner shall have if he intends to terminate any pregnancy under this Act; and
- (b) such other matters as are required to be or may be, provided by rules made under this Act.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

7. Power to make regulations.—(1) The State Government may, by regulations,—

- (a) require any such opinion as is referred to in sub-section (2) of Section 3 to be certified by a registered medical practitioner or practitioners concerned, in such form and at such time as may be specified in such regulations, and the preservation or disposal of such certificates;
- (b) require any registered medical practitioner, who terminates a pregnancy, to give intimation of such termination and such other information relating to the termination as may be specified in such regulations;
- (c) prohibit the disclosure, except to such persons and for such purposes as may be specified in such regulations, of intimations given or information furnished in pursuance of such regulations.

(2) The intimation given and the information furnished in pursuance of regulations made by virtue of clause (b) of sub-section (1) shall be given or furnished, as the case may be, to the Chief Medical Officer of the State.

⁹[(2-A) Every regulation made by the State Government under this Act shall be laid, as soon as may be after it is made, before the State Legislature].

(3) Any person who wilfully contravenes or wilfully fails to comply with the requirements of any regulation made under sub-section (1) shall be liable to be punished with fine which may extend to one thousand rupees.



8. Protection of action taken in good faith.—No suit or other legal proceeding shall lie against any registered medical practitioner for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act.
