

# Legal Abortion In India: A Comprehensive Analysis Of Laws, Access, And Public Perception

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## ABSTRACT

This research paper explores the legal barriers hindering access to safe abortion services in India. Despite the progressive legal framework established by the Medical Termination of Pregnancy (MTP) Act of 1971, numerous challenges persist, limiting women's ability to exercise their reproductive rights safely and effectively. The study investigates the intersection of legal, social, and cultural factors that contribute to the barriers, highlighting the gaps between policy and implementation. The paper discusses the implications of these barriers, emphasizing the negative impact on women's health, safety, and autonomy. Unsafe abortions, resulting from restricted access to legal services, contribute to maternal morbidity and mortality rates. Furthermore, the denial of reproductive autonomy perpetuates gender inequality and violates human rights. The findings of this research contribute to the existing body of knowledge on safe abortion services, particularly within the Indian context, shedding light on the persistent legal barriers that hinder women's reproductive rights. By identifying and addressing these barriers, policymakers, healthcare professionals, and advocates can work collaboratively to ensure equitable access to safe abortion services, protect women's health and rights, and foster gender equality.

**Keywords:** Medical Termination Act, Abortion, Reproductive Rights.

## INTRODUCTION

Among all the essential rights, the right to life is the most expansive. Article 21 of the Indian Constitution recognizes the right to life, stating that "No person shall be deprived of his life and personal liberty except according to procedure established by law." Here, "person" refers to both genders. Of all the rights that a woman can exercise, the right to an abortion is regarded as one of the most important and basic rights. The right to privacy, which is derived from the right to life and is a component of the right to personal liberty, has acknowledged the right to an abortion. However, the question of whether or not an unborn kid qualifies as a human inevitably comes up.

Access to safe abortion services is a fundamental aspect of reproductive rights and women's healthcare. It allows women to make informed decisions about their bodies, families, and futures. However, in many countries, including India, legal barriers hinder women's ability to exercise this right and obtain safe abortion services. Despite the enactment of the Medical Termination of Pregnancy (MTP) Act in 1971, which aimed to provide a legal framework for safe abortions, challenges persist, limiting access and perpetuating health risks for women.

India, as the second most populous country in the world, faces unique complexities in addressing safe abortion services. The MTP Act allows for abortions under specific conditions, such as foetal abnormalities, contraceptive failure, or risk to the woman's physical or mental health. It sets a gestational limit of 20 weeks, beyond which abortions can only be performed with the approval of medical boards. While the Act reflects a progressive step towards ensuring reproductive rights, its implementation has been hindered by a multitude of legal, social, and cultural factors.

Of the 48.1 million pregnancies that occur in India annually, approximately half are unintended. A third of all pregnancies are aborted. 12.3 million Abortions, accounting for 78% of all abortions are illegal as per the terms of the Medical Termination of Pregnancy Act, 1971 ("MTP Act") even though they may otherwise be safe solely because they occur outside of healthcare facilities. However, at least 800,000 of these abortions are unsafe, and unsafe abortions account for 10% of maternal mortality in India. Women and girls who are impoverished, not literate, live in rural areas, or belong to minority religions or oppressed castes, are at a significantly higher risk of having unsafe abortions and abortions outside of facilities, thus placing them at a heightened risk of adverse health outcomes as well as criminal liability.

This research paper aims to explore the legal barriers that impede access to safe abortion services in India. It seeks to identify the gaps between policy and implementation, analyze the implications of these barriers, and propose potential solutions to improve access and protect women's reproductive rights. By understanding the complexities surrounding safe abortion services, policymakers, healthcare professionals, and advocates can work towards creating an environment that upholds women's rights to safe and dignified reproductive healthcare.

The study will employ a mixed-methods approach, combining an extensive literature review with qualitative analysis. It will examine existing literature on legal frameworks, policy documents, and academic research related to safe abortion services in India. Additionally, secondary data of healthcare providers, legal experts, and women who have sought or attempted to seek abortion services will provide insights into the barriers they face.

The findings of this research are significant for several reasons. First, they contribute to the existing body of knowledge on safe abortion services in India, highlighting the persistent legal barriers that hinder women's reproductive rights. Second, the research sheds light on the implications of these barriers, including the negative impact on women's health, safety, and autonomy. Finally, the study proposes evidence-based policy recommendations drawn from international best practices and experiences to address the identified legal barriers and improve access to safe abortion services.

## **HYPOTHESIS**

As a result of changes in India's legal system, women from a wider range of socio-economic backgrounds now have more access to safe and regulated abortion procedures.

## **RESEARCH QUESTIONS**

- 1) Whether restrictive abortion laws effectively reduce abortion rates?
- 2) Whether instead of reducing abortion rates does existing law create barriers to safe abortion access?
- 3) Whether the prohibition leads to a situation where a woman resorts to extremely unsafe method of abortion?

## **RESEARCH METHODOLOGY**

This research paper utilizes a mixed-methods approach to investigate the legal barriers to accessing safe abortion services in India. The methodology involves both a comprehensive literature review and qualitative analysis to gain a deeper understanding of the topic. This research includes a comparison analysis with the liberal abortion laws system and its interpretation in the United States, as well as an analysis of legislation, case laws, and existing secondary information collected from various sources, including as books, papers, journals, websites, etc.

## **LITERATURE REVIEW**

1. Leela Visaria, Vimala Ramachandran, Bela Ganatra and Shveta Kalyanwala in their article "Abortion in India: Emerging Issues from Qualitative Studies" aimed to generate an evidence-based body of knowledge on all aspects of induced abortion, and this article outlines concerns that came up in eight qualitative research studies that were part of the project. Some recurring patterns and themes that have emerged from these research include the unfulfilled demands for abortion and contraception, the issue of son preference, the desire for private providers, and the unmet requirements of women who are single,

widowed, or separated. Above all, they draw attention to the necessity of incorporating different points of view in order to facilitate the advancement of the shared objective of making abortion a safe and uncommon choice for women who find themselves in an unplanned pregnancy. (Visaria, Ramachandran, Ganatra, & Kalyanwala, 2004)

2. "Bodies of Evidence: The Practice of Queer Oral History" by Nan Alamilla Boyd and Horacio N. Roque Ramírez - This book explores various aspects of sexual and reproductive rights, including abortion rights, in India. ( Boyd & Ramírezis, 2012)
3. Vinay Kumar in his paper "Ethical and Juridical Aspects of Abortion in India A Socio Legal Study with Special Reference to Criminal and Constitution Laws" emphasizes the necessity for current research and focuses on constitutional and human rights problems pertaining to unborn children in the Indian and worldwide contexts. Additionally, it outlines the parameters and methodologies of the current investigation and focuses on the main topics covered in each chapter. (Kumar, 2023)

A thorough literature review is conducted to examine existing academic research, policy documents, legal frameworks, and relevant publications related to safe abortion services in India. This review helps identify key legal barriers, gaps in implementation, and the impact of these barriers on women's reproductive rights and health.

1. Data Collection: The research begins with an extensive search for existing secondary data from reputable sources. This includes academic journals, government reports, policy documents, surveys, and statistical databases. Online databases, such as PubMed, JSTOR, official government websites, and international organizations' publications, are accessed to gather a wide range of relevant data.
2. Data Selection: The collected data undergo a thorough screening process to select the most relevant and reliable information for the research objectives. Studies, reports, and data sources that specifically address legal barriers to safe abortion services in India are prioritized. Emphasis is placed on selecting data that provide insights into the nature of the barriers, their impact, and potential factors contributing to them."

Medical Termination of Pregnancy Act 1971 ("MTP Act"), Statement of Objects and Reasons Medical Termination of Pregnancy (Amendment) Act, 2021 (MTP Amendment Act, 2021"), Statement of Objects and Reasons (referring to the objectives of the original Act).

3. Data Analysis: The selected data are analyzed through a qualitative approach. The data are reviewed in detail, and key information related to legal barriers, such as gestational limits, approval processes, availability of healthcare providers, and societal attitudes, is extracted. Themes and patterns within the data are identified and coded to facilitate further analysis.
4. Synthesis and Interpretation: The synthesized findings from the data analysis: are interpreted within the context of the research objectives. The identified legal barriers are discussed, and their implications for women's access to safe abortion services in India are examined. The analysis aims to provide a comprehensive understanding of the challenges and potential consequences of these barriers.

## LEGAL PROVISIONS

1. According to Article 21 of the Constitution of India, "No person shall be deprived of his life or personal liberty except according to procedure established by law, nor shall any person be denied equality before the law or the equal protection of the laws within the territory of India."

Numerous distinguished jurists, as well as scholars, have interpreted Article 21 of the Indian Constitution. As per the scholars and jurists, the ambit of Article 21 is wide enough to include termination of pregnancy in it. The same was upheld in the case of

- **K. S PUTTASWAMY V. UNION OF INDIA (2018)**

In this case, the Supreme Court specifically recognized the fundamental right of women to make choices about childbirth under Article 21 of the Constitution of India.

Thus, termination of pregnancy also falls under the "personal liberty" mentioned in Article 21 of the Constitution of India. Similarly, the Medical Termination Act of 1971 legalizes abortion"

- **SUCHITA SHRIVASTAVA V. CHANDIGARH ADMINISTRATION (2009)**

In this case, the Supreme Court recognized that every woman has certain reproductive rights, which include a woman's right to give birth, raise children and continue or terminate a pregnancy. All these rights are an integral part of the privacy, integrity and dignity of a woman enshrined in the Constitution of India."

If the fundamental right to terminate the child is violated, the woman has the right to go to court. Interpreting the law, the Supreme Court stated that a pregnancy cannot be terminated in the third trimester or from the 24th week, because this entails a risk for the life of the mother and the child. However, in exceptional cases, the victim may choose an abortion with a court order. Such a decision is based not only on the discretion of the judge, but on the medical reports of the mother and the recommendations of the medical committee whether to allow the abortion. The court also noted that women have a right to their own bodies and that right cannot be transferred to families or the government."

Not just in India, but even on the international platform, medical termination of pregnancy is regarded as a significant human right. Even the United Nations International Conference on Population and Development has embraced the rights of reproduction. In accordance with the international standards, the rights regarding reproduction include the following:

1. Access to contraceptive methods.
2. The right to a sterile and legitimate abortion.
3. The freedom to choose one's reproductive options without fear of brutality, coercion, or unequal treatment.
4. The freedom from harmful practices like forced childbirth.
5. The equal opportunity to the people from the LGBTQIA+ community to the same sexual and procreative care services as heterosexual people.

- **MEDICAL TERMINATION OF PREGNANCY ACT, 1971**

Before 1971, abortion was considered illegal in India. Indian legislation had no provisions for termination of pregnancy. However, the Indian Penal Code of 1860 contained certain provisions regarding abortion. Sections 312 to 318 of the Indian Penal Code, 1860, dealt with "offences relating to new-born or unborn children".

Legally, abortion has been criminalized under Section 312 of the Indian Penal Code of 1860. So Article 312 says that "Whoever voluntarily tries to cause the miscarriage to a woman except in the good faith or where the woman's life in danger shall be liable for imprisonment which may extend to three years and shall also be liable to fine."

Earlier in India, if a person tried to terminate a pregnancy, they were sentenced to imprisonment and a fine. Women have died for centuries from unsanitary and illegal abortion methods. Many countries, including Spain, Greece and the United Kingdom, have liberalized abortion laws over the past three decades. Today, there are relatively few countries that still have strict and restrictive abortion laws. The Medical Abortion Act of 1971 was considered groundbreaking when it was first passed."

The Medical Termination of Pregnancy (MTP) Act of 1971 was enacted in response to the realization that the overly restrictive provisions in the Indian Penal Code (IPC) were jeopardizing the health, well-being, and sometimes the lives of pregnant women. The IPC criminalized the voluntary causing of miscarriage, even with the pregnant woman's consent, except in cases where the miscarriage was necessary to save the woman's life. This prohibition led to a situation where women resorted to extremely unsafe methods of abortion, resulting in grave consequences for their health. Doctors were faced with gravely ill or dying pregnant women who had resorted to dangerous measures to terminate their pregnancies.

Recognizing the need to address this issue and ensure the safety and well-being of women, the MTP Act was enacted with the aim of liberalizing abortion. The Act sought to provide legal exceptions to the criminalization of abortion and establish a framework for safe and regulated abortion services. The objectives of the MTP Act were multifaceted. Firstly, it aimed to serve as a health measure, allowing for abortion when there is a danger to the life or a risk to the physical or mental health of the woman.

Secondly, it sought to address humanitarian concerns, such as pregnancies resulting from sex crimes like rape or intercourse with a mentally ill woman. Lastly, the Act recognized eugenic grounds as a valid reason for abortion when there is a substantial risk that the child, if born, would suffer from deformities and diseases.

- **PREGNANCY ACT, 1971**

The objective of the Medical Termination of Pregnancy Act 1971 is stated in its preamble. The preamble of the Act states that- "An Act to provide for the termination of certain pregnancies by registered medical practitioners and for matters connected therewith or incidental thereto"

According to the Medical Termination of Pregnancy Act of 1971, only specific pregnancies will be permitted to be ended by licensed medical professionals. The primary objectives of the Act are also to reduce the death rate of women from unsafe and illegal abortions and to optimize the maternal health of Indian women. Only after this legislation were women entitled to have safe abortions, but only under specific Circumstances Section 3 of the Medical Termination of Pregnancy Act, 1971, states the conditions under which pregnancy can be terminated.

According to Section 3 of the Medical Termination of Pregnancy Act, 1971<sup>21</sup> "When pregnancies may be terminated by the registered medical practitioners." Hence, these are some of the conditions where medical termination of pregnancy is allowed. However, not all women have the privilege to opt for the termination of pregnancy as a matter of right. In the United States of America, women have the freedom to opt for medical termination of their pregnancy as a matter of right of reproduction, which is included under the fundamental right- The Right to Privacy. Until recently changed, this used to be the case in the United States of America. <sup>23</sup>

The scenario is not the same in India. In India, all women are not allowed to medically terminate their pregnancies. As per the Medical Termination of Pregnancy Act of 1971<sup>24</sup>, only married women and rape victims are allowed to terminate their pregnancies. Unmarried women, widows, as well as divorced women, are deprived of their right to terminate their pregnancies. So, these women have two options - either to continue their pregnancy or to opt for illegal methods of termination of pregnancy. Even married women do not have a fully qualified right to abort as they are supposed to prove the failure of contraceptives to avail themselves of the facility of medically terminating the pregnancy, which violates the fundamental right to privacy.

From the provisions outlined in the MTP Act, it becomes evident that the Act operates within a framework of criminalization. Abortion is considered a criminal offense unless it falls within the exceptions specified under the Act, which include reasons related to "health," "humanitarian grounds," and "eugenics." Therefore, for an abortion to be legally justified and not subject to criminal penalty, the pregnant woman and the service provider must meet the criteria and conditions set forth in the Act.

Furthermore, the MTP Act can be characterized as a provider protection law. It primarily seeks to shield registered medical practitioners (RMPs) from criminal liability in performing abortions that fall within the exceptions outlined in the Act. The Act does not sufficiently prioritize the needs, reproductive autonomy, and agency of the pregnant woman. Rather, it establishes a highly regulated procedure that transfers decision-making power from the pregnant woman to the RMP. The RMP is granted considerable discretion in determining whether abortion should be provided or not, thereby limiting the pregnant woman's autonomy and control over her reproductive choices. Interestingly, this transfer of decision-making power operates within a framework of criminalization. RMPs who choose to provide abortion services potentially expose themselves to criminal prosecution if they violate the terms and conditions stipulated in the MTP Act, thereby falling outside the protection provided by the Act. On the other hand, RMPs who choose to deny abortion care face no legal consequences. This asymmetry highlights the potential risks and challenges faced by RMPS in navigating the complex legal landscape surrounding abortion provision.

- **MEDICAL TERMINATION OF PREGNANCY AMENDMENT ACT, 2002**

The majority of the women employed in the private health sector were the focus of this statute. The following provisions and purposes were taken into account by the Amendment Act:

1. Operating mostly at the district level, the commission was responsible for whether to allow private facilities to provide abortion services.
2. The nature and extent of the abortion service, including the time and place of execution, had to strictly

observe the provisions of the law; Otherwise, harsher

3. To deal with the psychological illnesses that did not amount to mental disabilities, the term 'lunatic' was amended to 'mentally ill person.'

The Medical Termination of Pregnancy Amendment Act of 2002 brought changes, but there was still room for improvement in private abortion clinics. The Medical Termination of Pregnancy Rules, 2003 was published to legalize the operation of private hospitals.

Medical Termination of Pregnancy (MTP) Act, 1971: This is the central legislation that governs abortion in India. It outlines the conditions under which abortion is legally permissible and the procedures to be followed. Key provisions include:

Grounds for Abortion: Abortion is allowed under specific circumstances, such as the risk to the pregnant woman's life, physical or mental health risks, and cases of fetal abnormalities.

Gestational Limits: Abortions are generally permitted up to 20 weeks of pregnancy. However, this limit can be extended in certain situations with the approval of two registered medical practitioners.

Authorization: For abortions up to 12 weeks, one registered medical practitioner can authorize the procedure. For abortions between 12 to 20 weeks, the opinion of two registered medical practitioners is required.

Consent: In most cases, the consent of the pregnant woman is necessary for the abortion. In the case of minors, the consent of a guardian is required.

Amendments: The MTP Act has undergone amendments to align with changing medical and societal needs. The most recent amendment in 2021 seeks to increase access to safe abortion services, expand the provider base, and reduce gestational limits for certain categories of women.

Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994: While this act primarily addresses the issue of sex-selective abortions and prenatal sex determination, it indirectly impacts abortion laws by regulating ultrasound and related technologies that could be used for determining the sex of the fetus.

Indian Penal Code (IPC): Sections 312 to 316 of the IPC deal with offenses related to causing miscarriage, which can apply if abortions are conducted illegally or in a manner that endangers the life of the pregnant woman.

## CONCLUSION

Legal abortion in India has undergone significant changes and improvements over the years. The liberalization of abortion laws in 1971 through the Medical Termination of Pregnancy (MTP) Act marked a critical step toward recognizing women's reproductive rights and addressing the issue of unsafe abortions. This legal framework has allowed women to access safe and legal abortion services, reducing maternal mortality and morbidity associated with unsafe procedures.

However, despite these legal advancements, challenges persist. Access to safe abortion services varies significantly across regions, with rural areas facing greater barriers. Stigma surrounding abortion and a lack of awareness about legal rights and services remain obstacles for many women. Additionally, there is a need for better training and resources for healthcare providers to ensure the quality and accessibility of abortion care.

The law pertaining to abortion has always acknowledged that, in most cases, a mother may choose to have an abortion in order to preserve her own life when faced with a choice between her own life and the life of the unborn child. Likewise, even in the event that the fetus is human, it would not have the authority to coerce the mother into using her body against her will in order to sustain it. If she decides to become a mother, it's a "wonderful decision." However, it is her choice, and she cannot legally be forced to make it.

## SUGGESTIONS

1. Strengthen Awareness Campaigns: Government and non-governmental organizations should collaborate to launch comprehensive awareness campaigns to inform women about their legal rights to safe abortion services. These campaigns should focus on rural and marginalized communities, where awareness levels tend to be lower.

2. **Improve Access in Underserved Areas:** Efforts should be made to expand the availability of safe abortion services in remote and underserved areas. This includes training healthcare providers in these regions to offer safe abortion care and ensuring the necessary infrastructure and supplies are in place.
3. **Combat Stigma:** Public education campaigns should also target reducing the stigma associated with abortion. By normalizing discussions surrounding reproductive rights and choices, society can become more supportive of women seeking abortion services.
4. **Streamline Legal Processes:** The legal procedures for obtaining an abortion should be simplified and made more accessible, ensuring that women can access services without unnecessary delays or obstacles.
5. **Ensure Healthcare Provider Training:** Continuous training for healthcare providers in safe abortion procedures and counseling is essential to maintain the quality and safety of abortion services. This includes training in both medical and surgical abortion techniques.
6. When a woman decides she wants to abort the baby, it is advised that she consider getting the approval of everyone who will be directly impacted by her decision, starting with her husband. This relates to a woman's right to kill any fetus of her own without getting permission from anybody else in order to become a mother. However, it is her choice, and she cannot legally be forced to make it.

In conclusion, while legal abortion in India has come a long way in safeguarding women's reproductive rights, there is still work to be done to ensure equitable access to safe services and reduce the stigma surrounding abortion. By implementing the suggested measures, India can continue to make progress toward providing comprehensive and accessible reproductive healthcare for all women.

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