

# Recommendations for a Progressive and Inclusive MTP Amendment Bill 2020

**Pratigya Campaign** for Gender Equality and Safe Abortion is a coalition of 100+ individuals and organisations working together to improve access to safe abortion services and for upholding gender equality. The coalition is guided and advised by a dedicated eight member **Campaign Advisory Group**.

The coalition congratulates the Government for proposing the MTP Amendment Bill 2020. The MTP Act 1971 when passed by the then parliament was indeed liberal and ahead of its time. Most of the amendments proposed in the MTP Amendment Bill 2020 will strengthen pregnant person's access to safe abortion services, but there are some key changes we would suggest, that would make the MTP Act truly a progressive and transformative piece of legislation that would further bolster the Government of India's commitment and global leadership in advancing sexual and reproductive rights.

The changes recommended are in line with, The Statement of Objects and Reasons, mentioned by the Honorable Health Minister, while presenting the Bill to the Lok Sabha which articulated the Government's intention to ensure "safe, affordable, accessible abortion services"; reach benefits of "advancement of medical technology for safe abortion" and "ensuring dignity, autonomy, confidentiality and justice for women who need to terminate pregnancy". The statement of objects are commendable and we as a civil society coalition recognise it as a step in the right direction.

The recommendations Pratigya Campaign submits for your consideration are classified under three themes:

**Advancing Right Based Legislation**

**Operational Convenience**

**Harmonising Bill with recent Laws & Judgements**

## 1. Advancing a Rights Based Legislation

- First Trimester Abortions on Request:** Currently abortion is a conditional right and is available only based on the opinion of the doctor and the coalition recommends that abortions upto 12 weeks be allowed as per request/decision of the pregnant person. **66 countries** around the world including Canada, Nepal, Netherlands, Sweden, South Africa and Vietnam allow abortion at will of the pregnant person for up to 12 or more weeks of gestation.
- No upper gestation limits for survivors of sexual abuse and not just for fetal anomalies:** Currently the Bill allows for termination of a pregnancy at any time (without any upper gestation limit) if it is necessitated due to 'substantial foetal abnormalities diagnosed by a Medical Board', the coalition recommends that the clause 'no upper gestational limit' should be extended to survivors of sexual abuse. Having to carry a pregnancy resulting out of sexual abuse to term can cause mental and physical anguish as well as infringes on the pregnant persons right to life and liberty. Often survivors of sexual abuse get to know of their pregnancy later and given the trauma and stigma, there are considerable delays before they seek help. This gets further exacerbated when the survivor is a minor. In the past courts have allowed termination beyond 24 weeks for survivors of sexual abuse, hence we recommend that having no upper limit would considerably ease a survivor's life, as one incident will not define her autonomy in the future. This change would make a huge difference to the lives of survivors and help uphold their dignity and right to life.

## 2. Operational Convenience

- Extend gestation limit to 24 weeks for all pregnant persons and not be restricted to only 'certain categories of women':** The upper gestation limit of 24 weeks be extended to all pregnant persons, and this will make the law inclusive and, non-discriminatory. It would certainly be an operational convenience by avoiding the need to draw up a list to categorise pregnant persons who are eligible for up to 24 weeks and keep the implementation of the law simpler. **20 countries** including Finland, Netherlands, Singapore, Spain and UK allow women to access abortion up to 24 weeks on social grounds or for foetal anomalies and India's approval on this would continue India's presence in the league of progressive countries that have laws and policies advancing SRHR. A Pratigya Campaign legal analysis report shows that **53% of women** who sought judicial intervention for foetal anomalies were in the 20-24 weeks gestation, and 35% of all women who sought judicial intervention were survivors of sexual abuse within the same gestation (20-24 weeks), hence extending the upper gestational limit for all will ease access.
- Opinion of a single provider for gestation up to 24 weeks, instead of two providers for 20-24 weeks gestation:** Given the limited number of **qualified late abortion providers**, the coalition recommends that opinion of one provider should be sufficient for 20-24 weeks gestation instead of two as proposed in the Bill. The actual termination requires only one provider and therefore the need for two provider opinion just adds another layer of inconvenience, especially when the number of providers approved to provide late trimester are very limited. **Only 12-23% of facilities** providing abortion are in the public sector and of these abortion providing facilities, only 13-40 % provide second trimester abortion. Many of these may have only one provider and will not be able to provide services for 20-24 weeks gestation. This change will certainly ease the burden on the health system and reduce potential delays in seeking care.
- Medical Boards should not be constituted and instead the decision should be between the pregnant person and the provider:** The coalition recommends that Medical Boards be not constituted and the decision for termination should be solely between a pregnant person and the provider. Lack of specialised and trained Health care experts, especially at district and block levels in remote areas, constituting Medical boards at all levels would not be feasible. It will further add to delays and complicate access to abortion. Medical boards will add to the health infrastructure and will add as barriers to access.

## 3. Harmonising Bill with recent Laws & Judgements

- 'Abnormalities' should be replaced by the word 'anomalies':** To make the Bill inclusive and gender neutral, we would like to suggest some changes in terminology used in the amendment bill. Replace 'Abnormalities' with "Anomalies" since the term abnormalities reinforces the notion that fetuses with potential disabilities or medical conditions are undesirable. The term implies that persons with disabilities are 'abnormal' and those without disabilities are 'normal' and therefore more valued and wanted.
- The term 'woman' in the Bill be replaced by person 'or pregnant person':** Replacing the term 'woman' with 'pregnant person' will be gender inclusive. Access to abortion services is necessary for transgender, intersex and gender-diverse persons and not just traditionally termed 'women'. This inclusion is recommended in line with the **2014 National Legal Services Authority vs Union of India judgement** and the **Transgender Persons (Protection of Rights) Act 2019**.
- Ensure Confidentiality:** In 2017, the Puttuswamy judgement held that privacy is a fundamental right, and in line with this, the Campaign recommends that the confidentiality aspect of the MTP Regulations 2003 (the particulars of the woman, along with details in the admission register, are to be kept secret and not disclosed to any person) be maintained. Already due to the overzealous implementation of PCPNDT Act, many providers are skeptical of providing services, hence the confidentiality of a pregnant person seeking abortion should be maintained at all levels. We recommend that the provision in the amendment which states that 'No registered medical practitioner shall reveal the name and other particulars of a woman whose pregnancy has been terminated under this Act except to a person authorised by any law for the time being in force' be amended to say that the particulars of the person seeking MTP services should not be disclosed to anyone unless ordered by the court. This change will help in "ensuring dignity, autonomy, confidentiality and justice for women who need to terminate pregnancy."

**The above suggested changes do not substantially alter the MTP Amendment Bill 2020. They just make it clearer and inclusive and will be seen as path breaking in advancing abortion laws globally. We believe the above-suggested changes are not controversial and will not only be welcomed by a wide range of stakeholders but applauded as a progressive and women centered piece of legislation globally.**

**The coalition's secretariat is hosted by [Foundation for Reproductive Health Services](#).**

**Signed by Campaign Advisory Group Members**

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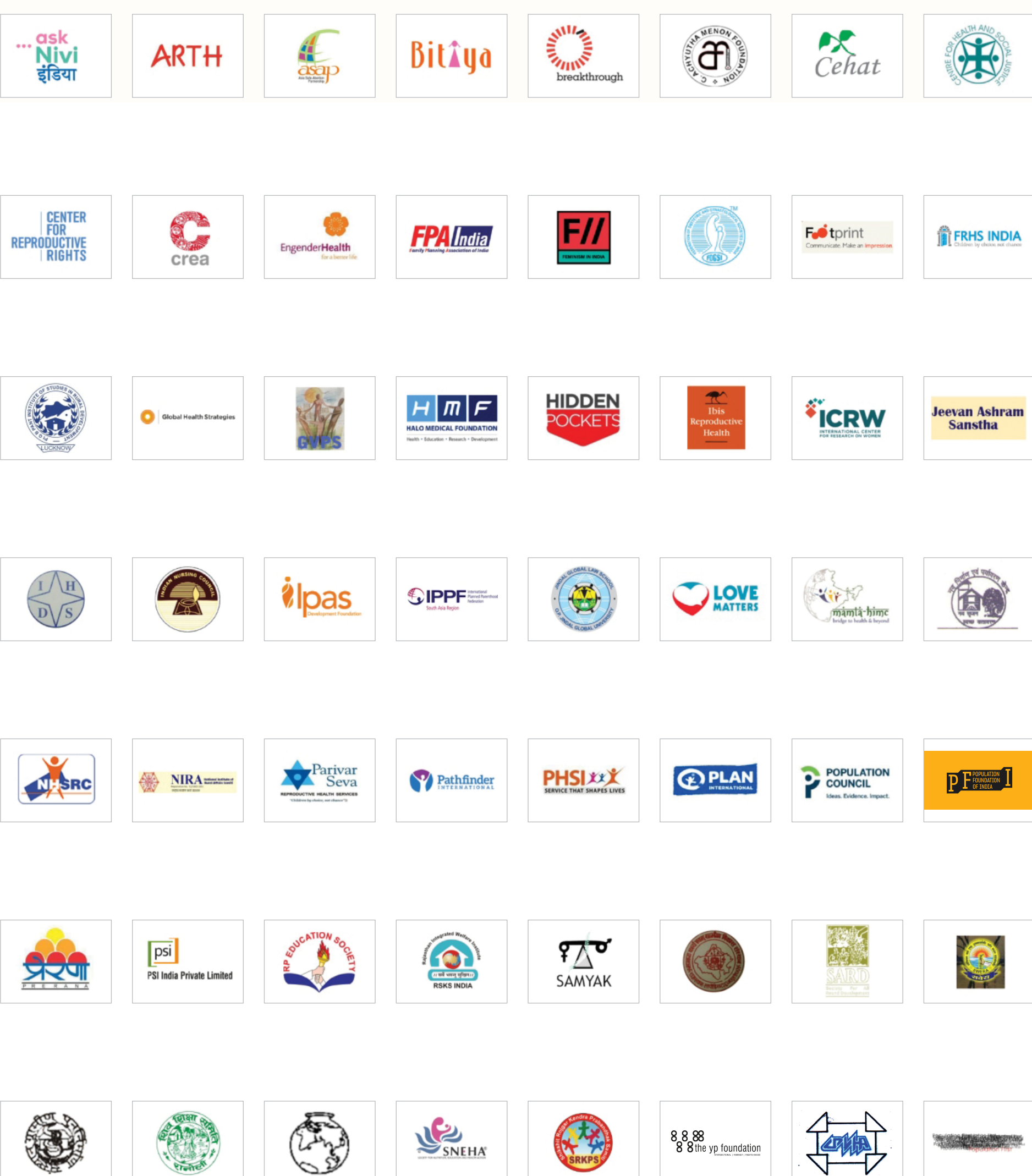
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\*Some partners do not have logos, but this letter has been endorsed by 112 partners of the coalition.