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## Legalisation of Abortion: Legal Aspects

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*Throughout history, the topic of abortion has been a source of ongoing social and legal debates and disputes. In both Indian society and on a global scale, countries adhere to various traditions, customs, and norms. It is crucial to exert significant effort to minimise their impact on prevailing moral and ethical values. To address the issue of abortion, a comprehensive approach is necessary, encompassing legal measures, societal advancements, and the eradication of traditional mindsets. This article examines the impact of abortion laws, particularly the Medical Termination of Pregnancy Act 1971, on content that is in dire need of amendment in today's society. It delves into the historical persistence of moral stigma surrounding abortion in developing societies and the necessity of feminist language in shaping abortion laws. The article concludes with a thorough examination of the proposed amendment and its striking resemblance to a valiant protector. Despite the acknowledged and suggested advancements, this article addresses certain remaining deficiencies, ultimately attaining its intended objectives through concrete assertions and making significant strides in both the societal and legal dimensions of abortion.*

**Keywords:** *abortion, feminist vocabulary, moral wrong, MTP Act, social offence.*

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## INTRODUCTION

There has been legislative progress in India towards legalising abortion, but women still confront stigma, revulsion, guilt, and unprofessionalism while seeking an abortion. Some people think

that abortion involves killing a troublesome character, a pregnant lady who refuses to acknowledge her health problems, because she is choosing to disregard them.

Policies regarding abortion rarely take into account women's autonomy in matters of sexuality, fertility, and reproduction. It takes legal action to rightfully claim what is already widespread, but abortion is rarely labelled as a crime against death, even though it is a matter of choice and rights that women have. There are medical, ethical, legal, and moral considerations surrounding the abortion axis. Using these services is rarely a problem for women. Legal and religious considerations inform the conventional wisdom on all sides of the abortion debate. A person has the right to life and privacy guaranteed by Article 21 of the Indian Constitution.<sup>1</sup> This supreme prerogative, however, is not without its detractors. Abortion rights are one of the issues. But the rights of the unborn child must not be prioritised over those of the mother. Society was vehemently against legalising abortion before this. Having a pregnancy terminated is the same as killing the unborn child. Nevertheless, as a result of advancements in both technology and legal precedent, most nations now recognise the right to abortion, and the court maintains that a mother can have an abortion for any reason she chooses.

## THE HISTORY OF ABORTION LAW

Almost 50 years after the Medical Termination of Pregnancy (MTP) Act prevailed in 1971,<sup>2</sup> some practical changes have been introduced to use the right tools, provide the right facilities, and perform abortions by professional doctors. Historically, abortion was regarded as a crime under the Indian Penal Code 1860<sup>3</sup> and the Criminal Procedure Code 1973,<sup>4</sup> and their respective origins can be traced back to the British Crimes of Assault Act of 1861.<sup>5</sup> For example, according to Article 312 of the Law of the International Criminal Court,<sup>7</sup> both the person who induces a pregnant woman to have a spontaneous abortion and the woman who wishes to terminate the pregnancy will be subject to criminal prosecution and imprisonment for maliciously committing such acts. However, it was not until 1964 that the Ministry of Health and Family Planning

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<sup>1</sup> Constitution of India 1950, art 21

<sup>2</sup> The Medical Termination of Pregnancy Act 1971

<sup>3</sup> Indian Penal Code 1860, ss 313-316

<sup>4</sup> Criminal Procedure Code 1973

<sup>5</sup> Siddhivinayak S Hirve, 'Abortion Law, Policy and Services in India: A Critical Review' (2004) 12(sup24) Reproductive Health Matters <[https://doi.org/10.1016/S0968-8080\(04\)24017-4](https://doi.org/10.1016/S0968-8080(04)24017-4)> accessed 11 August 2025

<sup>6</sup> Offences Against the Person Act 1861

<sup>7</sup> Rome Statute of the International Criminal Court 2011, s 312

recommended to the Ministry through its Central Family Planning Commission to establish a committee to legalise abortion in India, taking into account norms and world regulations. Subsequently, after the appointment of Shantilal Shah as a member of the chairman committees of various public and private institutions in India, the finances were formed. In this case, the committee's first task is to identify and persuade legislators to require an abortion law as an exception to the natural abortion law that has already been enacted.

To this end, the committee reviewed the socio-cultural, medical, and legal aspects that formed the potential themes of the proposed legislation. At the same time, it conducted an extensive analysis of a large amount of statistical data prevailing at the time. The committee published its report on December 30, 1966. In addition, shortly after receiving the positive reply, the Medical Termination Law was introduced in 1971, and the rules and regulations for medical termination of pregnancy were formulated in 1975.<sup>8</sup> Drafters and critics believe that the committee's proposed MTP bill is well ahead of the lack of sanitation facilities at the time, and divided abortion into two categories: namely:

- (i) Medical abortion and
- (ii) surgical abortion.

The first consists of terminating the pregnancy by taking antiabortion drugs and medications, which may or may not be taken according to medical prescription, while the second recommends surgical termination of pregnancy, which must be performed by a trained physician in all cases. With this in mind, the MTP Act can focus on situations that can result in miscarriage due to an abnormal fetus and delay accidental and unwanted pregnancies, including those of rape victims.

According to 1976 estimates from the General Register of India, 407 mothers die from pregnancy-related causes for every 100,000 live births. One of the main causes of concern is the high rate of maternal mortality due to unsafe abortions. In addition, the Ministry of Health and Family Welfare recorded approximately 460,000 MTPs performed in India in 1996. Untrained individuals perform an estimated 16.7 million abortions outside of government-recognised and registered institutions, usually in unsanitary conditions.

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<sup>8</sup> Shraileen Kaur, 'Medical Termination of Pregnancy Act, 1971' (*iPleaders*, 09 July 2022) <<https://blog.ipleaders.in/medical-termination-of-pregnancy-act/>> accessed 11 August 2025

## LEGAL AND ETHICAL ASPECTS: ISSUES OF PERSPECTIVE

The legal and ethical aspects of abortion have been debated for many years. Since the Middle Ages, in India, this behaviour has been prominent in practice, and pregnant women are tortured at the same time. It is considered a criminal offence to end the life of a newly budding human. Today, 50 years after the decriminalisation of abortion, the country is still facing major problems due to the scarcity of resources, so the nature of the law is also controversial.

Understanding the simple definition of abortion from the perspective of liberals shows that the abortion process is a woman's exercise of the right to decide whether to choose childbirth or not. Different from this type of thinking is the definition of social conservatives, who believe that abortion is committing suicide.<sup>9</sup> Here, the main focus of the argument escapes from the hands of two intemperate people, because the first cannot prove whether the abortion is morally correct, the fetus will gradually blossom to be recognised as human offspring, while the second cannot prove that if Abortion is morally correct The form of the fertilised egg with cells exists in the mother's uterus at the earliest stage to terminate the pregnancy, and its lifespan is long enough to be considered as a human being.

In all aspects of existence, we have the change of society and evolution and support the moral aspect of the concept, and there is a significant change in abortion that supports the legal aspects in other situations. In a scenario of this type, it is considered that the value of the life of the form is easily considered exceeded for the selection of the carrier, and the same is true compared to the act of committing murder. This suppresses the difficulties in the future to suppress the difficulties of the illegals of the existing law, health professionals, or promotion to promote promotion, or the difficulties of violation of the person requested adjust the pressure to the state when the foetus is abnormal or when the underlying pregnancy is derived from the original pregnancy.

The concept of abortion in society is extremely important to determine the moral position of the fetus. How this idea is characterised is a conflict between the privileges of the mother and the fetal privileges for the termination of pregnancy. Social liberal layers are not recognised in an

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<sup>9</sup> 'Abortion-1' (*Applied Ethics*) <<https://appethics.blogspot.com/2010/04/abortion-1.html>> accessed 11 August 2025

isolated state, but the person thinks as a social category. To become morally important categories, the person should involve biological integrity, as well as personality. In any case, for mothers during pregnancy, they can be done in the future, wearing as an ideal and can be done in the future.

### **SOCIAL OFFENCES AND STIGMAS, YET A PREVALENCE**

The MTP bill was considered advanced when it was introduced, but with the changes in society and people's perceptions, the legislation could not certainly keep up with the pace of development. Regardless of this aspect, since the introduction of the legislation, it has promoted the reduction of a large part of the social, moral, and ethical stigma related to abortion, such as the stigma of child preference.

The advancement of any society and its economy hinges on the collective strength of its population, encompassing individuals of all genders and sexual orientations. Nevertheless, even after 73 years of independence, there is a prevailing preference for male children over female ones. Gender selection seems to stem from a deeply rooted bias towards boys, evident in the practice of favouring boys' rights and the emphasis placed on rituals performed by boys. It is a widely observed phenomenon across various human societies that men tend to dominate women, while the opposite is rarely seen. This pattern of male dominance is considered to be prevalent and almost universal. From both a social and economic perspective, it is evident that male dominance and universality are valid.

There is evidence that before the enactment of the MTP, the killing of female fetuses was not only the result of patriarchal patriarchy, but also that this practice has existed to this day. Ever since then, India has curbed discrimination against fetal sexual orientation. With the enactment of the Prenatal Diagnostic Techniques (Abuse Regulation and Prevention) Act in 1994, the practice of female abortion continues as a heinous act against mothers and budding human souls.

### **MEDICAL TERMINATION OF PREGNANCY LAW 1971**

The Medical Termination of Pregnancy Law is forward-thinking legislation that needs to be amended urgently today. Since voluntary abortion is still a crime, the MTP law constitutes an

exception for doctors and health professionals to terminate the pregnancy. According to the law, only registered doctors with corresponding experience or training by a gynaecologist or obstetrician can terminate the pregnancy. The interruption of pregnancy will be carried out under the advice of a single doctor who has been formed in good faith to terminate the pregnancy if the action must be carried out within weeks after the deadline, and 12 weeks in the case of an extended deadline, but within 20 weeks.

### **MEDICAL TERMINATION OF PREGNANCY DUE TO ABORTION: WORD GAME**

Interestingly, although the establishment of MTP is to ensure safe abortion and eliminate voluntary abortion, the legislation does not mention the term ‘abortion,’ but the term ‘medical termination of pregnancy’ is used. This is done to protect doctors from being prosecuted for the termination of pregnancy because a fundamental key goal of the legislation is to enable women to legally use abortion procedures. This is not a question of choice, but a question of providing safe abortion. If the mother or their child suffers from fetal and mental or physical abnormalities.

### **THE MEDICAL TERMINATION OF PREGNANCY (AMENDMENT) ACT 2020: A SILVER LINING**

Accordingly, the Medical Termination of Pregnancy (Amendment) Bill 2020<sup>10</sup> was proposed in the People’s Court on March 2, 2020, and was subsequently passed on March 17, 2020. Interruption of pregnancy is a time-sensitive issue because of its nature, and a large number of delays in pregnancy will often lead to complications, causing pain for the pregnant woman, and in most cases, this pain will also be passed on to the fetus.

The bill proposed in its introduction to extend the duration for termination of pregnancy from the current twelve weeks to twenty weeks in the case of the only registered doctor. This will not only benefit married women but also single women because the right of single women to abortion will continue to depend on the pending judgment of the court. The bill also calls for the establishment of a medical committee in each state and federal territory to seek its decision and expertise in extending pregnancy termination to 24 weeks.

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<sup>10</sup> The Medical Termination of Pregnancy (Amendment) Bill 2020

Taking into account the proposed amendments to the bill to achieve the goal of safe abortion by eliminating some existing loopholes, and increasing the range of the upper limit of interruption of the pregnancy, especially for Vulnerable injuries to women and pregnancies with obvious fetal abnormalities that are in the later stages of pregnancy, can be resolved through the legal framework.

## **PRIVACY CONCERNS**

This bill gradually resolves the most critical loophole: protecting women's privacy. According to this loophole, doctors should not disclose the details of women who have terminated their pregnancy unless it is disclosed to someone legally authorised.

As a matter of individual liberty guaranteed by Article 21 of the Indian Constitution,<sup>11</sup> K. S. Puttaswamy's ruling in India recognised a woman's right to decide how to procreate. The bench previously established this in the case of *Suchita Srivastava v Chandigarh Administration*.<sup>12</sup> No one else has any business claiming someone else's body as their own. A fundamental human right is any intrusion upon it that does not involve the individual's free will. The morality and constitutionality of abortion are two sides of the same coin. The most pressing concern is whether these rights extend to teenage girls. There are stringent safeguards in place to ensure the privacy of abortion patients under the MTP legislation. But the POCSO Act,<sup>13</sup> which protects children from sexual offences, runs counter to the secrecy procedure. Consensual sexual encounters between people under the age of eighteen are still considered a crime under this act, and they include adolescent girls. Consequently, a doctor's duty to disclose an adolescent patient to the authorities as a victim of sexual assault violates the patient's right to privacy if the patient seeks an abortion while being pregnant. This might make teen girls afraid that their doctors will report them for violating their privacy, which could lead to criminal charges against their partners if they seek out reproductive health services like contraception. Protecting the health of pregnant teenagers and rescuing women from dangerous abortions performed by unlicensed medical providers necessitates swift, clear, and comprehensive abortion legislation.

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<sup>11</sup> Constitution of India 1950, art 21

<sup>12</sup> *Suchita Srivastava v Chandigarh Administration* (2009) 9 SCC 1

<sup>13</sup> The Protection of Children from Sexual Offences Act 2012

## **LOOPHOLES**

Although the new amendment resolves the ambiguity surrounding the MTP Act's regulations on single women, it does not establish the abortion rights of transgender people who identify as women and may have fetuses. In addition, the law does not recognise the pain of rape victims, because, for them, abortion procedures must still be carried out by submitting a written petition to the court. In addition, the benefits of consulting two registered doctors in rural areas to terminate the pregnancies are. In rural areas, this is especially a challenge because inappropriate and unsafe practices are still prevalent in many parts of the country, due to a lack of sufficient medical facilities or unsafe abortions performed by scammers.

## **RECOMMENDATION AND SUGGESTIONS**

When investigating the abortion legalisation question, one should thoroughly cover both the legal and ethical issues. A comprehensive analysis involves scrutiny of the historical background of abortion laws, including highlighting the main legal junctures and their outcomes on reproductive rights. Besides, analyse the ethical frameworks, including the religious, philosophical and human rights points of view on abortion. Case studies or comparative analyses of different countries' abortion policies need to be explored to comprehend the detailed spectrum of policy implications and the public health outcomes and individual liberties involved. Besides that, you should include different viewpoints of other various stakeholders like healthcare providers, policymakers, activists and people who are affected by the matter to enhance the discussion and get a comprehensive outlook of the issue.

## **CONCLUSION**

Numerous instances of pregnancy terminations have been successfully carried out, both through legal intervention and personal decisions. The issue surrounding abortion legislation has been the subject of ongoing discussions and proposed amendments. The proposed bill is regarded as a significant stride in promoting the safety and well-being of women. It aims to broaden the scope and enhance the opportunities for women to access safe and legal abortion while ensuring the utmost safety and quality of care. The proposal will ensure the dignity, autonomy, confidentiality, and justice of women seeking to terminate their pregnancy.



Nevertheless, the societal dimensions, including the stigma, shame, and emotional distress experienced by women, necessitate a shift in public attitudes. The progress in the legal and ethical dimensions of abortion has reached a critical juncture, with a concerted effort to not only advocate for legal reform but also to diligently pursue the desired outcomes.

Unsafe abortion is a significant issue that arises from various factors, including limited access to safe abortion facilities, legal and political restrictions, unaffordable abortion services, and inadequate awareness among women. There is a need to consider amending Section 19(1) of the POCSO Act<sup>14</sup> to protect the confidentiality of pregnant teenagers seeking abortions so that they can undergo the procedure without the risk of mandatory reporting requirements.

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<sup>14</sup> The Protection of Children from Sexual Offences Act 2012, s 19(1)