

A Critical Analysis of Legislative Measures for Prohibiting Abortion in India

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1.1 ABSTRACT

The paper examines the intricate interplay between legal frameworks, societal views, and women's rights under India's abortion-prohibition legislation. Since the Medical Termination of Pregnancy (MTP) Act was passed in 1971, India's abortion laws have undergone considerable changes; yet stringent measures continue to hamper women's access to safe and legal abortion services. This research looks at historical circumstances, the history of the MTP Act, and the impact of state-level variances that exacerbate existing barriers, by comparing India's legislative framework with more progressive models from other countries, this paper underscores the urgent need for reform that prioritizes women's autonomy and health. Additionally, the role of advocacy groups and public awareness campaigns in challenging societal norms and promoting reproductive rights is discussed.

Furthermore, this research advocates for complete legal change that decriminalizes abortion while simultaneously improving access to healthcare services, guaranteeing that women may exercise their reproductive rights without fear or shame. The paper's critical evaluation attempts to contribute to the greater debate on reproductive justice in India by pushing for a framework that recognizes women's rights and health as essential human rights.

Keywords: *Abortion, Indian Legislation, MTP Act, Reproductive freedom*

Introduction

Abortion regulation in India is a complicated and frequently difficult topic that involves legal, medical, cultural, and socioeconomic considerations. Since the passage of the Medical Termination of Pregnancy (MTP) Act in 1971, the landscape of abortion rights has changed, but it remains plagued with paradoxes and prohibitions. This article critically examines the legislative regulations governing abortion in India, with an emphasis on those that impose prohibitive restrictions. We hope to give a full overview of the situation of abortion policy in India and its consequences for women's rights and health by thoroughly reviewing historical context, current laws, case studies, statistical analysis, and graphical representations.¹

Abortion rights are one of the most crucial aspects of reproductive freedom and fairness. For decades, the debate over abortion legality and regulation has created ethical quandaries for supporters on all sides of the issue. There are two opposing views, with staunch pro-life and pro-choice advocates frequently competing in political, medical, and legislative arenas. This has long been a controversial topic, with

some sophisticated nations are unable to address it. India, a growing country with a diverse range of cultures, customs, socioeconomic positions, and religious beliefs, is likely to be wrestling with this issue.² Abortion raised significant practical issues, given poor infrastructure, limited access to health care, and disregard for women's health. However, since the 1970s, India has taken a definite stance against abortion. Medical Termination Pregnancy (MTP) has been allowed in India since 1971, with the goal of respecting women's right to personal liberty, reproductive independence, and the value of their health. Since then, various new ethical and legal questions with MTP have emerged. The Act also acknowledged changing times and technical improvements in medicine and modified the regulations governing MTP correspondingly. We examine the abortion laws in India, the practical and ethical implications, recent modifications to these laws, and the path forward.³

2. Historical Background

Abortion is legal in India from year 1971 under specific circumstances. These circumstances include the risk to the life of the pregnant woman, a threat to her physical or mental health, the risk of the child being born with physical or mental abnormalities, and pregnancies resulting from rape or contraceptive failure. Abortion laws in India have undergone significant transformations over the years, reflecting the complex interplay of societal values, medical advancements, and evolving perspectives on reproductive rights. The journey of abortion laws in India can be traced back to the colonial era. The British-era Indian Penal Code, 1860 (IPC) criminalized abortion, considering it a serious offence except when done to save the life of the mother. Abortion was not legal in India until 1971 when the Medical Termination of Pregnancy Act, 1971 (MTP Act) was enacted, marking a turning point in the legal stance on abortion. However, Section 312 of IPC still criminalizes causing miscarriage, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman.⁴

2.1 Pre-Independence Era

Abortion laws in India have their roots in colonial legislation. The Indian Penal Code (IPC) of 1860 made abortion illegal under Section 312, reflecting traditional Victorian beliefs about women's reproductive rights. This statute successfully positioned women's sovereignty over their bodies as a criminal problem, rather than a personal choice.⁵

2.2 Societal Impact

The outlawing of abortion has serious public health effects. Women seeking abortions faced harsh penalties, prompting many to turn to risky, illegal methods. Historical statistics suggest that unsafe abortions constituted a substantial contributor to maternal mortality throughout this period.⁶

2.3 Post-Independence Developments

After independence in 1947, the high rates of maternal death caused by unsafe abortions forced the Indian government to reexamine its abortion policy. In 1971, the Medical Termination of Pregnancy (MTP) Act was enacted to create a legal framework for abortion and protect women's health.⁷

2.4 Evolution of the MTP Act

Abortion rights are one of the most crucial aspects of reproductive freedom and fairness. For decades, the debate over abortion legality and regulation has created ethical quandaries for supporters on all sides of the issue. India, a growing country with a diverse range of cultures, customs, socioeconomic positions, and religious beliefs, is likely to be wrestling with this issue. Nevertheless, since the 1970s, India has taken a definite stance against abortion. Medical termination of pregnancy (MTP) has been allowed in India since 1971, respecting women's rights to personal liberty and reproductive independence, as well as the importance of women's health. We examine the legislation governing MTP in India, the practical and ethical implications, recent **modifications to these regulations, and the route ahead.**⁸

The MTP Act has been amended multiple times throughout the years to accommodate changing cultural attitudes and health imperatives. Notably, in 2021, the allowed limit for abortion was raised to 24 weeks for certain types of women, including minors and survivors of sexual assault.⁹ However, major problems persist, notably in terms of access and social stigma¹⁰.

3. Salient Features of the MTP Act, 1971

Permissible Conditions: The MTP Act allows for abortion under specific conditions:

- **Upto 12 weeks:** Requires the opinion of one registered medical practitioner.¹¹
- **12 to 20weeks:** Requires the opinion of two registered medical practitioners.¹²
- **Beyond 20 weeks:** Allowed only in rare situations, including serious fetal malformations or threats to the mother's life.¹³

Consent Requirements: Although the Act mandates informed consent, the vague wording surrounding "informed consent" may put women seeking abortions at a disadvantage.¹⁴

4. Limitations of the MTP Act

- ❖ **Access to Services:** Access may be delayed by the need for medical approvals, especially in rural areas with fewer healthcare facilities¹⁵.
- ❖ **Cultural Stigma:** Negative societal perceptions of abortion frequently deter women from getting the necessary medical care.¹⁶
- ❖ **Recent Amendments:** The Medical Termination of Pregnancy (Amendment) Act, 2021, While some of the original legislation's shortcomings were intended to be addressed by the 2021 amendments to the MTP Act, new complications were also added. Although raising the legal limit for abortion to 24 weeks is a big step, access may be hampered by the ongoing need for medical advice.¹⁷

Main Changes brought by The Medical Termination of Pregnancy (Amendment) Act, 2021

- **Extended Time Frame:** An important development is that the new law permits abortions up to 24 weeks for certain types of women¹⁸.
- **Informed Consent:** Although informed consent is still required, unclear procedures may result in uneven application in various healthcare settings¹⁹.

5. Comparative Legal Framework

Comparing India's abortion laws to those of other nations is crucial to understanding them better. Numerous countries have implemented more lenient abortion laws that prioritize the autonomy and rights of women.²⁰

Table 1: Comparative Analysis of Abortion Laws in Select Countries

Country	Legal Status of Abortion	Permissible Period for Abortion	Conditions Required
India	Restricted	24 weeks for certain cases	Requires medical approval, conditions apply
Canada	Legal (no restrictions)	No limit	None
USA	Varies by state	Generally 24 weeks	Varies by state
Sweden	Legal	No limit	None, but counseling is recommended
Brazil	Restricted	Only in specific circumstances	Risk to life, rape, fetal anomaly

6. State-Level Variations

India has a fragmented legal system because of its federal structure, which permits states to pass their

own abortion laws. Access has become more difficult in some states due to new regulations or formalities.²¹ The Uttar Pradesh government suggested requiring counseling prior to an abortion in 2020, claiming that this would encourage people to make educated decisions. But this requirement frequently serves as a barrier, especially for women in situations where time is of the essence.²² Public opinions about abortion are greatly influenced by cultural beliefs. Because abortion is morally wrong in many communities, women are stigmatized by society and reluctant to seek necessary medical care.²³ According to a qualitative study done in rural Maharashtra, women's health decisions are greatly influenced by social stigma. Many respondents said they were ashamed and afraid of being shunned, which made them less likely to get medical attention when they needed it²⁴.

7. Socio-Political Implications

- **Women's Rights and Autonomy**
Abortion restrictions are closely related to more general concerns about women's autonomy and rights. Women's capacity to make knowledgeable decisions regarding their reproductive health is restricted by restrictive laws, which further gender inequality²⁵.
- **Legal Framework and Women's Rights**
The right to equality, personal freedom, and life are among the fundamental rights protected by the Indian Constitution. But restrictive abortion laws frequently go against these rights, endangering the autonomy and health of women²⁶.
- **Advocacy and Activism**
In India, a number of advocacy groups are actively advancing reproductive rights. To combat stigma and advance access, organizations like the Center for Reproductive Rights and the Feminist Approach to Technology concentrate on societal education and legislative changes²⁷.
- **Centre for Reproductive Rights**
Besides submitting petitions to overturn restrictive laws, the Center for Reproductive Rights has played a significant role in promoting legislative changes. Their initiatives seek to increase public understanding of the value of reproductive rights and hold the government responsible for guaranteeing access to safe abortions²⁸.
- **Public Awareness Campaigns**
Campaigns for public awareness are essential in changing how society views abortion. Community education programs about reproductive health can lessen stigma and give women the power to make wise decisions²⁹.

8. Global Perspectives on Abortion Laws

It is crucial to compare India's abortion policies with those of other nations in order to comprehend them. Abortion is treated as a personal choice in many Western countries, which frequently permits fewer legal restrictions.³⁰

US: In order to make access to abortion care difficult or impossible, anti-abortion lawmakers in the US have consistently created legal restrictions. In addition to the health care and economic systems' inability to give Black, Indigenous, and Latino communities, as well as low-income communities, access to high-quality, affordable health care and safe and sustainable communities, this strategy has resulted in the enactment of more than 1,300 restrictions on abortion since the 1973 *Roe v. Wade*³¹ ruling. Abortion prohibitions and other legal restrictions therefore hurt everyone who is or may become pregnant, but they hurt those who are already the targets of systemic racism and economic injustice even more.³²

Russia: Russia has long marketed itself as a country with what President Vladimir Putin frequently refers to as "traditional family values". Terminating a pregnancy is a legal and widely available procedure in Russia, but in recent weeks and months, a flurry of new laws appear to limit abortion access amid fears of further population declines and a push toward conservatism. According to the independent news outlet Meduza, all private health clinics in Russian-occupied

Crimea have announced that they will no longer provide abortions. Other private clinics in Russia have also curtailed access to abortions. Women are instead urged to go to government facilities, which have enormous wait times. According to accounts, workers at these clinics put pressure on patients to prolong their pregnancies. In certain areas, government clinics arrange anti-abortion "days of silence" in which the operation is not done.³³

Canada: Abortion is permitted in Canada, with no maximum gestational age. This has led to fewer unsafe abortions and better maternal health outcomes. Access to family planning health services in Canada has historically been limited and inequitable. In July 2015, Health Canada authorized mifepristone, the gold standard for medical abortion, which provided a viable option. We wanted to look at the characteristics that determine the effective commencement and continued provision of medical abortion services among Canadian health professionals, as well as how these factors connect to abortion policies, systems, and service access across Canada.³⁴

Sweden: Sweden's comprehensive reproductive health regulations stress women's rights and offer extensive education, resulting in fewer unwanted pregnancies and safe abortions. Sweden has an abortion law that trusts the woman to make the best decisions about her body and her life, and she is not required to justify herself. Women's motives for getting abortions are mostly motivated by a desire for planned parenthood. Abortion is among the most prevalent medical treatments. Approximately half of all women will have an abortion at some time.³⁵

9. The Legal Regime in India

India might benefit from implementing a more innovative reproductive health policy. Proper sex education, affordable healthcare, and community awareness campaigns may empower women and eliminate the stigma of abortion.³⁶ India has a central law called The Medical Termination of Pregnancy (MTP) Act, which allows qualified medical practitioners to conduct abortions in particular predetermined scenarios as outlined in the statute. Prior to the MTP Act's implementation in 1971, medical termination of pregnancy was controlled by the Indian Penal Code (IPC), which included Sections 312-318. The majority of these clauses sought to criminalize abortions, with the exception of cases when the operation was performed in good faith to preserve a woman's life. The IPC laws failed to distinguish between intended and unwanted pregnancies, making it exceedingly difficult for women to get safe abortions. Parliament passed the MTP Act in 1971 as a "health" measure, "humanitarian" measure, and "eugenic" measure, decriminalizing abortion in specific defined conditions and under the supervision of certified medical practitioners.³⁷

In September 2021, the Medical Termination of Pregnancy (Amendment) Act of 2021 went into effect, raising the upper gestational limit for abortion from 20 to 24 weeks. Although the amendment did not recognize abortion on demand as a pregnant woman's right, it was hailed as the next step toward making Indian abortion laws more progressive. The modification was a response to the Indian courts hearing pleas for safe medical treatment from numerous women with undesired pregnancies that went past the allowable gestation time.³⁸

In *X v Principal Secretary*³⁹, the Supreme Court ruled in September 2022 that a petitioner could abort her 22-week pregnancy. In a ruling applauded by reproductive rights campaigners, the Court ruled that any disparity between a person's rights based simply on marital status is unconstitutional. Furthermore, it acknowledged the unmet needs of marital rape survivors in cases of undesired pregnancies. The option to bring a pregnancy to term or terminate it is deeply based in a woman's right to bodily autonomy and the opportunity to choose her own course in life, according to the ruling. It also acknowledged that an undesired pregnancy may have substantial negative consequences for a woman's education, career, and mental health. However, in 2023, the favorable advancements of 2021 and 2022 seem to have been overwhelmed by anti-reproductive rights attitudes. A year after the decision in *X v Principal Secretary*, this pro-rights strategy suffered a serious setback, revealing how much more work remains to be done in India to transform into a fully liberal and right-based jurisdiction for medical termination of pregnancy.⁴⁰

In *X v Union of India*⁴¹, a 27-year-old married lady and mother of two petitioned the Supreme Court for an abortion under the Medical Termination of Pregnancy Act, 1971. The complainant discovered her pregnancy at about 24 weeks owing to lactational amenorrhea, a condition in which breast

feeding women do not menstruate. Following an initial refusal at the health institution, the petitioner appealed to the Supreme Court to obtain access to necessary treatment. In a somewhat dramatic change of events in the Supreme Court, the arguments for fetal viability and concerns about the rights of the unborn child were heard and given priority over the petitioner's reproductive autonomy. Despite meeting the legal standards for mental health problems, her reproductive rights were evaluated against a checklist for abortion after 24 weeks and judged wanting. The Court recognized that she did not qualify for Section 3(2B) provisions, which include sexual assault survivors, juveniles, widowed or divorced people, handicapped people, mentally ill people, fetal abnormalities, or pregnancy during humanitarian emergencies. She also did not qualify for Section 5 protections, which allow for the termination of a pregnancy when it is required to preserve the woman's life.⁴²

Firstly, For starters, the Court's view of mental illness as grounds for termination was uncertain. Despite X's numerous representations about her mental health, postpartum depression and psychosis, suicidal inclinations, and proclivity to hurt herself and her children, the Court declined to allow termination on these grounds. Secondly, With the complainant's fears about suicide weighed and denied, the decision begs the question, *What constitutes a threat to a woman's life?*

The decision implies that in order to fully exercise reproductive autonomy, the woman must demonstrate the risks of her situation and her urgent necessity for an abortion. With this, the Court effectively reversed its ruling in *Xv Principal Secretary*, which recognized a woman's role as the "ultimate decision-maker" on her reproductive choices.⁴³

10. Conclusion

In India, the legislative environment around abortion is complicated, with rights, health, and society views all playing a role. While great progress has been made since the MTP Act was passed, restrictive regulations continue to impede women's access to safe and legal abortions. A careful examination of existing legislation indicates a pressing need for comprehensive change that promotes women's autonomy, health, and rights. India's journey toward equitable reproductive health must take into account global best practices, with the goal of creating a framework that empowers women rather than limiting their rights. Advocacy activities must continue to confront cultural stigma and promote legal changes that reflect the realities of women's lives in India. Finally, the objective should be a society in which women can make educated reproductive health decisions without fear or restriction.

According to Justice Nagarathna, the requests at hand may have been resolved using a rights-based legal interpretation. It is critical for reproductive rights specialists to carefully examine this decision and its ramifications, taking into account the subjectivities involved. It is also critical to analyze whether the healthcare system is prepared to face the difficulties that come with its place in this context. Engaging with healthcare professionals and hospital managers is essential for closing any gaps in their awareness of reproductive rights and promoting a rights-based approach.

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