Reproductive Autonomy and Constitutional Morality in India: A Critical Analysis of Abortion Jurisprudence after the 2021 Medical Termination of Pregnancy Act Amendment

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Abstract

Women have always been the victims of discrimination and all other harmful practices, thus entitled to additional rights. Although there are several rights available to women at the international and national levels. However, the paternalistic control of women's sexual and reproductive behaviour is manifested in laws and policies. Laws have been passed restricting women's access to voluntary sterilization and Abortion. There are various legislations at the international and national level dealing directly or indirectly with women's right to Abortion. These are the CEDAW 1979, ICPD 1994, the ICCPR, and ICESCR, giving expression to the values of UDHR. The jurisprudence in India on reproductive rights is at a developing stage. The Constitution, under Article 21, although it does not mention such rights, in a wider interpretation provides the right to live with dignity, make choices, and the right to privacy. There is central legislation dealing with Abortion, the Medical Termination of Pregnancy Act 1971, as amended in 2021, allowing Abortion on specific grounds. Provisions are also provided by indirect legislation, i.e., BNS. The Indian judiciary has played a progressive role in this regard most importantly since the 2021 amendment has become effective in one way, but on the other maintaining the restrictive approach.

Key words: abortion, women, constitution, judiciary, reproductive rights, privacy

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I. Introduction

Women are considered as a vulnerable group, and are accorded special status and protection by the UN and regional human rights regimes. Reaffirming belief in fundamental human rights, human dignity and value, and gender equality is one of the objectives of the 1945 United Nations Charter. Promoting respect for fundamental freedoms and human rights is the aim, regardless of a person's colour, gender, language, or religion.[4] This doctrinal study provides an analysis of present law on abortion in India with respect to the reproductive rights of women.

The UDHR, adopted in 1948, declares that women and men have equal rights. The usage of the term "all men" rather than a gender-neutral term was a point of discussion during the formulation of the Declaration.[5] The UDHR was subsequently adopted using the language "all human beings" and "everyone" to make it clear that it was meant for men and women alike. CEDAW, 1979, states that, despite the existence of the various documents, women still do not have equal rights as that of men.[6] Women's rights activists organized under the slogan "Women's Rights are Human Rights" to guarantee that women's human rights were fully on the international community's agenda.[7] As per the Vienna Declaration and Programme of Action, these women's human rights are essential, inseparable, and part of universal human rights.[8] The conference[9] represented a milestone for women's rights. The Beijing Declaration and

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[4] THE UN FUND FOR POPULATION ACTIVITIES 1969, www.Unfpa.org/resources/human-rights-principle(last visited May 7 2023).

[5] Johannes Morsink, *Women's rights in the Universal Declaration* HUMAN RIGHTS QUARTERLY (1991).

[6] The Convention on Elimination of Discrimination Against Women, 1979.

[7] RAMONA VIJEYARA, INTERNATIONAL WOMEN'S RIGHTS LAW AND GENDER EQUALITY MAKING THE LAW WORK FOR WOMEN (Routledge, 2022).

[8] VIENNA DECLARATION AND PROGRAMME OF ACTION-WORLD CONFERENCE ON HUMAN RIGHTS, PARA 18 1993, http://www.legislationsonline.org (last visited May 5 2023).

[9]THE INTERNATIONAL CONFERENCE ON POPULATION AND DEVELOPMENT, UNITED NATIONS PUBLICATION SALES NO. E.95. XIII.18 SEPTEMBER 5, 1994, http://www.unfpa.org/development (last visited on May 5 2023).

Platform for Action[10] focused on 12 areas related to the execution of women's human rights. The Millennium Development Goals of 2000 included a focus on gender equality, women's empowerment, and a reduction in maternal mortality. The international community agreed to eight time-bound development goals to be accomplished by 2015. The CEDAW Obligates the State parties to ensure "access to health care services". The ICPD Programme of Action provides that all couples and individuals have the right to freely and responsibly decide the number, spacing, and timing of their children.[11] They should have the information and means to do so as well as the highest standard of sexual and reproductive health.[12] The women's dignity is threatened and abused because the doctrine of informed consent is not enforced or is misapplied.[13]

The key issues in the abortion discussion include women's autonomy over their bodies, the nature of the state's obligation to protect the unborn, the rights of parents and spouses to participate in the choice to terminate a pregnancy, and the competing rights of the mother and the foetus. By the end of the 19th century, practically every government had made Abortion illegal.[14]

II. Pro- choice and Pro-life Debate

The Abortion debate has effectively split the world into two intensely opposing camps: Pro-life and Pro-choice, as no other subject has. Both factions attempt to make arguments in support of their respective stances, demonstrating the

[10] THE FOURTH WORLD CONFERENCE ON WOMEN, BEIJING, UNITED NATIONS PUBLICATION SALES NO. E.96.IV September 4, 1995, http://www.un.org/ womenwatch/daw/beijing/pdf. (last visited on May 5 2023).

[11] FUTURE-PROOFING THE ICPD PoA: REPRODUCTIVE RIGHTS IN A LOW FERTILITY WORLD-PMC, https://share.goog le/taOP75tgHwNbdADIB (last visited February 22 2026).

[12] Sexual And Reproductive Health and Rights| Ohchr, http://share.google/p2AyxoVILEzZOT8H (last visited on February 22 2026).

[13] Dickens B, *Reproduction law and medical consent*, UNIVERSITY OF TORONTO LAW JOURNAL (1985).

[14]ABORTION LAW AND POLICY AROUND THE WORLD, 63http://pmc.ncbi.nlm.nih.gov/articles/pmc543035/ (last visited on 22- Feb 2026).

influence of Abortion's permissibility or non-permissibility on society and individual members of society.[15]

The pro-life movement seeks legislation to prohibit Abortion. It associates Abortion with infanticide, poor mothering, ethnic cleansing, and lynching, making the need for safe Abortion less clear. It emphasizes the sanctity of life's inviolability. While as the pro-choice movement wants laws to protect Abortion and strives to defend the freedom to choose Abortion based on the right to one's own body.[16] The discussion about Abortion has to start by defining what "choice" means and highlighting how, without "choice" there cannot be reproductive freedom. They believe that a woman has the capacity to make moral decisions, including those concerning her reproductive health. Pro-choicers advocate for sex education, increased healthcare accessibility, and abortion, asserting women's right to abortion as a fundamental right to bodily integrity and personal liberty, regardless of why she decides to have an abortion or when she decides to have one. Unintended pregnancy restricts a woman's liberty by limiting her control over her body for nine months, but for decades in service to the child.[17] Although the therapeutic abortion is allowed, it is a procedure used to save a mother's life or prevent the birth of a child with disabilities only. It does not take into consideration the choice of that woman.

III. Historical Perspective of Abortion Legislation

The abortive technique, dating back 4,600 years, was first documented in ancient China by Emperor Shen Nung, who prescribed the use of mercury for abortion.[18] A Chinese record document has mentioned the number of royal concubines who had Abortions in China between the years 500 and 515 BC.[19] The Hippocratic Oath, a medical guideline, has been a subject of controversy

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[15] POJMAN, THE MORAL LIFE: AN INTRODUCTORY READER IN ETHICS AND LITERATURE (Oxford University Press, 2007).

[16] SANDRA ALTERS, ABORTION: AN ETERNAL SOCIAL AND MORAL Issue 9 (Gale Cengage Learning, 2010).

[17] Marvin M. Ellison*, Is Pro-Choice What We Really Mean to Say?* JOURNAL OF FEMINIST STUDIES IN RELIGION (2014).

[18] Tietze C and, Lewit S, *Abortion*, SCIENTIFIC AMERICAN (1969).

[19] Traditional Abortion Practices: A Historical Background, http://share.google/OYHoqaLst9jh69IOk (last visited on 23 Feb. 2026).

regarding its prohibition of abortion.[20] The criminalization of abortion significantly affected vulnerable women, impoverished women, and women of colour, accounting for 75% of illegal abortion deaths in the US in 1969.[21] The growing popularity of humanitarian reform in the first half of the 19th century shifted the public opinion.[22] In Canada, Abortion was made illegal in 1868, punishable by life imprisonment, but liberalization began in Canada after World War II and the Universal Declaration of Human Rights in 1948. The legalization of birth control and abortion was done as long as a woman's health was at risk.[23]

The Hindu belief in ahimsa (non-violence), which was supported by Buddhism and Jainism in various eras, pushed against any legitimacy of Abortion. The Jains, who filter their air and water to avoid killing even the tiniest living organisms like bacteria or insects, cannot comprehend murdering a human new born. Islam forbids celibacy and encourages its adherents to choose acceptable companions with whom to marry and produce children.[24] The spacing between child-births has been advised in order to provide proper care for children. All these considerations show that Islam was not opposed to family planning; rather, it supports it.[25]Another view of the same effect may be found in the collection of Bukhari, where it is stated that the soul does not enter the body of the foetus until the eightieth day of gestation. Thus, until the embryo has been created into another being or it is instilled with the soul, its destruction may not amount to infanticide, and the Abortion done during this period may not be

[20] Rachel Hajar and, M.D., *The Physician's Oath: Historical Perspective* PUBMED CENTRAL (2017).

[21] SIMON AND SCHUSTER, OUR BODIES, OURSELVES FOR THE NEW CENTURY (Health and Fitness, 1998).

[22] Du Prey and Beatrice, *Reflections on the History of Abortion*, UNIVERSITY OF CALGARY'S DIGITAL REPOSITORY (2008).

[23] Impact Of Abortion Law Reforms on Women's Health Services and Outcomes: A Systematic Review Protocol, http://pmc.ncbi.nlm.nih.gov/articles/PMC8240208/ (last visited 23 Feb. 2026).

[24] The Holy Quran, 7; 189; 25; 74; 30 :21

[25] Batula Abdi, Jerry Okal, *et al*., *Children are a blessing from God – a qualitative study exploring the socio-cultural factors influencing contraceptive use in two Muslim communities in Kenya*, REPRODUCTIVE HEALTH (2020).

against the tenets of Islam.[26] It is also probable that until recent times, the majority of illegal Abortions were driven by socio-moral concerns. The religious and cultural patterns of Hindus and Muslims, or any other society, are difficult to withstand the onslaught of the materialistic world of today, no matter how strictly laid down and adhered to in the distant past. Ancient religion placed no bar on Abortion, and Foetal rights were largely unrecognized.[27] Interestingly, however, one of the basic requirements of the Hippocratic Oath is a categorical one to refrain from the practice of Abortion in any form.[28] Early common law, influenced by the philosophic and Theological debates of its own, when the foetus was to be considered "alive," Recognized Abortion as a crime only after "quickening".[29] Many US states began to adopt some form or modification of the American Law Institute's Model Penal Code in the 1960s and 1970s.[30]

Abortion laws were first passed in the United Kingdom in 1803, with a number of restrictions as to the life of foetus and Health of the woman. However, the United States, more specifically the American Judiciary could be credited with changing Abortion laws and recognizing the intrinsic, perhaps inextricable, right and liberty of women over their bodies. In *Roe* v. *Wade*,[31] the US Supreme Court held that women have a constitutional right to Abortion in the first six months of pregnancy.[32] By this Judgment, the US Supreme Court upheld the right to Abortion based on woman's Right to privacy. The value system of an individual has a strong association with their perspective on different ethical, moral, and legal issues. The US Supreme Court, in the case of *Dobbs State Health Officers of the Mississippi Dept of Health v. Jackson Women's Health*

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[26] ABDEL R. OMRAN (EDS.), EGYPT POPULATION PROBLEMS & PROSPECTS (University of North Carolina Press, 1973).

[27] Historical attitudes to abortion, https://www.bbc.co.uk/ethics/abortion/legal/history1.shtml (last visited May 08, 2023).

[28] Hippocratic Oath, https://www.britannica.com/topic/Hippocratic-oath (last visited May 08, 2023).

[29] WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND, (Clarendon Press, Oxford, 1765).

[30] Model Penal Code, 1962.

[31] Roe v. Wade (1973) 410 US 113.

[32] PETER SINGER, PRACTICAL ETHICS (Cambridge University Press, 3rd edn., 2003).

Organization[33]on 24th June 2022, overruled the *Roe* v. *Wade* decision. The Mississippi Gestational Age Act, 2018, provides that except in a medical emergency/in case of severe foetal abnormality, a person shall not intentionally/knowingly perform/induce an abortion after 15 weeks. The Court held that the Constitution does not confer the right to abortion specifically as such, and both the Roe and Casey decisions are overruled. Justice Samuel Alito wrote the majority opinion.[34] The authority to regulate abortion is returned to people and the elected representatives. According to judges, the stare decisis of the Roe case in 1973 (as followed in the Casey case) was to be assessed properly on the ground on which the Roe case was decided. The US Constitution does not expressly provide abortion as a right. This decision clearly indicates the societal morality prevailing over constitutional morality. The Roe case upheld the constitutional principle of privacy, granting women the right to privacy in 1973. The 24th June 2022 decision has been criticized by the pro-choicers. In the leading case of *Morgentalor Smoling and Scott* v. *R*[35] the Supreme Court of Canada found the procedure under the criminal code of the country requires a woman who wants Abortion to submit an application to a therapeutic committee, resulting in delays infringing the guarantee of security of a person.[36]

The pregnant women are subjected to psychological stress. Countries that allow Abortion on demand without restrictions have a low rate of unsafe Abortion deaths. The most effective method to prevent unsafe Abortion is to eliminate all legal barriers to safe Abortion and allow universal access to it. One of the first feminist researchers, Rosalind Petchesky, proposed that women should be given a key role in the prenatal scene.[37]

Abortion regulations, influencing domestic High Court rulings to recognize abortion as a constitutional right, serve as a valuable resource for legislation

[33] Dobbs State Health Officers of the Mississippi Department of Health v. Jackson Women's Health Organization et al. (2022) 597 U.S 215.

[34] Dobbs State Health Officers of the Mississippi Dept of Health v. Jackson Women's Health Organization et al. (2022) 597 U.S 215.

[35]Scott v. R (1988) 1 SCR 30.

[36] *Id.*

[37] Rosalind Pollack Petchesky, *Fetal Images: The Power of Visual Culture in the Politics of Reproduction* 13 FEMINIST STUDIES 263-292 (1987).

and policy reform. These criteria can impact the development of transformational national-level jurisprudence, legislation, and policy reform in support of women's reproductive autonomy. These norms continue to evolve to generate better protection for Abortion as a fundamental human right. These normative advances and their implementation at the national level are the results of ongoing efforts by attorneys, advocates, and activists to hold states accountable for their human right commitments. It exposes the negative impact of restrictive Abortion laws, and destigmatise Abortion.

Despite clear evidence that reforming the laws is essential for reducing unsafe Abortion and resulting maternal mortality and morbidity or recognizing the linkages between lack of access to Abortion and gender discrimination.[38] Further, treaty bodies have consistently urged states to decriminalize Abortion and ensure safe services, highlighting the link between restrictive laws, unsafe abortion rates, and maternal mortality.[39] The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, 2003 (Maputo Protocol), mandates that states must uphold women's right to Abortion at a minimum, in instances of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus.[40]

IV. Right to Privacy and Reproductive Autonomy

The right to privacy is accepted to be included in the significant expansion of the concept of personal liberty.[41] Any reproductive decision has the greatest direct impact and solely affects the individual involved. It's an area that's usually left to individual decision-making, just like marriage and other parts of family life that have a minimal impact on the community. As a result, the right

[38] The Role Of International Human Rights Norms in the Liberalisation of Abortion Laws Globally, http://pmc.ncbi.nlm.nih.gov/articles/PMC5473039/ (last visited on 23-Feb 2026).

[39] *Johanna B. Fine, Katherine Mayall, and Lilian Sepúlveda, The Role of International Human Rights Norms in the Liberalization of Abortion Laws Globally* HEALTH AND HUMAN RIGHTS (2017).

[40] FRANS_ VILJOEN _AN _INTRODUCTION _TO _THE_ WOMEN_PROTOCOL_ IN_ AFRICA, http://share.goog le/Ov0C 6UzMyWxtXheVG (last visited 23 February 2026).

[41] Roe v. Wade (1973) 410 US 113.

to women's reproductive rights is inextricably linked to the right to privacy or the right to be left alone.[42] The right to privacy has been recognized as a constitutional right in the United States since it is one of the elements of "liberty" guaranteed by the due process clause. Personal liberty is used instead of liberty in Article 21 of the Indian Constitution, as the founders intended to limit the protection provided by the clause to only particular types of liberties relating to an individual's life and person. Nonetheless, the Supreme Court has broadened the definition of personal liberty to embrace even the specific freedoms guaranteed by Article 19 of the Constitution.[43] The focus has been on the contradiction between the right to privacy and other individual rights rather than the conflict between state interests and privacy.[44] Despite the enshrinement of the right to privacy in Article 21, courts have not regarded it as equally significant as other fundamental rights. The Court's general strategy has been to prioritize other constitutionally protected rights over privacy rights. The justification appears to be that the Indian Constitution does not clearly mention the right to privacy. In *Suchita Srivastava v. Chandigarh Administration*,[45] the court held that a woman's right to privacy, dignity, and bodily integrity includes the right to carry a pregnancy to term, to give birth, and raise children and that these rights are part of a woman's right to privacy, dignity, and bodily integrity.[46] The case of Suchita Srivastava emerged in the context of India's MTP Act, which regulates Abortions.[47] Article 21, which ensures the fundamental right to life and personal liberty,[48] i.e., any restricting must be "just, reasonable, and fair" to remain constitutionally valid. Sections 3 and 5 of the MTP Act have to be evaluated on this basis. According to Justice Chandrachud, this test consists of three points: the privacy restriction must be legal legislation; there must be a justifiable state interest behind it; and the

[42] Griswold v. Connecticut 381 U.S. 479 (1965).
[43] Gobind v. State of M.P. AIR 1975 SC 1378.
[44] United Nations International Conference on Population and Development, 1994.
[45] *Suchita Srivastava* v. *Chandigarh Administration* (2009) 9 SCC 1.
[46] Promise Of Reproductive Autonomy: Does Suchita Srivastava Walk The Talk, http://share.google /goJE8kzb3ww7FZpEdz (last visited 23-february 2026).
[47] Tarun Arora, *Suchita Srivastav and Anr v. Chandigarh Administration Paving the Way for Recognition of Reproductive Rights of Mentally Retarded Women*, LEGAL NEWS AND VIEWS 24(9) (2010).
[48] Maneka Gandhi v. Union of India AIR 1978 SC 597.

restriction must be proportionate to its object.[49] Either the Supreme Court adopts a mild rationality requirement, requiring the State to establish that the purpose of the privacy constraint and the means used are rationally related, or the Supreme Court applies a higher standard, requiring the State to show that no less restrictive measures would achieve the same result. Utilizing either criterion would severely harm Sections 3 and 5 of the MTP Act.[50] Under the purview of Article 21, there are many rights, i.e., the right to live with dignity, to make free choices, and the right to privacy and reproductive choice available within the territory of India, and no one can be deprived of such rights except according to the procedure established by law.[51]

V. Abortion Jurisprudence in India

Abortion is allowed in India if the pregnant woman's life or physical or mental health would be jeopardized if the pregnancy were to be continued. Abortion was practiced in the past as well, but because it was illegal at that time, it was done in secrecy. Abortion is strongly condemned in Vedic, Upanishadic, Puranic, and Smriti literature, and the Medical Council of India's Code of Ethics emphasizes respect for human life from conception.[52] The MTP Act, 1971, guarantees women in India the right to terminate unintended pregnancies by a registered medical practitioner in a government-established hospital or approved location.[53] It is not possible to terminate all pregnancies. Pregnancy termination is a health measure when life or physical/mental risks exist, humanitarily due to sexual offenses, or eugenically due to substantial risk of deformities or diseases. In this respect, a woman's right is doubtful because it is dependent on certain conditions. There are many rights available within the territory of India under the purview of Article 21 of the Indian Constitution (the

[49] Dipika Jain & Payal K. Shah, "*Reimagining Reproductive Rights Jurisprudence in India: Reflections on the Recent Decisions on Privacy and Gender Equality from the Supreme Court of India*." COLUMBIA JOURNAL OF GENDER AND LAW, (2020).

[50] A Womb of One's Privacy: Privacy and Reproductive Rights, https://www.epw.in/engage/Article/womb-ones-own-privacy-and-reproductive-rights (last visited July 20, 2023).

[51] INDIA CONST. art. 21.

[52] Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulation, 2002.

[53] Medical Termination of Pregnancy Act, 1971 (Act 34 of 1971).

right to life and personal liberty).[54] These include the right to live with dignity, the right to make free choices about one's body, and the right to privacy. Though ambiguous and unclear, the Constitution of India also provides the right to abortion. The MTP (Amendment) Act of 2021,[55] and the MTP Act, 1971, do not state anywhere that woman has a right to terminate a pregnancy as a matter of right but may be allowed to do so only in certain specified circumstances. It is done if a medical professional (and, in some cases, a Medical Board) determines that these circumstances exist. In other words, Abortion remains a state-sanctioned privilege available only in specific circumstances.[56]

A. Abortion Legislation in India

The Central Planning Board of the Government of India introduced the idea of a liberalized abortion law in 1964 as a family planning measure.[57] The Government of India in 1964 constituted the Shanti Lal Shah committee to suggest measures for reform in the existing law of Abortion.[58] The recommendations of the Committee were accepted, and the Medical Termination of Pregnancy Act was passed in 1971, and came into operation on 1 April 1972. It was passed to regulate and ensure access to safe Abortion.[59] To terminate a pregnancy between twelve and twenty weeks of gestation, two medical practitioners must be satisfied with the grounds. In all of these cases, the pregnant woman's consent is required before the termination of pregnancy. This position has been unambiguously stated in Section 3(4) (b). In 1975, the government revised the MTP Rules, 1975, allowing women to terminate unwanted pregnancies under the act without the consent of her husband.[60] The only other exception is provided in Section 5(1) of the MTP Act, permitting a

[54] INDIA CONST. art. 21.

[55] Medical Termination of Pregnancy (Amendment) Act, 2021 (Act 8 of 2021).

[56] Veronica Arora, Ishwar C Verma, *The Medical Termination of Pregnancy (Amendment) Act, 2021: A Step Towards Liberalism* LAW AND BIO ETHICS (2021).

[57] Amar Jesani, and Aditi Iyer, *Women and Abortion*, *EPW* (1993).

[58] An Updated Review of Indian Law on Medical Termination of Pregnancy and Future Practices-Entomology and Applied Science Letters, http://sharegoogle/lvdeUMmihx6L6X5ir (last visited 23 February 2026).

[59] Medical Termination of Pregnancy Act, 1971 (Act 34 of 1971).

[60] *Id.*

Registered medical practitioner to terminate the pregnancy if he or she is of the view that it is urgently necessary to save the pregnant woman's life. The MTP Act prohibits induced Abortions on demand.[61] The medical practitioner must provide their opinion in good faith with reference to the presence of a valid legal indication. It is important to mention here that for Abortion, the consent of the woman alone is required and not of any other person. The MTP Rules, 2003,[62] specified that one member of the district-level committee established under Section 4(b) of the MTP Act be a gynaecologist/surgeon/anaesthetist, as well as additional members from the local medical profession, non-governmental organizations, and district Panchayati Raj Institutions. It also stipulates that one of the committee members must be a woman. The amendment permitted registered medical practitioners to perform medical Abortions at facilities that were approved to perform Abortions up to seven weeks' gestation. The MTP Rules and Regulations were amended in 2003 to allow qualified Abortion physicians to prescribe medical Abortion medicines outside of a registered setting if emergency facilities were available. [63]With the development of amniocentesis, sex-selective tests became popular in India. Due to a ban on government institutions providing such services, private diagnostic facilities have sprung up to provide low-cost sex-determinative tests to the general population. This resulted in a decrease in the female population.[64]

In order to offset the phenomena of female-foetus Abortions, women's groups and social activists approached the Parliament for over a decade, thus leading to the passing of the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, which was passed in July 1994 and amended in 2003.[65] This Act aims to combat the excessive use of pre-natal diagnostic procedures, which could potentially result in female foetal Abortion. The

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[61] *V. Krishnan* v. *G. Rajan* (1993) H.C.M.P.No. 264.

[62] MTP Rules, 2003, rule 3.

[63] Kumar R, A. J. Francis Zavier, *et.al*., *Unsuccessful Prior Attempts to Terminate Pregnancy Among Women Seeking First Trimester Abortion at Registered Facilities in Bihar and Jharkhand, India*, JOURNAL OF BIOSOCIAL SCIENCE (2012).

[64] Sugandha Nagpal, *Sex-selective Abortion in India: Exploring Institutional Dynamics and Responses*, McGILL SOCIOLOGICAL REVIEW (2013).

[65] Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2003 (Act 14 of 2003).

women's groups targeted sex determinative testing rather than sex-selective Abortions because the Medical Termination of Pregnancy Act, 1971, liberalized access to Abortion services; the Right to Abortion is not recognized under Indian law. The Pre-Conception and Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 has been replaced by the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 2003. The sex of the foetus is revealed secretly, causing a breach of the law for both the individuals seeking the information and the medical professional providing it. The PNDT Act of 1994 has been inadequate in eradicating these wrongdoings from society, necessitating the introduction of an amendment to the Act.

For a variety of factors, the PNDT Act of 1994 failed to meet its goals. Studies show that primary care providers use manual vacuum aspiration (MVA) for Abortions up to eight weeks gestation and commonly use more in vasodilation and curettage (D&C) procedures despite 2001 guidelines recommending otherwise.[66]

B. The Medical Termination of Pregnancy (Amendment) Act, 2021

The advances in technology that have occurred both in ultrasonography and genetics have enabled prenatal diagnosis of a large number of foetal disorders. foetal anomalies are frequently diagnosed after 20 weeks of gestation due to scientific and biological reasons, highlighting the need to increase the upper gestational limit for terminating pregnancies.[67] The steady increase in writ petitions seeking termination of pregnancy in cases of severe foetal abnormalities, the concerned medical professionals advocated for the amendment of the MTP Act to align with international thinking.[68]

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[66] Dr. K. Shanmugavelayutham, "The Pre-conception and Pre-Natal Diagnostic Techniques (Prohibiti on of Sex Selection) Act, 2002", https://ijlljs.in/wp-content/uploads/2015/08 /11, (last visited July 05, 2023).

[67] Enhancing Fetal Anamoly Detection in Ultasonography Images: A Review Of Machine Learning-Based Approaches, http://share.google/x5lei2RIMD8IIPMpO (last visited 23 Feb 2026).

[68] Veronica Arora, Ishwar C Verma, *The Medical Termination of Pregnancy (Amendment) Act, 2021: A Step Towards Liberalism* LAW AND BIO ETHICS (2021).

Thus, the much-awaited MTP Amendment Act, 2021,[69] containing significant changes to the MTP Act of 1971 was passed. These amendments allow for the late-term termination of pregnancies, allowing foetal medicine, practitioners to diagnose foetal anomalies and allowing termination by a registered medical practitioner up to 20 weeks[70]if in that particular case, the medical practitioner is of the opinion, in good faith, that the pregnancy, if not terminated, would pose a threat to the life of the pregnant woman. It may result in grave injury to her physical or mental health, or there is a substantial risk that if the child is born, he would suffer from any serious physical or mental abnormality.[71] In the cases where the length of pregnancy exceeds twenty weeks but does not exceed twenty-four weeks, a woman's recommendation of not less than two registered medical practitioners is required.[72] The point under sub-section (2) relating to the particular length of pregnancy shall not apply to the termination of pregnancy by the medical practitioner if it becomes necessary by the diagnosis of any of the substantial foetal abnormalities diagnosed by a medical board.[73] The norms to be followed by the registered medical practitioner whose opinion is required for such termination at different gestational ages shall be only those as may be prescribed by rules made under this Act.[74]

The state government or union territory (whichever is involved) shall, through a notification in the official Gazette, constitute a Medical Board for the purpose of this Act in order to exercise such powers and functions as may be prescribed by rules made under this Act.[75] Further, the registered medical practitioner is under a duty not to reveal the name and other particulars of a woman whose pregnancy has been or has to be terminated under this Act except to a person authorised by any law for the time being in force. The

[69]Medical Termination of Pregnancy (Amendment) Act 2021 (Act 8 of 2021).

[70] Veronica Arora, Ishwar C Verma, *The Medical Termination of Pregnancy (Amendment) Act, 2021: A Step Towards Liberalism* LAW AND BIO ETHICS (2021).

[71] MTP Act, sec 3.

[72] Termination of Pregnancy for Fetal Abnormality in England, http://sharegoogle/UpKBNo8rHTipTWqB T (last visited 24 February 2026).

[73] MTP Act, sec 3 (2 B).

[74] MTP Act, sec 3 (2A).

[75] MTP Act, sec 3 (2 C).

contravention of the provisions of the above subsection leads to punishment with imprisonment, which may extend to one year, or with a fine, or with both."[76]

The law allows abortion up to 12 weeks gestation, raising the maximum limit to 24 weeks. It clarifies prenatal diagnostic technology use, replacing "married woman" with "all women" and the word "husband" with "partner" in the contraceptive failure clause in an attempt to clarify that Abortion is legal for all women, not only those who are married, and requires that the name and other details of a woman having an Abortion should remain confidential.[77] The new law has contributed toward ending preventable maternal mortality to help meet the Sustainable Development Goals (SDGs). Goal 3 pertains to the reduction in the maternal mortality ratio and the universal access to sexual and reproductive health and rights.[78] The Act authorises Abortion only in circumstances where a Medical Board detects significant foetal abnormalities after 24 weeks. This means that if an Abortion is required due to rape after 24 weeks, the only recourse is to file a Writ Petition.[79]

The women are naturally weak and vulnerable in relation to reproductive choices, and they are likely to be harmed by Abortion in spite of having chosen this option in the face of a problematic pregnancy; then, it still does not always lead to an Abortion being permitted.[80] many women get substandard Abortion treatments from unskilled or uncertified physicians, resulting in bad health outcomes. Pregnancy termination procedures have been prevalent since ancient times, but unwanted pregnancies and women seeking abortions will persist as

[76] MTP Act, sec 5 A (1).

[77] Supreme Court All Women Entitled to Safe and Legal Abortion, Distinction Between Married and Unmarried Women Unconstitutional, http://www.lawweb.in/2026/02/supreme-court-all-women-entitled-to-html (last visited 26 February 2026).

[78] Goal 3 |Department of Economics and Social Affairs, http://sdgs.un.org.goals/goal3, (visited on February 19 2024).

[79] Manika Kamthan Ruksana Akhtar, Right to Abortion of Survivors of Rape In India, http://ijme.in/ar ticles/right-abortion-of-survivors-of-rape-in-india/ (last visited 26 February 2026).

[80] Individual And Community Level Impact of Infertility Related Stigma In Malawi, http://pmc.ncbi.nlm.nih.gov/articles/PMC7233143 (last visited 26 February 2026).

long as men and women have sex for non-procreation reasons. Legal restrictions place unnecessary impediments in the way of women seeking abortion services and involve the state in a highly personal decision. Several facts must be addressed for the MTP Amendment of 2021 to be considered a success. Due to the fact that the majority of doctors work in rural areas, medical opinions from these professionals are very difficult to obtain in and around cities. Several other logistical difficulties such as inadequate skills and training among the health workers in rural regions and technical incompatibilities and infrastructure issues are not taken into account by the amendment. The amendment does not decriminalize Abortion for any class of people or take any action towards strengthening the autonomy and responsivity of the pregnant women.[81]

In the case of *Sharmishtha Chakraborty & Anr. v. UOI Secretary & Ors.,*[82] *Nisha Suresh Aalam v. UOI,*[83] *Priyanka Shukla* v. *UOI & Ors.,*[84] and many more, the termination of pregnancy beyond the period of twenty weeks by acknowledging that the right to terminate pregnancy could not be rejected only because the gestation period had extended beyond twenty weeks. Manifestly, the aforementioned cases, which were filed before the Supreme Court and High Courts for seeking permission to abort a pregnancy at stages beyond the twenty-week limit on the grounds of foetal abnormalities or pregnancies due to rape faced by women, highlight that people's needs and their lives are no longer similar to what was in the 70s when the MTP Act, 1971, was passed. Hence, the MTP (Amendment) Act, 2021, in the wake of the advancement of medical technology, is long past the right time, which increases the upper limit for terminating pregnancies, especially for vulnerable women and in cases of severe foetal abnormality.[85]

In this context, it is important to note that the legislation implies that the procedure for ending rape-related pregnancies that have exceeded the 24-week mark remains unchanged: a writ petition is the only means of obtaining

[81] The Transgender Persons (Protections and Rights) Act, 2019 (Act 40 of 2019).

[82] Sharmishtha Chakraborty & Anr. v. UOI Secretary & Ors (2017) W.P.(C) No. 431.

[83] Nisha Suresh Aalam v. UOI (2017) W.P.(C) No. 929.

[84] Priyanka Shukla v. UOI & Ors (2017) W.P. (ST) No. 36727.

[85] Ambika Gupta, *A Critical Analysis of the Shortcomings under the MTP (Amendment) Act, 2021* VISHWAKARMA UNIVERSITY LAW JOURNAL (2021).

approval. Pregnancy terminations are matters that must be handled quickly. The time frame within which the Medical Board must make its conclusion is not specified by the amended Act. The board's procrastination in making decisions could cause pregnant women to experience further complications. Additionally, unquestionably, the Act permits "pregnant women" to terminate their pregnancies in specific circumstances. However, as medical research has progressed, it has become apparent that certain individuals who have been diagnosed with an additional gender may occasionally exhibit these symptoms. Transgender people (not women) may need termination treatments if they become pregnant even after undergoing hormone therapy to go from a female to a male. It is unclear whether transgender people will be included in the amended Act because it only permits women to terminate their pregnancies.[86]

The medical board, or doctors, as the case may be, must give their consent before a pregnancy can be terminated under the Act. On the other side, the data unequivocally show how "unsafe women" are having these "safe abortions." There are currently 1351 gynaecologists and obstetricians working in community health clinics in rural India, according to the All-India Rural Health Statistics (2018–19). This means that there is a 75% lack of trained medical professionals.[87] Moreover, the National Health and Family Survey (2015–16) reports that, due to a shortage of qualified medical practitioners, only 53% of abortions are carried out by registered medical doctors. The remaining abortions are carried out by nurses, auxiliary nurse-midwives, family members, or the abortionist herself.[88] The scarcity of skilled medical practitioners has resulted in a significant barrier to the guaranteeing of safe abortions.

Decisions regarding consent for a married woman, minors, and mentally disabled women to end a pregnancy; forced abortions, foetal sex determination; the 20-week limit for termination; medical termination of pregnancy in the case of rape survivors; and abortion rights are all included in the framework of

[86] *Id.*

[87] Govt. of India, "Rural Health Statistics", http://sharegoogle/Tsld1X8UZ3ZfT2Cy (last visited on 27 Feb 2026).

[88] *Unstarred Question No. 599 Ministry of Health and Family Welfare*, Lok Sabha: Parliament of India (July 20, 2018), http://loksabhaph.nic.in/Questions/QResult15.aspx?qref=69317&lsno=16 (last visited September 26, 2023).

fundamental rights. It also includes instances where it has been questioned how POCSO affects minors' access to abortion. Courts have regularly supported the decision of a woman or girl to continue a pregnancy as well as the adult woman's exclusive right to decide whether or not to have an abortion. Women who are on trial or serving sentences do not need the approval of the jail authorities to abort their pregnancy. Rape survivors are not required to seek judicial authorization for termination under the MTP Act. Section 3(2) (b) of the MTP Act allows abortion up to 24 weeks of pregnancy. Courts have enabled rape survivors to terminate their pregnancy even after the expiration of time limit under MTP Act.[89] The PNDT Act of 1994 prohibits the use of sex determination and sex-selective abortions. Strong legal action taken by Courts under this Act has boosted anti-abortion sentiment, according to cases under this Section. The Courts have also highlighted that emergency contraception and pregnancy termination are not the same things. Within the framework of Article 21 of the Constitution, the Courts have gradually recognized a woman's freedom to choose whether or not to continue a pregnancy and is regarded as part of her right to live with dignity, and so is her right to terminate a pregnancy, which is emphasised as a key element of the right to bodily autonomy. [90]

C. Spousal Consent: Whether Necessary for Termination of Pregnancy

The POCSO Act, 2012, determines the age for consensual sexual intercourse at 18.[91] As a result, it considers all pregnant women who are under the age of 18 rape survivors, and the provider is required to report the assault. The confidentiality and privacy provisions of the MTP Act are in direct conflict with this reporting requirement. This required reporting rule may discourage women under the age of 18 from seeking safe abortion services when the pregnancy is the product of consensual marital or non-marital sex.[92] There are various cases where the judiciary has interpreted the various sections of the

[89] Medical Termination of Pregnancy (Amendment) Act, 2021 (Act 8 of 2021).

[90] Amy G. Bryant, MD, *et.al*., *Why Crisis Pregnancy Centers Are Legal but Unethical*, AMA J ETHICS (2018).

[91] Protection of Children from Sexual Offenses Act, 2012 (Act 32 of 2012).

[92] S Tyagi and S Karande, *Child sexual abuse in India: A wake-up call*, J POSTGRAD MED. (2021).

MTP Act covering the various aspects of the laws relating to abortion.[93] Courts have been asked to interpret this phrase in situations when a mentally challenged woman and her guardian or a minor and her parent disagree over abortion- that is, where the minor or woman wants to keep her pregnancy while the parent or guardian wants it terminated. The safe abortion activists have argued that the language used in decisions like *Suchita Srivastava* v. *Chandigarh Administration*[94] echoes anti-abortion values and gender-based stereotypes about motherhood. Section 3(4)(b) requires that a provider obtain a woman's consent to terminate a pregnancy in all other cases. Despite this plain language, courts across India have seen several cases in which husbands, family members, police officers, and jail superintendents have been requested to consent as a condition of termination. Courts have confirmed an adult woman's sole right to consent to abortion in each case. The pregnancies that have resulted from rape have various judgments in which judges have voiced their anger with police departments that force rape survivors to contact the courts for authorization to abort their pregnancy. The Supreme Court has ruled that when a wife terminates a pregnancy without her husband's knowledge or agreement, it may become a ground for divorce, as it may cause mental cruelty.[95] Although this decision does not change the consent required for an abortion, it does suggest that a woman's reproductive health is a shared responsibility. Men have also accused women of terminating non-existent pregnancies in order to prove false cruelty allegations in divorce cases. In the end, the point of spousal consent reflects patriarchal standards that deprive women of their bodily autonomy and equality.

D. Judicial Approach after 2021 Amendment

The court had decided that the Act allows for the termination of a pregnancy if carrying it to term poses a serious risk to the expectant mother's mental health. According to Section 3(2)(b)(1) of the MTP Act, a pregnant woman may legally seek a medical termination of her pregnancy if she suffers a serious mental health damage.[96]

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[93] The Medical Termination of Pregnancy Act, 1971 (Act 34 of 1971), s. 3.

[94] Suchita Srivastava v. Chandigarh Administration (2009) 9 SCC 1.

[95] Samar Ghosh v. Jaya Ghosh (2007) 4 SCC 511.

[96] Pratiba Gaur v. Govt of NCT of Delhi & Ors (2021) 12 DEL CK 0228.

These cases compelled the government to address the elephant in the room, and the MTP Amendment Act was passed in 2021. This represents a significant advancement in safeguarding the dignity, autonomy, anonymity, and justice of women seeking to terminate their pregnancies. Replacing the archaic law of 1971 with a law that keeps up with medical advancements is a huge step forward in ensuring that women in India have access to safe abortions legally and rightfully, and it has been hailed by all. It will help to strengthen women's reproductive rights and prevent unsafe abortions.

The court has held that any distinction made between the rights enjoyed by a person based solely on marital status is unconstitutional. The decision to continue or to terminate pregnancy is a right exclusively available to the woman and is rooted in her bodily autonomy.[97] Justice Chandrachud noted, "A changed social context demands a readjustment of our laws. Law must not remain static, and its interpretation should keep in mind the changing social context and advance the cause of social justice. Thus, allowing the unmarried woman to terminate her 22-week pregnancy, the judiciary recognized the unmet need of marital rape survivors in a situation of unwanted pregnancy. Through this judgment, India could put itself in a position that is far more progressive and an example of judicial activism. The US Supreme Court, in July 2022, overruled the *Roe* v. *Wade* case in *Dobbs State Health Officers of the Mississippi Dept. of Health* v. *Jackson Women's Health Organization,*[98] the court held that the Constitution does not expressly provide abortion as a right. This decision clearly indicates the societal morality prevailing over constitutional morality. The courts in India have upheld and protected the rights of women through their judgments through harmonious construction of the MTP Act. The court in this case referred to *Suchita Srivastava* v. *Chandigarh Administration*[99] and ordered the termination of pregnancy of the applicant victim who was aged 16 years at the earliest which is in the best interest of the

[97] X v. The Principal Secretary Health and Family Welfare Department, Govt of NCT Delhi & Anr 2022 SCC Online SC 1321.

[98] Dobbs State Health Officers of the Mississippi Dept of Health v. Jackson Women's Health Organization 2022 597 U.S 215.

[99] Suchita Srivastava v. Chandigarh Administration (2009) 9 SCC 1.

victim considering her physical health and the trauma caused by the sexual assault.[100]

But after this case, The Case of *X* v. *Union of India,*[101] a pregnant woman who was suffering from postpartum psychosis and anxiety and was using contraceptives to avoid further pregnancy, but due to the failure of contraceptives, she conceived, and it was already her 27th week of pregnancy when she came to know about it and wanted to terminate it because of the petitioner's mental, physical, and psychological health for which she was undergoing a treatment. She was at first allowed the termination, but then the Union of India called for a recall application based on an email from members of the Medical Board regarding the termination, and the bench delivered a split verdict in its order on October 11, 2023. Then the case was referred to a 3-judge bench, and Justice Chandrachud CJ held that the abortion could not be granted, keeping in mind the upper gestational statutory limit of 24 weeks, Sec 5 of MTP Act could not be invoked as there was no threat to the health or life of the woman. The judgement suggests that for a proper exercise of the reproductive autonomy, the woman has to provide the proof of the dangers of her circumstance and her need for an abortion.

Although the Constitutional morality has been upheld in the recent cases and judicial activism has proved itself to be a boon in ensuring that the rights are provided in real sense to everyone but when it comes to ensuring the right to privacy and reproductive autonomy of a woman, especially with regard to abortion, the approach has been restrictive. There has been a pro-life stance from the side of government, wherein the life of foetus is being given prevalence over the one who is bearing it. Thus, making the Abortion law black-letter law.

VI. Conclusion

Abortion as a right, although not directly, is a part of the right to life under the Constitution. Although India's legislature and judiciary have made numerous significant initiatives to empower women, women continue to suffer. Sadly, Indian legislation remains silent on the most important topic, reproductive

[100] XYZ v. The State of Gujrat and Others SLP (Crl.) Dy. No. 33790/2023).
[101] X v. Union of India 2023 DHC 2806.

liberty. There is no explicit regulation in this area, and neither the terms "reproductive rights" nor "reproductive freedom" is specified. India's constitution avoids mentioning reproductive rights at all. The right to abortion has been upheld by the courts in India, and after the 2021 amendment, the courts in India showed a progressive and active approach towards the granting of abortion by prioritizing the reproductive rights of the women, but after the judgement of *Mr X* v. *Union of India*, it can be concluded that the Indian Judiciary is taking a step backward after going forward. The court is unable to recognize the external interferences in the reproductive autonomy of a woman. The right of dignity in relation to reproductive autonomy acknowledges the pregnant woman's competence and autonomy to make reproductive decisions, which is to be exercised without any external influence or interference. The courts' emphasis on the protection of foetus heartbeat directly contradicts the abortion jurisprudence in India, prioritizing the reproductive autonomy of the pregnant women. The principle of certainty of the law is followed by each legal system, and it tries and strives to abide by it. It can be concluded that the Indian legal system has more or less failed to maintain certainty and progressiveness in its abortion jurisprudence.