



## Original Article

### Legal Status of Abortion Law in India

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**Abstract:**

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*The abortion rights were not legalized before 1971 and was criminalized under Indian Penal Code. However, during 1971, the Indian Constitution had granted abortion rights to women. The Medical Termination of Pregnancy (Amendment) Act in 2021 extended the legal limit for abortion from 20 to 24 weeks of gestation with the consent of the woman and on the advice of one registered medical practitioner. Every woman in India irrespective of any discrimination as to the marital relationship, have a complete access to safe and secure abortion as far as it falls under the regime of certain conditions imposed by the MTP (Amendment) Act, 2021. Though, the availability of this right is guaranteed under reproductive rights, there is a certain percentage of women who choose uncertified professionals for the process of abortion which ultimately resulted in unsafe abortions leading to post-abortion complications. The article highlights the concept of abortion and its legal status in India.*

**Keywords:** Abortion, Reproductive Rights and Legal Status.

#### Introduction:

The right to safe and legal abortion is one of the basic reproductive rights. This right rest on the recognition of the basic right for all couples and individuals to decide freely and responsibly the number, spacing and timing of their children.<sup>1</sup> India made the abortion laws liberal in 1971 by enacting Medical Termination of Pregnancy Act, which was designed to create certain exceptions to the strict provisions of IPC<sup>2</sup> and PNDT Act 1994. The Supreme Court of India has also recognized abortion as a fundamental right, and the Medical Termination of Pregnancy (Amendment) Act in 2021 extended the legal limit for abortion from 20 to 24 weeks of gestation with the consent of the woman and on the advice of one registered medical practitioner

<sup>3</sup> Consequently, every woman in India irrespective of any discrimination as to the marital relationship, have a complete access to safe and secure abortion as far as it falls under the regime of certain conditions imposed by the MTP.

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<sup>1</sup> International Conference on Population and Development (ICPD), Program of Action, UN Doc. A/CONF.171/13 1994, chap. 7.A. para 7.3.

<sup>2</sup> Section 88 of the Bharatiya Nyaya Sanhita states that any individual who voluntarily causes a woman to miscarry, unless it is done in good faith to save her life, shall face punishment of imprisonment up to three years, or a fine, or with both.

<sup>3</sup> According to Section 5(2) of MTP Act, 1970, termination of pregnancy by a person, who is not a Registered Medical Practitioner is an offence punishable with Rigorous Imprisonment (R.I.) for a term which shall not be less than 2 years but which may extend to 7 years. Note: It is important and worth wise to mention here that it is now a cognizable offence for which a police officer can arrest a doctor for violations without Warrant.



(Amendment) Act, 2021. However, the availability of this right is guaranteed under reproductive rights, there is a certain percentage of women who choose uncertified professionals for the process of abortion which ultimately resulted in unsafe abortions leading to post-abortion complications. The deaths and health complications in women due to unsafe abortion had led to severe impact which leads to severe life threatening disease and fatality.<sup>4</sup> The MTP Act, which was considered progressive at the time of its introduction, focused on providing immunity from criminal prosecution to medical practitioners rather than ensuring access to abortion as a right. Access to safe and legal abortion remains a challenge for many women, with a significant portion resorting to unsafe procedures. The Amendment Act fails to resolve this issue.<sup>5</sup>

## **Background of Abortion Law in India:**

Abortion rights are intricately linked to women's broader human rights, specifically their right to bodily autonomy, privacy, and health. India was the first nation in the world to establish legislative and policy mechanisms to guarantee access to abortion and contraceptives for women. The abortion rights were not legalized before 1971 and was criminalized under section 312 of the Indian Penal Code. However, during 1971, the Indian Constitution had granted abortion rights to women. The main reason behind the criminalization of the abortion were due to increase in female infanticide and unequal sex ratio in India, which raised to the biased and patriarchy mindset of the Society. In order to prevent this and to uplift the women and balance the sex ratio, the abortion of foetus was criminalized. The Shah Committee appointed by the government of India in 1964 performed a study on the socio-culture, medical and legal scenarios for abortion. The committee stated many field studies and recommended legalizing abortion.

## **The Legality of Abortion in India**

Women cannot achieve freedom, equality, full human dignity, or personhood unless they take control over their own bodies and reproductive processes. The option to have a child or not is one that each woman must make consciously. The fundamental right to life, liberty and the pursuit of happiness now includes the right to reproductive autonomy.<sup>6</sup> Indian Constitution emphasizes this issue to protect women against discrimination and made special provisions for her safety.<sup>7</sup> The freedom of a woman to choose her own options for reproduction is another aspect of 'personal liberty' enshrined in Article 21 of the Indian Constitution. The right to make free and informed decisions about health care and medical treatment, including decisions about one's own fertility and sexuality, is enshrined in Article 16 of the CEDAW.<sup>8</sup> The Indian law empowers women with a choice of abortion in the event of contraceptive abortion, all pregnancies not just those that endanger the health of the mother or foetus, or resulting from rape can be terminated legally. Technically, any woman above the age of 18 can have an abortion with nobody's consent but her own and her doctor's. The Legality of Abortion<sup>9</sup> in India grants access to women to abort the foetus under various grounds under The Medical Termination of Pregnancy (MTP) Act, 1971. This Act enables women to access safe and legal abortion services. In 2021, MTP Amendment Act 2021 was passed with certain amendments to the MTP Act 1971, such as women being allowed to seek safe abortion services on grounds of contraceptive failure, an increase in gestation limit to 24 weeks for special categories of women, and opinion of one abortion service provider required up to 20 weeks of gestation. Abortion can now be performed until 24 weeks of pregnancy.

## **The grounds for legal abortion are as follows:**

1. When continuation of pregnancy is a risk to the life of a pregnant woman or could cause grave injury to her physical or mental health;
2. When there is substantial risk that the child, if born or dead would be seriously handicapped due to physical or mental abnormalities;

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<sup>4</sup> S. M. Abinaya, 'The Legal Status of the Right to Abortion in India' (2023) 5 Indian JL & Legal Rsch 1.

Available at

<https://heinonlineorg.kslu.remotlog.com/HOL/Print?collection=journals&handle=hein.journals/inj10lw11&id=7291> accessed on 14.04.2025.

<sup>5</sup> Amar Singh, 'Abortion Law in India in the Light of Medical Termination of Pregnancy

(Amendment) Act, 2021' (2021) 1 Nyaayshastra L Rev 1, available at

<https://heinonline-org.kslu.remotlog.com/HOL/Print?collection=journals&handle=hein.journals/nalervw1&id=231>, accessed on 14.04.2025.

<sup>6</sup> Kavita Singh, Women's Right to Abortion vis-a-vis Right of the Unborn Foetus: Human Right Perspective, In Rathin Bandyopadhyay & Rajendra Dhar Dubey, Law and Gender: A Quest for Justice (Alfa Publications, Delhi, 1st Edn. 2012)

<sup>7</sup> Shakuntala, & Omlata Raj, Constitutional and Criminal Perspectives of Women's Reproductive Rights, Indian Journal of Integrated Research in Law, Volume II Issue V, ISSN: 2583-0538.

<sup>8</sup> Convention on the Elimination of all Forms of Discrimination Against Women (1978).

<sup>9</sup> Abortion results from some diseased condition in the mother or the foetus, or which is produced unintentionally by some other cause. This kind of abortion may be caused due to medical problem.



3. When pregnancy is caused due to rape (presumed to cause grave injury to the mental health of the woman);
4. When pregnancy is caused due to failure of contraceptives used by a married woman or her husband (presumed to constitute grave injury to mental health of the woman).
5. When the socio-economic condition of the family is poor and the couple already has 2-3 children.

The abortions which are provided by the healthcare workers and with methods recommended by the WHO are classified as safe abortions. The abortions that are provided by the trained providers using non-recommended methods or using a safe method but without adequate information or support from a trained individual are classified as less safe abortion. The abortion done by a trained provider using dangerous, invasive methods are unsafe abortions. Before 1971, abortion was criminalized under Section 312 of the Indian Penal Code, 1860, describing it as intentionally 'causing miscarriage'. Except in cases where abortion was carried out to save the life of the woman, it was a punishable offense and criminalized women/providers, with whoever voluntarily caused a woman with child to miscarry facing three years in prison and/or a fine, and the woman availing of the service facing seven years in prison and/or a fine.

The MTP Act specifies - (i) who can terminate a pregnancy; (ii) till when a pregnancy can be terminated; and (iii) where can a pregnancy be terminated.<sup>10</sup>

The MTP Rules and Regulations, 2003 detail training and certification requirements for a provider and facility; and provide reporting and documentation requirements for safe and legal termination of pregnancy. As per the MTP Act, pregnancy can be terminated only by a registered medical practitioner (RMP) who meets the following requirements:

- (i) has a recognized medical qualification under the Indian Medical Council Act
- (ii) whose name is entered in the State Medical Register
- (iii) who has such experience or training in gynaecology and obstetrics as per the MTP Rules<sup>11</sup>

#### **WTO Guidelines**

Craig Lissner, acting Director for Sexual and Reproductive Health and Research, WHO has stated that "Nearly every death and injury that results from unsafe abortion is entirely preventable. That's why we recommend women and girls can access abortion and family planning services when they need them."<sup>12</sup> The new WHO guideline demonstrates that public health evidence supports what has been established under international human rights law, what the Center for Reproductive Rights has long demanded, and what people across the globe know: abortion access is a human right and an essential health service that must be respected, protected, and fulfilled. The world's leading public health body has firmly based its recommendations on public health evidence and human rights standards. It is time for policy-makers, public health officials, the medical community, and others to take heed of this guideline by implementing its recommendations to ensure that the right to access abortion is fully realized. The WHO guideline recognizes that globally abortion is a common procedure, with six out of ten unintended pregnancies and three out of ten of all pregnancies ending in induced abortion. It notes that abortion is a safe health care intervention, completed using medication or with a simple outpatient surgical procedure. Abortion, whether using medication or a surgical procedure, is safe "when carried out with a method appropriate to the gestational age of pregnancy and in the case of a facility-based procedure by a person with the necessary skills." However, estimates suggest that just over half (55%) of all abortions worldwide can be considered safe. Barriers such as a lack of providers and facilities that can safely provide services, limited available methods of abortion, costs, stigma, and legal restrictions make it difficult or impossible for many women to access abortion care, which may lead them to use unsafe methods. The guideline reinforces that "the legal status of abortion has no effect on a woman's likelihood of seeking induced abortion, but it dramatically affects her access to safe abortion."<sup>13</sup>

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<sup>10</sup> According to Section 5(2), (3), (4) of MTP Act, 1970, Whoever terminates pregnancy in a place that is 'unapproved', any person, being 'owner' of a place that is not approved, and doing or allowing the termination of Pregnancy at such place is an offence punishable with Rigorous Imprisonment (R.I.) for a term which shall not be less than 2 years but which may extend to 7 years.

Sec.5 (4) Explanation- 2: The expression 'owner' means any person who is the administrative head or otherwise responsible for the working or maintenance of a hospital or place, by whatever name (DM, MS, DP etc.) called.

<sup>11</sup> S. M. Abinaya, 'The Legal Status of the Right to Abortion in India' (2023) 5 Indian JL & Legal Rsch 1.

Available at

<https://heinonlineorg.kslu.remotlog.com/HOL/Print?collection=journals&handle=hein.journals/injlolw11&id=7291> accessed on 14.04.2025.

<sup>12</sup> <https://www.who.int/news/item/09-03-2022-access-to-safe-abortion-critical-for-health-of-women-and-girls>. Accessed on 18.04.2025.

<sup>13</sup> <https://reproductiverights.org/wp-content/uploads/2022/03/CRR-Fact-sheet-on-WHO-Guidelines.pdf>. Accessed on 18.04.2025.



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## **Conclusion:**

Abortion is legal in India under the Medical Termination of Pregnancy (MTP) Act up to a certain gestational limit, with exceptions allowing termination up to 24 weeks for certain cases after the 2021 amendment, including cases of rape, incest, and fetal abnormalities. The 2021 MTP Amendment Act also expanded this right to unmarried women, based on contraceptive failure, and affirmed that the woman's marital status cannot be a ground to deny abortion. A woman's right to privacy, dignity, and bodily autonomy is recognized as a fundamental right under the Indian Constitution, though the Supreme Court has at times stepped in to allow abortions beyond the statutory limits in exceptional circumstances.