

The Concept Of Abortion In India And It's Solio-Legal Implications

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ABSTRACT:

This article explores the philosophical dimensions of abortion in India, examining the ethical, moral, and social implications surrounding the practice, while analysing the legal implications, thereof. Rooted in various philosophical frameworks, including utilitarianism, feminist ethics, and deontological perspectives, the discussion highlights the complexities of a woman's right to choose and the socio-cultural constraints that influence this autonomy. The article critically engages with the legal landscape, particularly the Medical Termination of Pregnancy (MTP) Act, 1971, and recent amendments, juxtaposing legal rights with philosophical theories of personhood and bodily autonomy. By analysing the perspectives of influential philosophers such as Judith Jarvis Thomson and Mary Anne Warren, the paper aims to illuminate the ethical debates surrounding abortion, advocating for a nuanced understanding that respects individual agency while considering societal implications. Ultimately, this philosophical inquiry seeks to contribute to the ongoing discourse on reproductive rights in India, emphasizing the need for a balanced approach that recognizes both moral considerations and women's rights in the context of health and well-being.

Keyword: Abortion, Medical Termination of Pregnancy (MTP) Act, 1971, Ethical Dilemma, Conflict of rights, Feminist Jurisprudence.

INTRODUCTION:

The concept of abortion has always been deeply intervened with the philosophical questions of ethics, rights, personhood and bodily autonomy. It encompasses a wide range of feminist perspective, emphasizing upon the right of women's, moral contradiction of the concept of status of foetus and body integrity of women and the societal implications of abortion in the patriarchal mindset.

One of the primary philosophical arguments for abortion, centres on the principle of bodily autonomy. Proponents argue that individuals have the right to control their own bodies, which includes making decisions about reproduction. This view posits that forcing a woman to carry a pregnancy to term is a violation of her rights, akin to involuntary servitude. Advocates assert that a woman should have the authority to decide whether to continue a pregnancy, as this decision is deeply personal and can significantly impact her life, health, and future.

The question of; when personhood begins is crucial, to the abortion, is debatable as various philosophical positions argue different points: the philosophy of conception believes that the personhood begins at conception, asserting that the foetus possesses a right to life from the moment of fertilization. This perspective often aligns with certain religious and moral frameworks that prioritize the sanctity of life.

The philosophy of viability argues that personhood arises when the foetus reaches a stage of viability, meaning it can survive outside the womb¹. This perspective suggests that until that point, the rights of the mother take precedence over the potential rights of the foetus. Some philosophical frameworks maintain that personhood begins at birth, emphasizing the transition from foetus to independent human being. This view highlights the significance of social relationships and the capacity for autonomy.

FEMINIST PERSPECTIVES

Feminist philosophy plays a significant role in the abortion debate, emphasizing the importance of gender equality and the historical context of women's reproductive rights. Feminists argue that the ability to choose whether to bear children is integral to women's liberation and equality in society. The restrictions on abortion often disproportionately affect the marginalized women, exacerbating existing inequalities. Abortion is a phenomenon which has been debatable based on pro-choice and pro-life ideologies, as the concept of abortion is multifaceted culminating the ideas of ethics, medicine, religion, society, bodily integrity and sexual preferences etc.². Abortion is also a social issue which directly relates to the liberation of women and her desired absolute right on her own body however, the concept of sex-based termination of pregnancy does not align with the concept of freedom that women demand over their bodies, specifically in the patriarchal setups as India, where the discretion to exercise choices and rights is not yet free from the influences of the patriarchal societal pressures.

¹ Parashar, Archana (2018) "Gender Inequality and Religious Personal Laws in India", 14(2) Brown Journal of World Affairs, pp.103-112.

² Susheela Singh; The incidence of abortion and unintended pregnancy in India, Lancet Glob Health 2018; ed. 6, p.p. 111–20.

As Betty Friedan³ says, there is no freedom, equality, human dignity and personhood, that is possible for the women, until, they positively assert and demand absolute control over their own bodies including the reproductive rights and processes, related thereto. The right to have an abortion is a matter of and individual's conscience and must be a conscious choice of the women, who are concerned. Women and their right to determine the questions of their sexuality, fertility and the rights of reproduction could have been considered, they have at least seldom, if not always or ever, been made to participate in the process for the formation of the policies related to abortion⁴.

Judith Jarvis Thomson⁵, in her seminal essay "A Defense of Abortion," employs thought of experiments, such as the famous "Violinist" analogy, to argue for a woman's right to choose. She asserts that while the foetus has a right to life, it does not automatically entail the right to use a woman's body. This perspective emphasizes bodily autonomy and the moral complexities of pregnancy. Mary Anne Warren⁶ argues that personhood is not merely about being human but involves specific characteristics such as consciousness, reasoning, and self-motivation. In her essay, she suggests that since foetuses do not possess these traits, they do not have the same moral status as born individuals, thus justifying the right to abortion. Judith Butler's⁷ philosophy of gender and identity challenges traditional notions of personhood and moral consideration. In her works, she critiques the binary classifications of gender and advocates for recognizing the complexities of identity. Butler argues that the right to abortion is integral to women's autonomy and their ability to define their own lives and bodies. While Ronald Dworkin⁸ in his book "Life's Dominion," Dworkin addresses the moral and legal implications of abortion, arguing that individual rights and personal beliefs about morality should guide legal frameworks. He emphasizes that the government should not impose specific moral views on individuals regarding abortion, advocating for a principled approach that respects personal autonomy. Mill's⁹ utilitarian philosophy, as presented in "On Liberty," posits that individual freedom should only be restricted to prevent harm to others. His principle of harm can be extended to the abortion debate, suggesting that a woman's autonomy should be respected unless her actions harm others. This perspective underlines the importance of balancing individual rights against societal norms. Angela Davis¹⁰ emphasizes the intersection of race, gender, and class in her discussions on reproductive rights. She argues that access to abortion is crucial for marginalized women, advocating for a holistic understanding of reproductive justice that considers social inequalities. Her work highlights the societal implications of restricting abortion access and the importance of women's autonomy. Michael Kimmel's¹¹ sociological approach focuses on masculinity and its implications for reproductive rights. He critiques traditional masculinity that often sidelines women's choices and voices in the abortion debate. By addressing gender dynamics, Kimmel advocates for a more inclusive dialogue that recognizes the complexities of reproductive rights.

From a utilitarian perspective¹², which evaluates actions based on their consequences for overall well-being, the question of abortion can be viewed through the lens of societal benefits and harms. Supporters argue that allowing access to safe and legal abortion services contributes to the well-being of women, families, and society by preventing unwanted pregnancies, reducing maternal mortality, and enabling women to make informed choices about their futures. Controlled abortions, while taking away the right of a woman, in absolute sense, over her body in context of abortion with an intention to create a social benefit like avoiding or minimising the chances of female feticide, while making legal abortions specifically, the only mean in which the body autonomy of a female can be reinforced, is the utilitarian consideration which somehow tries to create a synergy between the public good as proposed by Bentham¹³ and the feminist approach of absolute bodily integrity.

ETHICAL DILEMMAS AND CONFLICTING RIGHTS IN ABORTION

The abortion debate often presents ethical dilemmas, particularly when considering conflicting rights. While a woman has the right to autonomy over her body, the foetus is also viewed as having a potential right to life. This clash of rights raises complex moral questions that can lead to deeply polarized views.

³ Margalit Fox, "Betty Friedan, Who Ignited a Movement With 'The Feminine Mystique,' Dies at 85," New York Times (February 6, 2006), 20.

⁴ Betty Friedan, Abortion: A Woman's Civil Right, 39 (reprinted in Linda Greenhouse and Reva B. Siegel, 1st edn 1999).

⁵ Thomson, Judith Jarvis. "A Defense of Abortion." *Philosophy & Public Affairs*, vol. 1, no. 1, 1971, pp. 47-66.

⁶ Warren, Mary Anne. "On the Moral and Legal Status of Abortion." *Journal of Philosophy*, vol. 70, no. 1, 1973, pp. 5-32.

⁷ Butler, Judith. *Gender Trouble: Feminism and the Subversion of Identity*. Routledge, 1990. Another significant work is "Bodies That Matter: On the Discursive Limits of 'Sex'," published in 1993, where she further explores the relationship between gender, power, and the body.

⁸ Dworkin, Ronald. *Life's Dominion: An Argument About Abortion, Euthanasia, and Individual Freedom*. Knopf, 1993.

⁹ Mills, C. Wright. *The Sociological Imagination*. Oxford University Press, 1959.

¹⁰ Davis, Angela. *Women, Race, & Class*. Random House, 1981.

¹¹ Kimmel, Michael. *Guyland: The Perilous World Where Boys Become Men*. HarperCollins, 2008.

¹² Alstott, Anne L. *Utilitarianism, Gender, and Feminist Philosophy*. Oxford University Press, 2004.

¹³ Miriam Williford; Bentham on the Rights of Women, *Journal of the History of Ideas*, Vol. 36, No. 1 (Jan. - Mar., 1975), pp. 167-176.

The history of abortion laws is a complex narrative shaped by cultural, religious, and political contexts across different societies. Here's an overview of key developments in abortion laws, particularly focusing on significant global trends and specific milestones.

In many ancient cultures, abortion was practiced and often accepted. Evidence suggests that various methods were used for both contraception and abortion, often with the understanding of the health risks involved. Abortion was largely legal in ancient Rome and Greece. Philosophers like Aristotle debated the morality of abortion, but it was generally viewed as a private matter in this middle age renaissance. As Christianity spread, the views on abortion shifted. The church condemned abortion, particularly after the point of "quickening" (when foetal movement is felt, typically around 16-20 weeks). This established a moral framework that influenced laws in Christian-dominated societies.

The late 19th century saw a wave of criminalization of abortion in many parts of the world, influenced by rising medical standards and social concerns. In the U.S., the American Medical Association (AMA) began advocating for stricter laws against abortion in the 1850s. The early to mid-20th century saw increased activism for women's rights and reproductive health. Many countries began to reconsider their abortion laws in light of these movements.

The landmark case of *Roe v. Wade*¹⁴ legalized abortion nationwide, establishing a woman's right to choose based on privacy rights. The Abortion Act of 1967 legalized abortion under specific conditions, such as the risk to the mother's health or serious foetal abnormalities.

The Indian Penal Code of 1860¹⁵ made abortion illegal, allowing it only to save the mother's life. This law reflected colonial influences and moral standards of the time.

The specific of the Medical Termination of Pregnancy Act, 1971, legalized abortion under certain conditions, marking a significant shift toward recognizing women's reproductive rights.

ABORTIONS IN INDIA:

The concept of abortion in India is shaped by a complex interplay of cultural, legal, ethical, and social factors. Historically, Indian society has held diverse views on reproduction and motherhood, influenced by various cultural and religious beliefs. While some communities have accepted abortion under certain circumstances, others have viewed it negatively, often linking it to issues of morality and family honour. Although the criminalization of abortion began during the British colonial period with the Indian Penal Code of 1860, making abortion illegal except to save a woman's life but it greatly reflected the influence of the Victorian moral standards, however it would be wrong to discredit the law from creating a groundwork for future laws.

The Idea of sons expected to take care of their aging parents and the religious concept of shrug along with the concept of inheritance historically created a belief in Indian society that having son is a prerogative. Meanwhile, the married women often living with and on the support of their in-laws always lived in this tremendous pressure of the conventional patriarchal mindset of some preference to give birth to the son which in long run resulted into the practices of sex based termination of pregnancy wherein the female foetuses were killed in order to conceive a male.

Nearly all Indians say it is important for a family to have both a son and a daughter. Indians universally believed that it is important for the families to have at least one son and then the second child can be a son or a daughter. Some preference in the Indian community had disbalanced India's sex ratio and the imbalanced increase was the ultimate symptom the cause of which was the patriarchal mindset, desire to have a son and the advanced prenatal diagnostic techniques, which made it easy to either choose this sex or terminate the pregnancy based on the choice of the sex of the foetus.

In India the cultural and social perspectives of abortion is directly inter-linked with the stigma and misconceptions prevalent around the idea of abortion, despite the legal framework, stigma around abortion remains the most pervasive in Indian society. Cultural beliefs often stigmatize women who seek abortions, viewing it as a moral failing or a violation of traditional family values. The concept of abortion in India is also intricately tied to broader gender dynamics of the society. Women often face societal pressure to bear children, and the preference for male children can lead to gender-based discrimination. This underscores the need for autonomy and informed decision-making regarding reproductive health. The access to safe abortion services and the awareness, thereof, varies significantly across urban and rural areas. Many women, particularly in rural regions, face barriers such as a lack of medical facilities, trained healthcare providers, and awareness about legal rights. This often leads to unsafe abortions, posing significant health risks.

There is a strong ethical and moral debate that lies around the concept of abortion in India vis-à-vis the personhood and the foetal rights. The ethical debate surrounding abortion in India includes discussions about foetal rights and personhood. Some argue that life begins at conception, while others contend that the rights of the woman should take precedence, especially in the early stages of pregnancy.

The Religious Perspectives with prevalence of the different religious beliefs shape attitudes toward abortion. While some religions condemn it outright, others may accept it under specific circumstances. This diversity complicates the societal discourse on abortion in India.

¹⁴ *Roe v. Wade*, 410 U.S. 113.

¹⁵ Sections, 312, 313, 314, 315, 316 of IPC, 1860

A HUMAN RIGHT PERSPECTIVE

The Preamble of the Universal Declaration of Human Rights¹⁶ presents the Declaration as a standard common parameter of the achievements for all peoples and nations, affirming the commitment of the United Nations to the fundamental human rights and the inherent dignity and worth of every individual, along with the equal rights of all genders. The Article 2¹⁷ emphasizes that these rights and freedoms are universally applicable, stating, that everyone, irrespective of their sexuality is entitled to all those rights and freedoms which are set forth in this Declaration without any kind of distinction. Article 3 introduces the right to life as a fundamental human right, which serves as the basis for all other rights. While the Declaration outlines the international community's understanding of human rights, it does not impose legal obligations. The International Covenant on Civil and Political Rights (ICCPR)¹⁸ reinforces the right to life as mentioned in the Declaration, declaring, that all the human beings have the right to life, which is inherent and must not be taken away in arbitrary manner. Importantly, the Covenant specifies that this right applies to every human being. In contrast to the term "person," which has been interpreted in the United States to exclude the unborn from legal protection, the term "human being" refers scientifically to a living human organism. Therefore, one interpretation suggests that key human rights documents ignore the rights of foetus by being silent on the abortions, and do not establish a right to it. Jurists assert that the beginning of the right to life needs to be understood before protecting it by the international framework and giving it the status of legal rights. This interpretation creates a historical understanding of the legal right of lives the source of which is the birth.

The interpretation is widely supported during the negotiations while creating the treaties dealing with the international human rights. It is evident that only a small number of the states and their governments proposed that any effective right to life must be created from the moment of conception and not only when the person is born and after that first of all the majority of such proposals were not taken cognizance of and finally Article 1¹⁹ of the ICCPR declares that 'every human being' has an inherent right to life and while in the respect of all other rights, the expression that is used is 'everyone' and 'every person' which creates a further conflict of interpretation that whether the term 'every human being' will have wider connotations and legal implications than the word 'everyone' and 'every person' and hence could possibly interpreted to include the person, who is unborn that is the unborn child. Absence of any authentic literature about the interpretational aspect or the contentions behind the real legislative intention, it is well understood that criminalization of abortion can definitely have a restrictive impact and implication regarding the right to life, which can be corroborated using the instances of suicide or attempt to commit suicide, by the young females, in the cases where they fail to abort, due to criminalization of abortion by the state, which is directly violative of the right to life. It was this evident failure to prevent deaths of the females that created a need to re-analyse the anti-abortion laws and discuss the real impact of them, along with the obligation of the State, to ensure that everyone, including the females, enjoys the right of life. An additional interpretation can be borrowed from the Article 12²⁰ of CEDAW²¹ that provides that all the state parties shall take all the necessary appropriate measures to eliminate all kinds of discriminations against the women specifically in the field of health care so that it can be ensured that women have the excess to health care services including those services which are related to family planning and in this context men and women will be treated equally.

ABORTION AND THE CONSTITUTION OF INDIA:

The Indian Constitution while incorporating the Benthamian concept of utilitarianism, creates a socialistic understanding for the State, imposing a responsibility upon it, to not only govern with the ideology of social welfare but also to ensure that there is no misuse of power by any government agency, directly or through its officials. The fundamental rights enshrined in part III of the Constitution guarantees, rights to the people, which are pertinent to the basic requirement of

¹⁶ Universal Declaration of Human Rights (UDHR), adopted in 1948.

¹⁷ Article 12 of the Universal Declaration of Human Rights (UDHR) protects the right to privacy by stating that; No one can be arbitrarily interfered with in their privacy, family, home, or correspondence, No one can be attacked on their honour or reputation, everyone has the right to legal protection against such interference or attack, Privacy is a value in itself and is essential to human dignity, privacy is not an absolute right and can be limited in some cases.

¹⁸ The International Covenant on Civil and Political Rights, 1966

¹⁹ In the case of Nandini Sundar v. State of Chhattisgarh, 2011 AIR SCW 4141, the court said that all the laws dealing with abortion must focus on a woman's right in a broader context it is women autonomy and safety that must be the groundwork while discussing reproductive rights.

²⁰ Article 12 of CEDAW, imposes a responsibility on the state parties to take all the appropriate steps to eliminate discrimination against women in the field of Healthcare and they are also obliged to ensure the women to get access to appropriate services related to pregnancy and the postnatal period.

2. Notwithstanding the provisions of paragraph I of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

²¹ Convention on the Elimination of All Forms of Discrimination against Women, 1979.

the human existence. The Indian Constitution through Article 21²² provides right to life, which includes the right to privacy and has been expanded effectively by the judiciary²³. The existence of human beings depends on the determinants like right to life and personal liberty, making them the most precious, fundamental, sacrosanct and inalienable of all the fundamental rights given to the citizens in India. This guarantee however imposes a responsibility and restraint on the government and becomes the element of consciousness cultural and social of all the communities, prevalent in India. It is in this context that every woman owes an individual right that becomes the source of her existence that is the right to life and liberty²⁴, which includes that her right to abortion aligns to her right to life and liberty, which inherently can be her pursued to happiness. The woman, who has the anatomy suitable for reproduction, must have an absolute right²⁵ to decide about the sexual implications of the body that she has, including her sexual health and the question of her reproductive choices and how she wants to shape them. It is to ensure this extended format of right of life to women that had been acknowledged by the international legal community while enshrining the reproductive rights of the women the advanced analogy given to the reproductive right of women creates and recognizes. To ensure that human rights are available to every woman and for further development in this direction the International Community connectively, has acknowledged the reproductive rights and in order to follow this international mandate various governments including, that of India, as recognized productive rights and have accredited them to women, in an unprecedented way. To fulfil these commitments Indian government also enacted a set of formal laws and policies indicating the legislative intention of promoting reproductive right of women to which each and every woman must unconditionally be entitled to²⁶.

LEGAL FRAMEWORK FOR ABORTION IN INDIA:

The Bhartiya Nyaya Sanhita (BNS), 2023²⁷ criminalizes abortion in India, even when it is performed in a safe environment and with the woman's consent. The BNS has several sections that deal with abortion-related offenses, including:

- Section 88: Prohibits causing a miscarriage, except in cases where it is necessary to save the woman's life. Penalties include imprisonment of up to three to seven years, depending on the stage of the pregnancy, and may also include fines.
- Section 89: Punishes anyone who causes a miscarriage without the woman's consent with life imprisonment, or imprisonment up to ten years, along with a fine.
- Section 90: Criminalizes causing the death of a pregnant woman with the intent to induce miscarriage. The punishment can be up to ten years of imprisonment and a fine

Some criticize the BNS for criminalizing abortion, even when it is performed in a safe environment and with the woman's consent.

The Medical Termination of Pregnancy (MTP) Act, enacted in India in 1971, marked a significant step towards recognizing women's reproductive rights. Over the decades, societal attitudes towards women's health and reproductive autonomy have evolved, leading to the need for amendments in the MTP Act. The most notable changes came in 2021²⁸, when significant amendments were introduced to broaden access to safe abortion services. This essay explores the historical context, provisions, and implications of the MTP Act in its original and amended forms, along with the challenges and future directions for reproductive health in India.

Historical Context: The Pre-1971 Scenario

Before the MTP Act was introduced, abortion in India was largely illegal and viewed as a moral issue. Women who sought abortions often resorted to unsafe procedures, leading to severe health complications and maternal mortality. The lack of

²² In *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1, The court held that freedom to make the reproductive choices is a new facet of article 21 of the constitution and the consent of the pregnant woman in mothers of such reproductive choices and the choice of abortion is the most paramount.

²³ *A (Mother of X) v. State of Maharashtra*, 2024 INSC 371

²⁴ *Shayara Bano v. Union of India*, AIR 2018 SC (CIVIL) 1169, the triple talaq case where the Supreme Court also discussed a woman's right including gender equality and her autonomy including reproductive choice, *K.S. Puttaswamy v. Union of India*, AIR 2017 SC 4161, which propounds the right to privacy of women, *Vishaka v. State of Rajasthan*, AIR 1997 SC 301, emphasises gender equality in all spheres.

²⁵ *Suman Kapur v. Sudhir Kapur*, 1 AIR 2009 SC 589, Is the case where in the code said that the right of women to choose for abortion must Be exercised in consonance with his integrity towards her husband specifically in the cases where the woman has conceived in regular circumstances after consummation of the marriage with her husband. Any non-compliance or abortion without the consent of the husband was held to be an act of cruelty which might be a ground of divorce.

²⁶ Siddhivinayak Hirve, "Abortion Policy In India: Lacunae and Future Challenge" Abortion Assessment Project 2004, India Centre for Enquiry into Health and Allied Themes, Bombay (2004).

²⁷ Section 88, 89 and 90 of the Bhartiya Nyaya Samhita, 2023.

²⁸ The Medical Termination of Pregnancy (MTP) Amendment Act of 2021, was passed in 2021 and amended an almost 50 years old abortion law the act came in course in September 2021.

safe and legal options disproportionately affected vulnerable women, including those from lower socio-economic backgrounds. Recognising the public health crisis associated with unsafe abortions, the Indian government, initiated discussions on the need for legalizing abortion. The K.S.S.R. Anjaneyulu Committee²⁹ recommended changes in abortion laws. The committee emphasized that the health risks posed by illegal abortions warranted a legal framework to provide safe access to termination services.

The MTP Act, 1971: The Objectives and Provisions

The MTP Act was enacted on April 1, 1971, with the primary objective of providing a legal framework for the termination of pregnancies under specific conditions. Key provisions of the Act include the conditions for termination which allowed abortions under certain circumstances, such as: if the pregnancy posed a risk to the mother's life or physical/mental health, if the foetus suffered from serious abnormalities, if the pregnancy was a result of contraceptive failure (limited to married women). The gestational limit of abortion was only up to 20 weeks of pregnancy³⁰. The approval process for the same the approval of two registered medical practitioners (RMP), which often made access to safe abortions cumbersome. The RMPs however, are under an obligation to be true to their responsibilities and not to act on the basis of arbitrariness or prejudices³¹.

While the MTP Act was a progressive step, its restrictive provisions were criticized for limiting access to safe abortions. The 20-week gestational limit and the requirement for multiple medical approvals created barriers for many women, particularly those in rural areas or with limited access to healthcare facilities.

Over the years, changing social attitudes toward women's rights and reproductive health prompted discussions about reforming the MTP Act. Advocacy groups, healthcare professionals, and women's rights activists highlighted the need for a more inclusive and accessible framework for abortion services. The feminist movement in India gained momentum in the 1980s and 1990s, advocating for women's rights, including reproductive rights. Increased awareness about women's health and the consequences of unsafe abortions led to calls for revising the MTP Act. In response to ongoing advocacy and changing societal needs, the Indian government introduced the MTP (Amendment) Bill in 2020. The bill aimed to amend the original Act to expand access to safe abortion services and address some of the criticisms levelled against the 1971 legislation.

Key Provisions of the MTP (Amendment) Act of 2021:

The bill for the amendment proposed extending the legal limit for abortion from 20 weeks to 24³² weeks for specific categories of women³³, including: Survivors of rape and incest, minors, women with physical disabilities and any other vulnerable women as specified by the rules. The simplified approval process was proposed and accordingly the amendment allowed a single registered medical practitioner to perform an abortion up to 20 weeks, streamlining the process and reducing bureaucratic hurdles³⁴.

The focus on confidentiality was also emphasised upon, in the proposals and the bill accentuated the importance of maintaining the confidentiality of women seeking abortions, thereby addressing the stigma surrounding the procedure. It was mandated that women must be provided with adequate information regarding the procedure, risks, and alternatives, ensuring informed consent.

The MTP (Amendment) Act, 2021

The MTP (Amendment) Act was passed in March 2021, bringing significant amendments to the original Act. The amendment had expanded the horizon of the law. It broadened the categories of women eligible for abortion beyond the previously outlined cases, reflecting a more inclusive approach to reproductive rights. The accessibility was improved by

²⁹ The K.S.S.R. Anjaneyulu Committee²⁹ was set up in 1970.

³⁰ Nikhil D. Dattar v. Union of India, S.L.P. (Civ.) No. XXXX of 2008 (Supreme Court of India), available at: <http://www.hrln.org/hrln/images/stories/pdf/xandy-petition-8-3-14.pdf> (last visited on Feb. 10, 2017).

Section 3 and 5 of MTP Act was Questioned and challenged that they did not include the eventualities and facts and circumstances of the case while implementing the timelines and other stipulations.

³¹ In X v. State (NCT of Delhi), (2023) 9 SCC 433, The court recognized that there is a big fear of prosecution prominent amongst the registered medical practitioners which works as the barrier for all the pregnant women who desire to get the excess to save and legal abortions.

³² Sec 3B of the MTP (Amendment) Act, 2021.

³³ In the case of XYZ v. State of Gujarat, 2023 SCC OnLine SC 1573, the court said that the High Court or the Medical Board cannot refuse the abortion only on the ground that the gestational age of the said pregnancy is above the prescribed statutory limit.

³⁴ In Z v. State of Bihar, (2018) 11 SCC 572, the Supreme Court found that it was the state authority that failed in not terminating the pregnancy in question before the passage of the time of 20 weeks, provided under law while, a pregnancy beyond this statutory prescription must require the intervention from a constitutional code the vitality of the time sensitivity in the case was also recognized by the court.

allowing abortions to be performed by a single practitioner and extending the gestational limit for specific cases. The amendment aimed to make safe abortion services more accessible to women and easy. The Act also mandated the establishment of standards for medical facilities providing abortion services, ensuring quality care and safety for women.

Implications of the Amendments: The amendment attempts to reduce maternal mortality and morbidity associated with unsafe abortions by increasing access to safe and legal procedures. By recognizing the right to make decisions about their bodies, the amendments empower women, particularly those in vulnerable situations. The amendments categorically align India's abortion laws with international human rights standards, reflecting a commitment to women's health and rights³⁵. Despite the positive changes brought-in by the Amendment Act of 2012, several aspects are still left untouched and are anticipated to be addressed by the law makers really soon. However, the ultimate success of the amendments depends on effective implementation at the ground level, particularly in rural areas where healthcare access is limited and social integration is one aspect that is needed to be taken care of as the deep-rooted cultural attitudes towards abortion may continue to pose barriers, affecting women's willingness to seek services. Increased awareness and education about reproductive rights and available services are crucial for the successful utilization of the amended provisions. To ensure that the objectives of the MTP (Amendment) Act are realized, several steps can be taken in the direction of the enhanced healthcare infrastructure and improving healthcare facilities, especially in rural areas, for providing safe abortion services. The training and capacity building in respect of the healthcare providers on the new provisions and guidelines will help in their effective implementation along-with conducting awareness campaigns to educate women about their rights and available services will help reduce stigma and promote utilization of abortion services. Establishing a robust system for monitoring and evaluating the impact of the amendments will be essential for continuous improvement.

CONCLUSION

The evolution of the Medical Termination of Pregnancy (MTP) Act from 1971 to 2021 reflects significant progress in recognizing and safeguarding women's reproductive rights in India. The 2021 amendments are a crucial step towards improving access to safe abortion services, empowering women, and aligning India with international human rights standards. However, ongoing challenges must be addressed through effective implementation, awareness, and education to ensure that all women can exercise their reproductive rights safely and without stigma. The future of reproductive health in India depends on a collaborative effort from the government, healthcare providers, and society as a whole to create an environment where women's rights are fully realized.

Female body autonomy is a fundamental aspect of women's rights, and the ongoing evolution of abortion laws in India reflects the complexities of this issue. While progress has been made since the introduction of the MTP Act, significant challenges remain in ensuring that women have access to safe, legal, and timely abortion services. As society grapples with the question of reproductive rights, it is imperative to prioritize women's autonomy, promote awareness, and advocate for policy changes that empower women to make informed choices about their bodies. Ultimately, the journey toward achieving full body autonomy for women in India requires collective efforts from government, civil society, and individuals to foster a culture of respect, understanding, and support for reproductive rights.

³⁵ Arora V, Verma IC. The Medical Termination of Pregnancy (Amendment) Act, 2021: A Step Towards Liberation;2021.