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**LEGALIZATION OF ABORTION: LEGAL AND ETHICAL ASPECTS<sup>1</sup>****ABSTRACT**

Since ancient times, social and legal controversy and disagreements surrounding abortion have existed. Not only Indian society but also in terms of global parameters, different countries follow differently; Traditions, customs, and customs must wage a great struggle to curb their influence on existing morals and ethics. Solving the abortion problem requires not only laws but also social progress and getting rid of orthodox thinking. This article looks at how abortion laws, especially the Medical Termination of Pregnancy Act of 1971, as advanced legislation, weaken content that urgently needs to be amended in this age. It also explains how historically the moral stigma of abortion continues to prevail in developing societies and how abortion laws require an active feminist vocabulary. The article ends with an analysis of the proposed amendment and how it resembles a knight in shining armor. Regardless of the admitted and proposed breakthroughs, this article raises some remaining gaps, eventually achieving its expected goals through actual claims, and achieving a double breakthrough on the social and legal aspects of abortion.

**KEYWORDS:** - Abortion, MTP Act, Social Offense, Moral Wrong, Feminist Vocabulary

**AN INTRODUCTION TO THE NUANCES OF ABORTION**

Despite India's legislative efforts to promote recognition of abortion laws, so far, women still face shame, disgust, guilt, and unprofessional involvement in the abortion process. Abortion is often viewed as the murder of the problematic character of a woman who ignores the former's medical and health problems. s

Women and their right to determine sexual behavior, fertility, and reproduction are factors that are rarely if ever, considered when formulating abortion-related policies<sup>2</sup>. While abortion as a course is a matter of choice and rights that women have, this right is rarely classified as a crime against death and requires judicial intervention to correctly claim what is already widespread.

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<sup>2</sup>Amar Jesani & Aditi Iyer, 'Women and Abortion' (27th November, 1993) <<http://www.cehat.org/cehat/uploads/files/a14.pdf>>accessed on 12 December 2020

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The abortion axis does not only exist as a medicinal substance but also involves ethical, legal, and moral aspects. Women are rarely restricted from using these services. If we look at the traditional arguments for and against abortion, we will find that legal and religious arguments guide each argument separately<sup>3</sup>. Article 21 of the Constitution of India stipulates the right to life and privacy, and article 6 (1) of the International Covenant on Civil and Political Rights prohibits arbitrary deprivation of life. However, there are also some controversies related to this supreme right. One of the problems is the right to abortion. Among other women's rights, I believe that every mother has the right to abortion, which is a universal right. However, the rights of the mother must be balanced with the rights of the fetus. Before this, the right to abortion was not allowed, and society strongly opposed it. Termination of pregnancy is classified as the murder of the fetus. However, due to changes in time and technology, after the United States Supreme Court made the famous Roe Vs Wade decision in this case, today this right has been legally recognized by most countries, and the court believes that the mother can have an abortion for any reason.

Many scholars believe that abortion is the destruction of the lives of both mothers and mothers. Fetal. In my opinion, abortion is a women's problem, so it should be women's right to choose. She has the free will to consider the opinions and opinions of others, such as those of her father, but the law must protect her final decision. This is one of the most controversial issues in the world today. Everyone has his or her own opinions. A woman's body is hers, and no one has the right to force her to do things she does not want to do.

### THE HISTORICAL PREVALENCE OF THE ABORTION LAW

Almost 50 years after the Medical Termination of Pregnancy (MTP) Act prevailed in 1971<sup>4</sup>, some practical changes have been induced to use the right tools, provide the right facilities, and perform abortions by professional doctors.

This law allows a woman to legally undergo an abortion during pregnancy when it is possible to cause physical disfigurement or certain organ failure that endangers the physical and mental health of the mother and the fetus. Although current legislation applies to the termination of pregnancy for married women, there are still ambiguities in the procedures for single women, and rape victims are more likely to be exceptions.

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<sup>3</sup>Bhavish Gupta & Meenu Gupta, 'The Socio-Cultural Aspect of Abortion in India: Law, Ethics and Practice (2016) <[http://ili.ac.in/pdf/p10\\_bhavish.pdf](http://ili.ac.in/pdf/p10_bhavish.pdf)> accessed on 12 December 2020

<sup>4</sup>The Medical Termination of Pregnancy Act, 1971

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Historically, abortion was regarded as a crime under the Indian Penal Code (IPC) of 1860 and the Civil Procedure Act of 1898, 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, 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. Miscarriage of foetus<sup>6</sup>.

However, it was not until 1964 that the Ministry of Health and Family Planning recommended to the Ministry through its Central Family Planning Commission to establish a committee to legalize abortion in India, taking into account norms and world regulations. Subsequently, after the appointment of Shantilal Shah (Shantilal Shah) as a member of the chairman committees of various public and private institutions in India, the fiancées 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<sup>7</sup>.

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.

However, even after it was promulgated, the law did not replace the existing criminal provisions in the IPC but continued to coordinate with the widespread abortion as a punishable crime.

### NEED TO INDUCE ABORTION LAW

Drafters and critics believe that the committee's proposed MTP bill is well ahead of the lack of sanitation facilities at the time; the experience, understanding, and equipment are more than those implemented by trained personnel. The committee considered this level and determined how to divide abortion into two categories, namely (i) medical abortion and (ii) surgical

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<sup>5</sup>Siddhivinayak S. Hirve, 'Abortion Law, Policy and Services in India: A Critical Review' (27th April, 2005) <<https://www.tandfonline.com/doi/full/10.1016/S0968-8080%2804%2924017-4>> accessed 12 December 2020

<sup>6</sup>Indian Penal Code, 1860, s 312

<sup>7</sup>Government of India, Report of the Committee to Study the Question of Legalisation of Abortion 36 (Ministry of Health and Family, 1966).

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abortion. The first consists of terminating the pregnancy by taking abortifacient 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 rape victims.

According to 1976 estimates from the General Register of India<sup>8</sup>, 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-recognized and registered institutions, usually in unsanitary conditions<sup>9</sup>.

With the introduction of the 1971 legislation, in the early 1980s, the number of recorded abortions only predicted a marginal statistical record of 8 to 10% of the number of approved abortion facilities<sup>10</sup>. In comparison, the 2015-2016 statistics were approximately 15.6 million abortions, of which 47 abortions were performed for every 1,000 women in the 15 to 49 age group<sup>11</sup>.

According to an abortion study published by Lancet Globe Health in 2018<sup>12</sup>, 22% of these abortions were performed correctly under safe conditions and the consultation of a trained doctor, and respected the quality of care and preventive measures, while most 73% of reported abortions are medicinal, which means that they were interrupted by taking birth control pills as part of their medication. It is estimated that doctors perform 5% of reported abortions, but there are still 5% of cases. People are disturbed, but their lack of healthcare facilities and the required expertise and precision ultimately form part of unsafe surgical abortion.

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<sup>8</sup>Ministry of Health and Family Welfare, 'Major Schemes and Programmes' (MOHFW, November 2000) <<https://main.mohfw.gov.in/sites/default/files/8565929279Major%20Schemes%20%26%20Programmes.pdf>> accessed 12th December, 2020

<sup>9</sup>Bela Ganatra, LeelaVisaria, ShvetaKalyanwala and Vimal Ramachandran, 'Abortion in India Emerging Issues from the Qualitative Studies', (2004) Vol 39 Issue 46-47 EPW, <<https://www.epw.in/journal/2004/46-47/special-articles/abortion-india.html>> accessed 14 December, 2020

<sup>10</sup>Supra Note 4

<sup>11</sup>Susheela Singh, ChanderShekhar, Rajib Acharya, Ann M Moore, Melissa Stillman, Manas R Pradhan, Jennifer J Frost, HariharSahoo, ManojAlagarajan, Rubina Hussain, AparnaSundaram, Michael Vlassoff, ShvetaKalyanwala and Alyssa Browne, 'The Incidence of Abortion and Unintended Pregnancy in India, 2015' (12th December, 2017) <<https://www.thelancet.com/action/showPdf?pii=S2214-109X%2817%2930453-9>> accessed on 12 December 2020

<sup>12</sup>Ibid

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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 behavior has been prominent in practice, and pregnant women are tortured at the same time. Mothers who use dowry as an excuse in the form of domestic abuse, provided that the behavior was induced by an independent person and not in most cases by the mother herself; the bill also existed before the wave of economic liberalization, in the mother's embryo. It is considered a criminal offense to end the life of a newly budding human species induced by an independent person or the mother herself. Today, 50 years after the decriminalization of abortion, the country is still facing major problems due to problems and 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 and childbirth. Different from this type of thinking is the definition of social conservatives, who believe that abortion is committing suicide<sup>13</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 recognized as human offspring, while the second cannot prove that if Abortion is morally correct. The form of the fertilized 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. The legal aspect of the discussion is always, always what circumstances of the Law are in what circumstances, and regularly, where the State is obliged to follow the laws and regulations. It must be done. Good common for society. For more information, other required responses may be required to save the native life that is born compared to future mothers. The ethical character of the discussion is not experienced that it is simply similar to that of the great ideal size of the mother or the soul of humans or germinates. Rather, defenders of the argument of moral patients with Abissistors are worth it to the same position as those given to other humans.

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

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<sup>13</sup>Applied Ethics' <<https://appethics.blogspot.com/2010/04/abortion-1.html>> accessed on 12 December 2020  
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committing murder.

Migration of the law of abortion, specifically, medical interruptions of the 1971 pregnancy law, regardless of whether the existence of abortion and termination of pregnancy is not regulated by law, the existence of pregnancy is dominant as an action that It can be understood that it is. This suppresses the difficulties in the future to suppress the difficulties of the illegality 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 of when the fetus It is abnormal or when the underlying pregnancy is derived from the original pregnancy.

*The concept of abortion society concepts is extremely important to determine the moral position of the fetus.*

How this idea is characterized is a conflict between the privileges of the mother and the fetal privileges for the termination of pregnancy.

Social liberal layers are not recognized in an 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. Abortion causes an enthusiastic dispute for some women and families, especially when it stops due to state suppression. 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. I am continuing. For your family or state. This is more important in the country where social tools set it. Moreover, if they want to embrace children, women's rights are theoretical as practical rights.

### VOCABULARY OF FEMINISTS

Investments do not flow directly from the fact that their differences change to social and economic deprivation<sup>14</sup>.

Even if it is a country like India when the number of judicial constant steps profoundly understands the problems faced by women, society implements and takes development objectives that I cannot approve well. If you claim to have religions, traditions, and laws next to people, if offspring is a key to female reproductive health, you should talk about the ethics of abortion from the attractive perspective of women<sup>15</sup>.

The determination of women who discontinued fetuses is sacred due to personal and sacred

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<sup>14</sup>Ann C. Scales, 'The Emergence of Feminist Jurisprudence: An Essay', (1986) 95 1373-1403 Yale <<https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=7010&context=yjlj>> accessed on 14 December, 2020

<sup>15</sup>Marge Berer, 'Making abortion safe and legal. The ethics and dynamics of change' (1st November, 1993) <<https://www.tandfonline.com/doi/pdf/10.1016/0968-8080%2893%2990002-B>> accessed on 14 December 2020  
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subjects. Today's era must be interesting to understand the difference between hope and unwanted pregnancy, the expected pregnancy. It is not only the black and white thumb rules of emotional pressure, but all gray within these extremists respectively respect women's decisions; all gray at that end must be approved and allowed.

The unexpected motherhood of Japan is often called under the end of women under the sacrifice of the end of women, often under the sacrifice of the end of women, is called the belief that maternity should not be welcome. Rejected. The great hierarchy of society considers life that gives life through pregnancy. However, people who hoped to have gone through abortion depending on the protection of the fetal fetus than this situation, regardless of this situation against their desire. More frequently than ever, they are looking down as simple boats and containers that communicate to those who tell children.

### SOCIAL OFFENCES AND STIGMAS YET A PREVALENCE

MTP bill was considered advanced when it was introduced, 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, although 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, society has hardly seen it compared with the pre-independence era. , The difference of the same subject.

A woman would have the right to be relieved of carrying the foetus, however, she would not have the right to the death of the foetus<sup>16</sup>

The progress of any society and its economy depends on its population, which includes not only the male population but also the female population and people who identify with the LGBTQIA community. However, after 73 years of independence, more people like boys than support female fetuses than support the latter. The sole reason for gender selection appears to be an ingrained preference of boys in practice, such as inheriting power that favors boys over girls' rights, or the ultimate focus is the ritual performed by boys. Male members to the female family members.

There is no human society in which women dominate men; on the contrary, societies in which men dominate women are so common that male dominance is considered a universal phenomenon in human beings. Not only from the social aspect but also the economic point of

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<sup>16</sup>M J Former, 'Abortion Ethics' (30th April, 1982) <<https://pubmed.ncbi.nlm.nih.gov/7041095/>>accessed on 12 December 2020

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view, male dominance and universality are correct.

Men are more valued because of their long-term dominance in the economy, politics, and society. Due to this long-standing orthodox mindset, the needs of married, single, widowed, or separated women are often ignored and ignored.

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. Even 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.

The law prohibits gender selection, not only before conception, but also after the fetus is conceived, and spread in the provisions of prenatal diagnostic technology, and is limited to the detection of genetic abnormalities, metabolic disorders, chromosomal abnormalities, and congenital abnormalities. , Which prohibits determining the sex of the fetus. After the legislation was introduced, the amendment was instilled in 2003, but traces of heinous behavior continue to prove.

#### MEDICAL TERMINATION OF PREGNANCY LAW, 1971

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<sup>17</sup>.

According to the medical termination of pregnancy rules introduced in 2003, only registered doctors with corresponding experience or training by a gynecologist 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, It will be done after consulting two well-trained doctors.

Here, the opinion of registered medical practitioners is found to be in good faith only-

- I. When the continuance of pregnancy might involve a threat posed to the life of the pregnant woman by way of suffering a physical or mental agony by herself, or
- ii. When there is a substantial risk involved for the child to suffer any physical or mental abnormalities such as (s)he cripples to be seriously handicapped<sup>18</sup>.

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<sup>17</sup>Medical Termination of Pregnancy Act, 1971, s 3(1)

<sup>18</sup>Medical Termination of Pregnancy Act, 1971, s 3(2)(b)(ii)

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This legislation focuses on married women and women who become pregnant due to forced intercourse or rape. It is also assumed that the pain caused by the pregnancy will seriously damage the mental health of pregnant women. The first explanation of the bona fide reason for a medical termination.

However, even after the legislation, the court still faces a large number of petitions to consider termination of pregnancy after the prescribed 20 weeks, because in many cases, the alleged arguments indicate that anomalies may develop after 20 weeks. Pregnancy will leave the fetus physically disfigured or mentally imbalanced.

#### 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" pregnancy is used». This is done to protect doctors from being prosecuted for 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

The joint cabinet chaired by Prime Minister Shri Narendra Modi passed an MTP law amendment law on January 29, 2020<sup>19</sup>.

Accordingly, the Medical Termination of Pregnancy (Amendment) Bill 2020 was proposed in the People's Court on March 2, 2020, and was subsequently passed on March 17, 2020. Currently, the bill requires further approval by Parliament to take effect.

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 extending the time for termination of pregnancy from the current twelve weeks to twenty weeks in the sincerity 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. Chapter

Plank although the bill proposes this benefit, it leaves the interpretation of such special

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<sup>19</sup>PIB Government, 'Cabinet Approves the Medical Termination of Pregnancy (Amendment) Bill, 2020, (2020) 29 January <<https://pib.gov.in/PressReleasePage.aspx?PRID=1600916>> accessed on 14 December, 2020

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circumstances to rules that the central government has not yet notified.

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.

Taking into account the proposed amendments to the bill to achieve the goal of safe abortion by eliminating some existing loopholes, legislators considered the advancement of medical technology of safe abortion and determined how to increase 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<sup>20</sup>.

### PRIVACY CONCERNS

This bill gradually resolves the most critical loophole, which is to protect 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 authorized.

In India, the K. S. Puttaswamy's judgment clearly acknowledged the constitutional right of a woman to make her reproductive choices, as a part of personal liberty under Article 21 of the Indian Constitution. The bench also recapitulated this position in Suchita Srivastava vs. Chandigarh Administration, which held that reproductive rights include a woman's right to carry a pregnancy to its full term, to give birth, and to subsequently raise children; and that these rights form part of a woman's right to privacy, dignity, and bodily integrity. The right to one's body lies with oneself and no one else. Any forced act upon it without one's consent is a violation of basic human rights. Abortion is not only a moral issue but it is also a constitutional issue. The main question that arises is whether these rights include adolescent girls in their ambit. The MTP regulations contain strict confidentiality protections for women who undergo an abortion. However, the Protection of Children from Sexual Offences (POCSO) Act contradicts with the confidentiality process. Under this act, having sexual relations with an adolescent girl is a crime even if it is consensual between the persons below the age of eighteen. Hence, if a pregnant adolescent girl approaches a doctor seeking an abortion, her privacy is infringed since the doctor must report the girl to the police as a survivor of sexual assault, even if it goes against her wishes. Due to this, adolescent girls may be reluctant to seek out contraceptive or other reproductive health services out of fear that the doctors will report them infringing their privacy and that criminal action may be taken against their partners. The need for efficient, comprehensible and holistic laws on abortion is dire in order to protect the right to

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<sup>20</sup>The Medical Termination of Pregnancy (Amendment) Bill, 2020, Statement of Objects and Reasons.  
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health of pregnant adolescents and to save the lives of women currently forced to seek unsafe abortions from unlicensed medical professionals.

### LOOP HOLES.

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 recognize 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 pregnancy. In rural areas, this is especially a challenge, because inappropriate and safe practices<sup>21</sup> are still available in many parts of the country, using them to accept inadequate medical facilities or unsafe abortions performed by scammers.

### CONCLUSION

The goal of the Medical Termination of Pregnancy Act is to ensure safe abortion practices in India, and multiple pregnancy terminations have been achieved, whether through judicial intervention or without your introspection. The legend of abortion law has gradually been proposed to be resolved by amendments. The proposed bill is seen as a step towards women's safety and well-being. It will expand women's scope and opportunities for safe and legal abortion without compromising the safety and quality of care. The proposal will also guarantee the dignity, autonomy, confidentiality, and justice of women who need to terminate their pregnancy.

However, the social aspects of abortion, the stigma, shame, and pain of women being impersonated require a change in social perceptions. The advancement in the legal and moral aspects of abortion has reached a boiling point, not only actively claiming to change the law, but also ensuring that the above goals are achieved expectedly.

One of the main reasons for unsafe abortion is the inability to access safe abortion facilities due to legal and political restrictions, lack of affordable abortion services, and women's awareness of abortion. Article 19 (1) of the POCSO Act should be amended to ensure that pregnant teenagers can undergo abortions without risking their confidentiality being violated by

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<sup>21</sup>Neetu Chandra Sharma, 'Why India Needs a MTP Act' (LiveMint, 1 September 2019)

<<https://www.livemint.com/science/health/why-india-needs-a-new-mtp-act-1567317067262.html>> accessed 14 December 2020

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mandatory reporting requirements. Considering women's privacy, choice, and women's health, on-demand abortion should be included in the MTP Act. The current abortion law does not allow the exercise of this right, which clearly shows that it has not done enough to ensure the interests of women and that progressive abortion laws still have a long way to go. By increasing access to safe abortion services in India, doctors are allowed to do their part safely within the law.

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