

**ACCESS TO SAFE ABORTION IN INDIA: A GENDER-JUSTICE  
EVALUATION OF REPRODUCTIVE RIGHTS UNDER THE MTP  
(AMENDMENT) ACT, 2021**

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**Abstract**

The global discussion on access to safe abortion remains deeply controversial, and restrictive access leads to unsafe procedures with adverse health consequences for women and girls. In India, abortion is legal and governed by the Medical Termination of Pregnancy (Amendment) Act and Rules, 2021. Article 21 of the Indian Constitution provides the right to life and personal liberty, a fundamental right that includes the right to make reproductive choices and the rights to privacy, dignity, and bodily autonomy through the interpretation of the Supreme Court. Viewing these rights through a gender-justice lens, these constitutional protections are intended to safeguard women's ability to exercise meaningful reproductive decision-making. Regardless of the strengthened legal framework, safe abortion services remain unevenly accessible. Enduring barriers such as social stigma, rural inequality, discriminatory attitudes toward unmarried women, delays caused by medical boards, moral policing, and inconsistent judicial interpretations among courts continue to obstruct real access. Mandating that a woman continue an unwanted pregnancy violates her bodily autonomy, exacerbates mental trauma, and endangers her health. <sup>2</sup>According to the WHO, nearly half of all pregnancies worldwide approximately 121 million annually are unintended; six in ten unintended pregnancies occur globally, and three in ten end in abortion. These numbers highlight that access to legal and safe abortion is essential to realising the fundamental right to health. This paper critically examines the evolution of abortion laws in India, the legal factors mediating

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women's access to safe abortion, and the structural and social barriers that hinder the effective implementation of the MTP (Amendment) Act, 2021.

**Key words:** Abortion, bodily autonomy, privacy, social stigmas.

### **Introduction**

Even in the 21st century, abortion by a woman is still considered a taboo by the society. It is not only because of killing a life that has not come to the world, but also because the mother enables it, making it a stigma and interfering with the bodily autonomy of a woman in reasonable situations. In India, the evolution of the medical treatment of abortion begins from the belief of Ayurveda in olden days, which was largely misused and unregulated. Historically, many countries have witnessed unfortunate outcomes when women raised their voices and autonomy. The struggle to formulate effective abortion laws is the best example of it. The global debate on abortion with restrictive access is leading to unsafe procedures and adverse consequences for women and girls. India enacted the Medical Termination of Pregnancy (Amendment) Act, 2021, with an aim to expand the access to safe abortion care under legal guidelines, enabling abortions on grounds of eugenic, mental health, humanitarian, and universal access to comprehensive care compared to the 1971 Act. But still, the effective implementation of the Act was challenged by the social opinion on termination and other technical and legal difficulties in the country.

### **Legal frame work and Evolution of abortion laws in india**

The milestone for the concept of abortion was set in the 90s period with the landmark judgment in the case of Roe vs Wade (1973). Before the judgment of this case, in 30 states of America, abortion was considered illegal, while 20 states contradicted it as legal. Although in this case, the right to abortion was considered the right to privacy, and it must be followed within the 3rd trimester. Following this case, in 1992, the rules and regulations regarding abortion by the Pennsylvanian State Abortion Act were challenged by Casey in Planned Parenthood vs. Casey (1992). Here, the court upheld the judgment of the Roe case and struck down only one rule that was contradictory in nature. Subsequently, in the very recent case of Dobbs vs. Jackson Women's Health Organization, a clinic for abortion challenged the law of Mississippi, which was for the extension of abortion up to 15 weeks, but the court overturned the previous judgement and seized the abortion rights from American women. Now how the Indian legal framework was conceptualized, the laws regarding the abortion were as follows:

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One of the significant Acts: The Indian penal code 1860 was criminalizing the act of abortion before the enactment of the 1971 Act under the section 312 present it was the Bharatiya Nyaya Sanhita 2023.. Afterward the Medical Termination of Pregnancy Act 1972 was enacted based on the recommendation of the shah committee; it was set up for study and scenario of the abortion with a social and cultural point of view in 1964. Pursuant to this Act of 1971, the right of abortion for women up to 20 weeks of pregnancy with certain conditions is

- .1. The pregnancy may lead to a threat to the woman's life and cause any physical as well as mental damage
2. The fetus was UN incapacitated, likely a handicapped
3. The pregnancy was due to reasons of rape
4. Due to failed contraception.

However, the permission for abortion exceeds the 20 weeks time period to the supreme court, which was inferred under the Article 142 ( the power to the Apex court).Eventually, the Act of 1971 was amended with recent and major changes; the time period for abortion was extended up to 24 weeks from 20 weeks. In prior Act, the for the abortion process of 12 weeks with one medical practitioner, which was prolonged up to 20 weeks and from 20 - 24 weeks is two medical practitioners. Another main reason for the legal framework for the abortion was prenatal abortion after determination of fetus sex, which has been prevalent all over India and may lead to imbalance in the sex ratio. For the restrictions in the procedure for diagnosis during the pregnancy, the Preconception and prenatal Diagnostic Technique Act was enacted in 1994. As per this Act, the sex determination of the foetus and declaration of the same amounts to an offence that was punishable under the Indian penal code also in BNS 2023<sup>3</sup>. In 2003, this Act was amended with newer technologies like IVF with PGD.

### **Gender perspectives**

Even though safe abortion has been legalised in India for nearly five decades, access to abortion rights is still a challenge for many women due to various social factors, making this issue in need of being viewed legally and with a gender justice lens. Gaps that affect real-life access to abortion among women include class inequality, patriarchy and family control,

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<sup>3</sup>Rohit Patel, Each Instance of Sex Determination Undermines Value of Female Life, Endangers Pregnant Women to Unsafe Medical Procedures: Delhi High Court, SCC Online Blog (Oct. 28, 2025), <https://www.scconline.com/blog/post/2025/10/28/sex-determination-undermines-value-of-female-life-dhc/>

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stigma around unintended pregnancies, and disparities in rural and urban healthcare facilities. In a country like India, which is highly bound by moral and social norms, mostly on women-related issues, abortion, which affects the bodily autonomy of women, is no exception, and <sup>4</sup>a recent study conducted by the National Law School of India University in 2021 shows that moral judgments, social stigmas, and judgmental character assassination make abortion a more sensitive and stressful decision for women. Abortion is still treated as a crime under the Bharatiya Nyaya Sanhita, 2023, under Section 88, and its exception is provided under the Medical Termination of Pregnancy (Amendment) Act, 2021, which permits termination of pregnancy in situations mentioned in the Act. And legal abortion is not only based on the woman's request; it is based on the decision of the registered medical practitioner, making it not a complete reproductive right. In Justice <sup>5</sup>K.S. Puttaswamy v. Union of India, the Supreme Court recognized that reproductive choice is part of a woman's right to privacy, dignity, and bodily autonomy. But still, abortion is considered an exception to criminal law. When we look through gender justice lenses, family or partner influence may limit a woman's real choice, and women from marginalized castes often face discrimination in healthcare systems, and social stigmas on unmarried pregnancy are still considered social and legal barriers to effective implementation in society.

### **Implementation challenges**

India's Medical Termination of Pregnancy (MTP) Act of 1971 has aimed to ensure safe abortion access for women. However, putting its provisions into practice has been tough. Issues like unclear rules, lack of facilities, and societal pressures often block women's access to safe abortion services. Let us explore the hurdles in implementing the MTP Act and their impact on women's healthcare.

1. Barrier to access - the access of the measures under the Act by the women can be barred by various reasons like family , status , social responsibility.
2. Accessibility of the specialist - As previously mentioned, the members of the medical board were unable to be available in all places, especially the rural areas.

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<sup>4</sup>Aparna Chandra et al., Legal Barriers to Accessing Safe Abortion Services in India: A Fact Finding Study (Centre for Reproductive Rights & Nat'l L. Sch. India Univ. 2021), <https://www.nls.ac.in/wp-content/uploads/2021/08/Legal-Barriers-to-Accessing-Safe-Abortion-Services-in-India.pdf>.

<sup>5</sup> SCC Online Blog, Justice K.S. Puttaswamy: Champion of the Right to Privacy (Obituary), <https://www.scconline.com/blog/post/2024/10/28/justice-ks-puttaswamy-champion-right-to-privacy-obituary-legal-news/amp/> (last visited Mar. 14, 2026).

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3. Legal fear - some of the provisions were contradictory with the provisions of the POCSO Act as the confidential nature was compelled by the MTP Act while the POCSO Act examination was taken as the main part in proceedings.

4. Social Norms and stigma - Most of the women were hesitate to approach this Act because of the trauma of the social norms and cultural things. The elders who were aware of the health of the women were pressurising them to get pregnant.

The other comprehensive part in the challenge was the unintended pregnancy, which acts as the major barrier for the access of the Act. The below mentioned things were the consequences of unintended pregnancy

(a) Death and illness of women during the delivery time as well as the termination of pregnancy because of the lack of awareness about the pregnancy.

(b)It affects the newborn child's health and results in suffering from legal vulnerability - various psychological and emotional distress and it becomes a socio-economic burden.

### **Social stigmas over abortion in india**

The right to abortion in India is still under-utilised, not only due to a lack of awareness of the right but also societal prejudice against it, particularly in cases of premarital and minor pregnancy, which pushes women to face judgment and discrimination. This disproportionately impacts the lives of unmarried women and forces them to seek unsafe abortion services, placing a psychological strain on them and making it difficult to take an appropriate decision regarding their reproductive health. These social stigmas, which primarily affect individual privacy, act as a serious obstacle to legal abortion.<sup>6</sup> According to statistics from 2009-2014, there was a nearly 50% rise in unintentional pregnancies, of which 49% involved teenagers. In India, even though termination of unmarried pregnancy is permitted and legal under the Medical Termination of Pregnancy Act, 2021, in-situations like rape and incest, ultimately, the decision is in the hands of a registered medical practitioner or the medical boards. And in reality, when a woman visits a clinic for abortion, she is often

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<sup>6</sup>Rajshree Dayanand Katke et al., Rising Incidence of Unwed Mothers in India; Associated Social Parameters & Institutional Guidelines for Managing Them, 3 Int'l J. Reprod. Contracept. Obstet. Gynecol. 942 (2014), [https://www.researchgate.net/publication/269463889\\_Rising\\_incidence\\_of\\_unwed\\_mothers\\_in\\_India\\_associated\\_social\\_parameters\\_institutional\\_guidelines\\_for\\_managing\\_them](https://www.researchgate.net/publication/269463889_Rising_incidence_of_unwed_mothers_in_India_associated_social_parameters_institutional_guidelines_for_managing_them).

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asked for her partner's consent, which pushes her towards unsafe abortion due to fear of social stigmas.

### **Role of medical board and its critical examination**

India's Medical Termination of Pregnancy (MTP) Act, 1971, has been a cornerstone in protecting women's reproductive rights. A key aspect of this law is the involvement of Medical Boards, which play a vital role in ensuring safe and legal abortion practices. These boards are responsible for evaluating medical necessity, preventing misuse, and upholding healthcare standards. Let us explore the Medical Board's responsibilities, challenges, and impact under the MTP Act. This Act emphasises every state government and union territory have to set up the medical board for the procedure to be taken and followed. As section 6 of this Act requires, the composition of the board includes Gynaecologist, paediatrician, Radiologist & Sinologist and other members notified by the state government or union territory<sup>7</sup>. The board has function as per the section 3 (2)(b) - the eligibility criteria for women for the termination of pregnancy. The main purpose for the formulation of this board - to provide opinion in critical cases where the women as well as the fetal abnormalities and ensuring safe and effective measures for time barred cases.

- (a) To uphold the dignity of the pregnant women without any disclosure of the identity.
- (b) For the special categories like rape victim, minor, women with disabilities and so on.
- (c) On the basis of the opinion given by the board, the consequent measures can be taken.

Furthermore, the examination of the pregnant women can sometimes be critical, which has been the challenge for the implementation and availability of the eligible board members i.e. gynaecologist and like experts, which acts as a major drawback for effective access to the abortion measures. Rural parts of India were struck between the availability of the experts and eligible medical practitioner which were estimated over 68.76% -98%.<sup>8</sup>

### **Judicial perspective on abortion**

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<sup>7</sup>D.C. Code § 29-406.25 (2024), <https://code.dccouncil.gov/us/dc/council/code/sections/29-406.25> (last visited Mar. 14, 2026) (authorizing nonprofit boards to create committees and delegate certain powers subject to statutory limits).

<sup>8</sup>Sabah Virani, Medical Boards to Approve Abortions Are Impractical and Draconian, Say Experts, 101Reporters (Feb. 21, 2021), [https://101reporters.com/article/Health/Medical\\_boards\\_to\\_approve\\_abortions\\_are\\_impractical\\_and\\_draconian\\_say\\_experts](https://101reporters.com/article/Health/Medical_boards_to_approve_abortions_are_impractical_and_draconian_say_experts)

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India's judiciary has played a pivotal role in shaping abortion laws, balancing women's rights with societal and foetal interests. From landmark judgments to recent rulings, courts have navigated complex issues, influencing access to safe abortion services. Let's explore the judicial perspective on abortion in India, highlighting key decisions and their impact on women's healthcare. As per Article 21 of the Indian constitution, the right to life and personal liberty the right to live with dignity, respect along with some privacy. The judiciary had interpret the Article 21 to harmonize between the reproductive autonomy of the women and personal liberty. Here some cases were the provisions of the Medical Termination of Pregnancy Act 1971 and amended Act 2021 were interpreted by the Indian judiciary as follows

1. The 2009 case of *Suchita Srivastava & Another vs Chandigarh Administration* saw the court rule that reproductive choice is part of Article 21's right to life and personal freedom<sup>9</sup>. This right, though, is governed by the Medical Termination of Pregnancy Act, 1971
2. In 2026 *ABC v. State of Maharashtra and Anr* 2026:BHC-AS:6245-DB the Bombay High court held that the termination of pregnancy availed to the unmarried women upto 24 weeks despite of the marital status for unintended pregnancy and the state should recognise the right because the reproductive autonomy and dignity were inferred under the constitutional provisions Article 21.<sup>10</sup>
3. On the basis of care of the women as well as foetus health the time period for the termination of pregnancy have to be expanded for effective access of measures under the Act were held in the case of *Meera santhosh pal vs union of India* (2017) and this case also ensure about bodily depend time extension.<sup>11</sup>
4. Again the Article 21 were enlarged it's emphasis over the reproductive decision should be fall under the category of privacy, dignity, and bodily integrity were held in famous Justice *K.S Puttaswamy vs Union of India*.<sup>12</sup>

<sup>9</sup> *Suchita Srivastava & Anr. V. Chandigarh Administration*, (2009) 9 S.C.C. 1 (India), available at <https://privacylibrary.ccgmlud.org/case/suchita-srivastava-vs-chandigarh-administration>

<sup>10</sup> *ABC v. State of Maharashtra through Principal Sec'y, Public Health Dep't, Writ Petition No. 9782 of 2022* (Bom. H.C. Jan. 29, 2026), available at <https://www.casemine.com/judgement/in/6988e493bab7316bf970d897> (last visited Mar. 14, 2026).

<sup>11</sup> *Meera Santosh Pal v. Union of India*, Writ Petition (Civil) No. 17 of 2017, Supreme Court of India, decided Jan. 16, 2017, <https://www.casemine.com/judgement/in/58823c5653bee708faae50b5>

<sup>12</sup> *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 S.C.C. 1 (India), available at <https://indiankanoon.org/doc/123985596> (last visited Mar. 14, 2026)

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5. X vs Principal secretary, Health & Family welfare Department, Government of NCT of Delhi (2022 SCC Online SC 1321) <sup>13</sup> was the landmark case which push some alteration to be made in the regarding the following 1 In this case the court has dismantled the difference between the access of abortion by married and unmarried women 2. Extension for the time period for the termination of pregnancy from 20-24 weeks 3. One of the significant held portion was The inclusion of marital rape under the definition of rape which was punishable.

### Conclusion

Hereby we conclude this article with some suggestions for the pathways to be improved for the access of abortion in India. The first aspect for this suggestion was to be confidentiality—since there was a regarding an abortion process to be done, many women were hesitant and afraid about the spreading of the news among the people. So the process and procedures for medical termination of pregnancy should be more confidential. Then the next factor was the campaign and awareness with the people to follow the instructions as per the Medical Termination of Pregnancy Act 2021 rather than being stuck in the unauthorized access and illegal process. The suggestions were followed by the most significant thing. i.e., telemedicine service—In the smart world with technology, the medical care after the abortion process is done and the supply of medicine is done through communication. Comprehensive coverage all over India - The essence of the provisions of the Act is to be taken to every corner of the country. Post-care and referral system - There were still people who were ambiguous about the utility of process abortion under the act, so a specific system for the clearance of the ambiguity and proper care should be taken after the abortion is done for the people.

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<sup>13</sup>X v. Principal Sec'y, Health & Family Welfare Dep't, Gov't of NCT of Delhi, Civil Appeal No. 5802 of 2022 (S.C. Sept. 29, 2022), available at <https://indiankanoon.org/doc/123985596> (last visited Mar. 14, 2026).

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