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Abortion: Right to Reproductive Health

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ABSTRACT

The approximate count of abortions taking place annually in India is about 15.6 million of which maximum are unsafe and end in maternal mortality or morbidities. This situation is attributable to lack of awareness regarding established legal courses of action. Before the 1971 legislation regarding Medical Termination of Pregnancy came into being, every kind of abortion was considered to be a crime under section 312 to 316 of the Indian Penal Code as intentional miscarriage. Considering legitimate exceptions, abortion has taken a legal recourse albeit societal stigma still prevails. Though the Medical Termination of Pregnancy Act, 2021 is comprehensive and has bolstered abortion rights in India, still there is a lacuna in the medical care services. This research paper aims at the analytical study of abortion laws in India and postulate suggestions for the refinement of the law to strengthen women's right to reproductive health.

Keywords: *Abortion, Medical Termination of Pregnancy, Comprehensive Abortion Care, Societal stigma, Right to reproductive health.*

I. INTRODUCTION

"No woman can call herself free until she can choose consciously whether she will or will not be a mother."—Margaret Sanger

The delicate issue of women's freedom reflects the plight of women in the society making it a gigantic task for lawmakers to ensure that the foundational principles of the Indian Constitution- equality and liberty are preserved and the soul of the constitution is kept alive. The issue of abortion is overshadowed by the obtrusive questions of morality, ethics and religious beliefs. As soon as a woman decides to practice her reproductive right of abortion, the prying eyes of the society and the irresolute law leads to the hara-kiri of the principles of equality and liberty. When the Medical Termination of pregnancy Act was first enacted in 1971, it was largely modeled on the Abortion act, 1967 of The United Kingdom. Presently, the Medical Termination of pregnancy Act 2021 is in force which lays down legal procedure for abortion only if specified conditions are met but there still remains the need for a comprehensive law. Under the Indian Penal Code, 1860, abortion is a crime for both the woman and the doctor, except to save the

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woman's life. Section 312[3] criminalises abortion, making any person liable for causing the miscarriage of a woman with an unborn fetus (including the pregnant woman herself), except in circumstances in which the procedure is done in good faith in order to save the woman's life. Such provisions in criminal law may be required to address situations where a woman's pregnancy is terminated due to intentional bodily harm or medical negligence. However, by failing to make a distinction between the termination of wanted and unwanted pregnancies, the law makes it extremely challenging for women to access safe abortion services at will.

(A) What is Abortion?

- The World Health Organization (WHO) defines abortion as "pregnancy termination prior to 20 weeks' gestation. Generally, abortion is a term that refers to the termination of a pregnancy, whether it occurs with medical intervention such as medications or surgical procedures or whether it occurs on its own, such as a miscarriage."
- The Centers for Disease Control (CDC) defines a legally induced abortion "as an intervention performed by a licensed clinician (e.g., a physician, nurse-midwife, nurse practitioner, physician assistant) within the limits of state regulations that is intended to terminate a suspected or known ongoing intrauterine pregnancy and that does not result in a live birth."

II. SOCIETAL STIGMA

Abortion is so stigmatised in our society that it appears that the stigma is 'transferable,' in the sense that everyone who knows a female who has had an abortion will be stigmatised as well. The term "abortion stigma" refers to the widespread belief that abortion is morally wrong and/or socially unacceptable. It manifests itself in the form of negative attitudes and behaviour toward everything related to abortion. Women who seek abortions or have abortions, as well as abortion providers and others involved in abortion care, all feel inferior. People seeking abortions are ridiculed, shamed, marginalised, and sometimes even penalised as a result of abortion stigma which prevents them from receiving safe health care treatments.[4]

Abortion has been practised for as long as society has existed. Despite the fact that millions of women get abortions each year, societal stigma still exists. The practise of abortion is seen differently by different religions. Hinduism is generally opposed to abortion except where it is necessary to save the mother's life. Classical Hindu texts are strongly opposed to abortion: one

[3] Indian Penal Code, 1860, § 312.
[4] Partnership, A.S.A. (2019) *Why we need to get rid of abortion stigma: #AbortionMeraHaq*, FEMINISM IN INDIA. (April, 8, 2022, 10:05 AM), https://feminisminindia.com/2019/05/09/abortion-stigma-india/.

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text compares abortion to the killing of a priest; another text considers abortion a worse sin than killing one's parents; another text says that a woman who aborts her child will lose her caste. Traditional Hinduism and many modern Hindus also see abortion as a breach of the duty to produce children in order to continue the family and produce new members of society. Many Hindus regard the production of offspring as a 'public duty', not simply an 'individual expression of personal choice'.[5] Muslims regard abortion as wrong and haram (forbidden), but many accept that it may be permitted in certain cases. Some schools of Muslim law permit abortion in the first 16 weeks of pregnancy, while others only permit it in the first 7 weeks. However, even those scholars who would permit early abortion in certain cases still regard abortion as wrong, but do not regard it as a punishable wrong. The more advanced the pregnancy, the greater the wrong. Most Muslim scholars would say that a fetus in the womb is recognised and protected by Islam as a human life.[6] Some Christians, including many Roman Catholics and Orthodox Christians, believe that abortion is morally wrong because of their belief that human life begins at conception. They may make an exception if an abortion is essential in order to save the life of the mother (the 'principle of double effect'), assuming all efforts have been made to save the fetus.[7]

III. HISTORICAL BACKGROUND OF ABORTION LAWS IN INDIA

Abortion law in India, which was governed by the Indian Penal Code of 1862 and the Code of Criminal Procedure of 1898 until 1971, has its roots in 19th-century British law, which made abortion a crime punishable for both the mother and the abortionist unless it was performed to save the woman's life. Consequently, after taking into account the legal developments taking place around the world in regards to the liberalisation of the medical termination of pregnancy, the Shantilal Shah Committee analysed the concept of abortion from various socio-cultural, legal and medical perspectives. The committee recommended legalising abortion to prevent maternal morbidity and mortality on compassionate and medical grounds.. The committee submitted a comprehensive report suggesting various situations justifying legal termination of pregnancy. It was of the view that this should be allowed not only for saving the life of the pregnant woman, but also to avoid grave injury to her physical or mental health.[8] As a result of

[5] *Religions - hinduism: Abortion* (2009) BBC (March, 25, 2022, 11:42 AM), https://www.bbc.co.uk/religion/religions/hinduism/hinduethics/abortion_1.shtml.

[6] *Religions - islam: Abortion* (2009) BBC (March, 25, 2022, 11: 50 AM), https://www.bbc.co.uk/religion/religions/islam/islamethics/abortion_1.shtml.

[7] *Arguments for and against abortion - matters of life and death: Abortion and euthanasia - CCEA - GCSE religious studies revision - CCEA - BBC bitesize* BBC News (March, 25, 2022, 12:00 PM), https://www.bbc.co.uk/bitesize/guides/zhbqf4j/revision/4.

[8] Indulia, B. *et al.* (2021) *Women and the law: An analysis on the medical termination of pregnancy law in India vis-à-vis the medical termination of Pregnancy Act, 1971 and the Medical Termination of Pregnancy (Amendment)*

this humanitarian proposal, the MTP Act, 1971 which was substantially modelled after the United Kingdom's Abortion Act of 1967, was introduced in Parliament in 1970, which was eventually passed in August 1971 and came into operation on April 01, 1972.[9] The Medical Termination of Pregnancy Act, 1971 is a piece of legislation enacted with an objective of regulating termination of pregnancies by registered medical practitioners.[10] With a landmark move to provide universal reproductive health services, India amended the MTP Act 1971 to enhance women empowerment by providing comprehensive abortion care for all. The new Medical Termination of Pregnancy (amendment) Act of 2021 extends access to safe and legal abortion services for medical, eugenic, human and social reasons to ensure universal access to comprehensive care.[11]

IV. MEDICAL TERMINATION OF PREGNANCY (AMENDMENT) ACT, 2021

The Medical Termination (Amendment) Act of 2021 amends the 1971 MTPA by increasing the upper limit of abortions for certain scenario from 20 weeks to 24 weeks. The amendment raises the upper gestational limit for certain groups of women, which is described in MTPA 2021, from 20 weeks to 24 weeks under Section 3(2c & d). The amendment also replaced the words 'married woman and her husband' with 'woman and her partner.' This step has been taken to reduce stigma that is attached to the abortion of pregnancy amongst unmarried woman. According to Rule 3B of the MTP Rules, 2021, women eligible for MTP up to 24 weeks are:

1. Survivors of sexual assault or rape or incest;
2. Minors;
3. Change of marital status during the ongoing pregnancy (widowhood and divorce);
4. Women with physical disabilities;
5. Mentally ill women including mental retardation;
6. The fetal malformation;
7. Women with pregnancy in humanitarian settings or disaster or emergency situations as may be declared by the Government.

Bill, 2020, SCC BLOG (Mar. 25, 2022, 4:38 PM), https://www.scconline.com/blog/post/2021/01/09/women-and-the-law-an-analysis-on-the-medical-termination-of-pregnancy-law-in-india-vis-a-vis-the-medical-termination-of-pregnancy-act-1971-and-the-medical-termination-of-pregnancy-amendment-bill/#_ftn15.

[9] Ambika Gupta, *A critical analysis of the shortcomings under the MTP (Amendment) Act, 2021*, 1, VULL, 86, 89 (2021).

[10] Aparna S., *The Medical Termination of Pregnancy Act, 1972- A Critical Analysis*, 9, CNLU, 174, 175 (2020).

[11] Drishti IAS (2021) *Medical termination of pregnancy (MTP) amendment act, 2021*, DRISHTI IAS *(March, 28, 2023, 4:30 PM),* https://www.drishtiias.com/daily-updates/daily-news-analysis/medical-termination-of-pregnancy-mtp-amendment-act-2021.

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When the length of pregnancy exceeds 20 weeks but not 24 weeks, the woman has to consult at least 2 registered medical practitioners whose opinion should be formed in good faith that (I) if the pregnancy is not terminated, it would pose grave risk to the life of the pregnant woman; (II) if there is a risk of child being born with mental or physical abnormalities.

What constitutes grave injury to mental health:

- Pregnancy caused by the failure of contraceptive devices may cause grave injury to the mental health of the pregnant woman.
- The continuance of pregnancy caused by rape traumatises the victim and may cause grave injury to the mental health of the pregnant woman.

When the length of the pregnancy exceeds 24 weeks then, the state government or union territory as the case may be, constitutes a 'Medical Board' which consist of a gynecologist, a pediatrician, a radiologist or a sonologist or any other member notified by the state government in the official gazette (section 3(2)(d)). Thereafter, the constituted medical board looks into the nitty-gritties of the case and if substantial fetal abnormalities are suspected then the abortion is allowed.

Rule 3A of the MTP Rules, 2021 defines the power of above mentioned Medical Board:

1. To allow or deny MTP beyond 24 weeks and to ensure whether MTP is safe at that gestational stage and analyze substantial risk of the abortion being incompatible with life of fetus.
2. Co-opt other specialists on the board.

Functions of the Medical Board:

1.The board has to examine the pregnant woman and her reports.

2.It has to provide its opinion in Form D.

3.It has to make sure that MTP occurs after all the safety precautions have been taken care off and the woman has been apprised of the details of the treatment through proper counseling. This has to be done within five days of receipt of request.

Place of MTP (section 4): A safe place for MTP may be a hospital established or maintained by government or to be approved by government or a district level committee (Form A & B). The district level committee consists of the Chief Medical Officer or District Health Officer as the chairperson. The committee and not less than three and not more than five members including the Chairperson as the government may specify from time to time.

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Confidentiality (section 5A): The "name and other particulars of a woman whose pregnancy has been terminated shall not be revealed", except to a person authorized in any law that is currently in force. The breach of this rule may result in one year imprisonment, fine or both.

Requirements for safe abortions as mentioned in the act:

1St Trimester: A gynecology examination/labor table, resuscitation and sterilization equipment, drugs and parental fluids, backup facilities for treatment of shock and facilities for transportation.

2nd Trimester: An operation table and instruments for performing abdominal or gynecological surgery, anesthetic equipment, resuscitation equipment and sterilization equipment, drugs and parental fluids for emergency use, notified by Government of India from time to time.

Beyond 24 weeks: An operation table and instruments for performing abdominal or gynecological surgery, anesthetic equipment, resuscitation equipment, sterilization equipment, drugs and parental fluids, blood for emergency use, as may be notified the Central Government form time to time and facilities for procedure under ultrasound guidance.

MTP must be conducted by a Registered Medical Practitioner which means a medical practitioner who possesses any recognized medical qualification as defined in clause (h) of section 2 of the Indian Medical Council Act, 1956[12], whose name has been entered in a State Medical Register and who has such experience or training in gynecology and obstetrics as may be prescribed by rules made under this act.

(A) MTP Act, 1971 vs MTP Act, 2021

Basis of difference	MTP Act 1971	MTP Amendment Act 2021
Indications (contraceptive failure)	Only applies to married women	Unmarried women are also covered
Gestational age limit	20 weeks for all indications	24 weeks for rape survivors. Beyond 24 weeks for substantial fetal abnormalities.

[12] Indian Medical Council Act, 1956, § 2(h).

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Medical Practitioner Opinions required before termination	One Registered Medical Practitioner till 12 weeks. Two Registered Medical Practitioners till 20 weeks.	One Registered Medical Practitioner till 20 weeks. Two Registered Medical Practitioners for 20 to 24 weeks. Medical Board approval after 24 weeks.
Breach of the women's confidentiality	Fine up to Rs. 1000	Fine and/or imprisonment of 1 year

V. UNSAFE ABORTIONS

Prior to the enactment of the MTP Act, approximately 5 million termination of pregnancies were performed annually in India of which 3 million were illegal. It is estimated that about 1 in 7 pregnant women in India every year resort to unsafe abortions performed by unskilled doctors and / or paramedics, such as nurses, midwives who do not have the necessary knowledge and this has led to higher morbidity and mortality for pregnant women and their babies.

WHO defines unsafe abortion as "a procedure for terminating an unintended pregnancy carried out either by persons lacking the necessary skills or in an environment that does not conform to minimal medical standards, or both."[13]

Every year, over 5 million women are admitted to hospitals around the world for treatment of abortion-related complications such as bleeding and infection, while abortion-related fatalities leave 220,000 children without a mother. Hemorrhage, infection, sepsis, genital damage, and necrotic intestines are the most common causes of death from improper abortion. Poor wound healing, infertility, repercussions of internal organ injury (urinary and stool incontinence from vesicovaginal or rectovaginal fistulas), and bowel resections are among the recorded nonfatal long-term health effects. Loss of productivity and psychologic harm are two more unquantifiable outcomes of unsafe abortion. The burden of unsafe abortion is shared by women and their families, as well as the public health system. Blood supplies, antibiotics, oxytocics, anesthesia, operating rooms, and surgical specialists may be required for every woman admitted for emergency post abortion treatment. Emergency care's financial and logistical costs can

[13] Haddad, Lisa B, and Nawal M Nour. *"Unsafe abortion: unnecessary maternal mortality."* 2,2, REVIEWS IN OBSTETRICS & GYNECOLOGY, 122, 122 (2009).

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overload a health system, preventing attention from being given to other patients.[14]

Various contributing factors to the alarming rate of unsafe abortions in India are as follows:

1.**Societal stigma:** People in society consider practice of abortion as a blot on one's escutcheon. Most people say they had negative attitude towards abortion or women seeking abortion. For example, a woman seeking help before having an abortion is looked down upon and considered as "irresponsible" or "immoral", while some call abortion a "sin" or "crime."

2.**Ignorance regarding abortion law:** Cognizance of the existing abortion law in India is limited due to which people sought unsafe methods for termination of pregnancy. Awareness of women's legal rights can influence their healthcare seeking behaviors and their ability to access safe legal providers in both abortion-restricted and non-abortion-restricted settings. A misunderstanding of the law can affect how women enter the health system or find services, and can contribute to discrepancies between official laws and law enforcement agencies that affect women's access to safe and legal abortion services.

3.**Unavailability of trained professionals for carrying out safe abortions:** The qualifications required for a doctor to be eligible to carry out abortion are quite high. Such highly educated and trained professionals are scarce in the Indian medical fraternity. When the ill-trained doctors perform such complex termination of pregnancy, a high mortality rate is inevitable.

4.**Lack of required medical apparatus:** Funds allocated for the medical infrastructure are insufficient. The high quality equipment required for termination of pregnancy are unavailable especially in the remote areas. Due to under supply of superior paraphernalia, the medical practitioners are forced to use inferior apparatus which leads to post abortion complications.

5.**Lack of financial resources:** The high end facilities are expensive and hence unaffordable by the majority which compels them to resort to the cheaper ways to get rid of their unwanted pregnancy which results in adverse consequences for both the mother and the child.

VI. RIGHT TO REPRODUCTIVE HEALTH

A remarkable observation made by Justice D.Y. Chandrachud in K.S. Puttaswamy v. Union of India, merits mention here:

“The best decisions on how life should be lived are entrusted to the individual. They are continuously shaped by the social milieu in which individuals exist. The duty of the state is to safeguard the ability to make decisions - the autonomy of the individual - and not to dictate

[14] *Id.* at 123.

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those decisions."[15]

A woman's right to make reproductive choices is also a dimension of personal liberty as understood under Art. 21 of the Constitution of India. "It is important to recognise that reproductive choices can be exercised to procreate as well as to abstain from procreating."[16] In Sarmishtha Chakrabortty v. Union of India, the Hon'ble Supreme Court observed that: "The right of a woman to have reproductive choice is an integral part of her personal liberty, as envisaged under Art. 21 of the Constitution. She has a sacrosanct right to have her bodily integrity."[17]

Another question that deters a woman seeking abortion is the question of rights of fetus. It is pertinent to note that a fetus cannot be put on a higher pedestal than a living woman. "According to international human rights law, a person is vested with human rights only at birth; an unborn fetus is not an entity with human rights." In Santhi v. State of Kerala,[18] it was observed that "by no stretch of imagination can a fetus be equated as a person." The concept of personhood is hence not conferred on a fetus despite the life being there from the moment of conception. It was also categorically laid down that the constitutional 'right to life' cannot be claimed at the fetal stage of life.

Women's reproductive rights are also asserted in the international committee named The Committee on Economic, Social and Cultural rights which acknowledges that the right to sexual and reproductive health includes "the right to make free and responsible decisions and choices, free of violence, coercion and discrimination, regarding matters concerning one's body and sexual and reproductive health."[19]

VII. COMPREHENSIVE ABORTION CARE

Unsafe abortion-related deaths and injuries continue to be a severe public health issue that affects families and entire communities. Making pregnancy safer entails providing or referring women to safe abortion services to the extent permitted by legislation, as well as early and proper management of unsafe and spontaneous abortions for all women. The WHO published technical recommendations in 2003 to develop the capacity of health systems to deliver safe abortion care (SAC) and post abortion care, in order to assist governments, planners, and service

[15] K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.
[16] Sucheta Srivastav v. Chandigarh Admn., (2009) 9 SCC 1.
[17] Sarmishtha Chakrabortty v. Union of India, (2018) 13 SCC 339.
[18] Santhi v. State of Kerala, 2017 SCC OnLine Ker 14293.
[19] *General comment no. 22 (2016) on the right to sexual and reproductive …* UNESC (April, 22, 2023, 5:56 PM), https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmlBEDzFEovLCuW1a0Szab0oXTdImnsJZZVQfQejF41Tob4CvIjeTiAP6sGFQktiae1vlbbOAekmaOwDOWsUe7N8TLm%2BP3HJPzxjHySkUoHMavD%2Fpyfcp3Ylzg.

providers in implementing their commitments to women's health and rights (PAC).[20] PAC is a five-part global approach to reduce death and suffering caused by the complications of unsafe and spontaneous abortion which are as follows:

- **Treatment** for partial and unsafe abortions, as well as potentially life-threatening consequences.
- **Counseling** to identify and address the emotional and physical health needs as well as other concerns of women.
- **Contraception and family planning services** are available to assist women in avoiding an unplanned pregnancy or spacing their children's births.
- **Reproductive and other health services** that are best delivered on-site or through referrals to other nearby facilities in the provider's network.
- **Partnerships between the community and service providers** to avoid unplanned pregnancies and unsafe abortions, mobilise resources (to help women receive adequate and timely care for abortion-related complications), and ensure that health services reflect and satisfy community expectations and needs.

All of the features of PAC, as well as safe induced abortion for all legal indications, are included in comprehensive abortion care (CAC) (i.e. as allowed by national law). All of these factors contribute to lower maternal mortality rates.

Patients, service providers, and support workers may become infected as a result of contact with pollutants, as with any invasive operation. Standard precautions must be followed at all times to reduce the risk. These include the use of appropriate barriers (such as gloves and masks), careful waste processing, and injury prevention measures. Iatrogenic infection can be avoided by utilising normal precautions, aseptic techniques, and ruling out or treating cervical infection before transcervical surgeries.[21]

Complications with uterine evacuation operations are conceivable, but they must be dealt with immediately by experienced professionals. Serious problems are extremely rare, however all patients should be followed up on because there is a minor chance of infection or hemorrhage. Ensure that women have access to emergency care at all times while undergoing treatment. Stabilize the woman's condition before referring her to a higher-level referral service if she

[20] *7 comprehensive abortion care - national center for biotechnology ...* NIH (April, 22, 2023, 6: 23 PM), https://www.ncbi.nlm.nih.gov/books/NBK305158/.
[21] *Id.*

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requires treatment beyond the capabilities of the facility where she is seen.[22]

After the surgery, women should be provided advice on how to care for themselves. The indications and symptoms of a normal recovery, as well as the signs and symptoms of possible problems that require rapid treatment, should be explained by service providers. They should also provide comprehensive information on post-abortion contraception and sexually transmitted infection protection. A follow-up visit should be planned in 10 to 14 days.[23]

VIII. LOOPHOLES IN MEDICAL TERMINATION OF PREGNANCY (AMENDMENT) ACT, 2021

Abortion is not simply a medico-technical issue however a fulcrum of a broader ideological warfare wherein the very which means of the circle of relatives, the nation, motherhood, and girls' sexuality are contested. Though the Medical Termination of Pregnancy (amendment) act 2020 has done away with a few stumbling blocks troubling women to pursue termination of pregnancy legally, yet some stones are left unturned because of the lacuna in the law itself.

Some of the loopholes are discussed below:

1. Excessive interference by Medical Practitioners: The lack of proper implementation of the MTP Act with respect to the rights of mentally healthy adult women is due to a flaw in the legal structure itself. The law provides room for negotiation between doctors and patients, who have the right to make judgments about the urgency or necessity of an abortion based on non-medical factors, including various socio-economic decisions. An abortion decision is one of the few treatments in which a doctor can reject a patient for purely non-medical reasons.[24] Despite the recent amendments in the Medical Termination of Pregnancy Act, the ultimate decision making power does not lie with the women because of involvement of many intermediaries for the purpose of giving consent.

2. Dearth of Medical Personnel: Recent amendments require that abortion to be carried out only by physicians with gynecology or obstetrics specialization. Contrary to the World Health Organization (WHO) recommendation of 1: 1000, India has one government doctor for 10,189 people. In addition, All-India Rural Health Statistics (2018-19) shows that there are a total of 1,351 gynecologists and obstetricians in public health clinics in rural areas. Such a shortage of trained medical professionals limits women's access to safe abortion services and is reflected in

[22] *Id.*
[23] *Id.*
[24] Saumya Maheshwari, *Reproductive Autonomy in India*, 11 NSLR, 27, 47, (2017).

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National Health and Family Survey 4 (2015 - 16) data. NHFS 4 data showed that 47% of abortions in India were performed by nurses or assisted nurses (ANM), or Lady Health Visitor (LHV), Dai, or family members.[25]

3. Increasing cost for the underprivileged: The 2003 provisions of the MTP Rules were amended to allow conditionally authorized providers outside the registered areas to provide medical abortion services (MA) for up to seven weeks, provided that 81% of abortions in India are performed using Medical Abortion. Medical abortion is a safe and uncomplicated method in which prescribed drugs are used to prevent pregnancy. However, due to a lack of regulatory framework and inadequate public health care facilities, more abortions are sought in the private sector leading to increased costs for disadvantaged groups.[26]

4. Delay in decision making: The need for judicial approval to terminate a pregnancy for medical reasons takes a lot of time because the act does not put any time restrictions within which the decision should be made by the court or the medical board. This creates unnecessary delays and defeats the purpose. Even if it is risky to abort a pregnancy at this stage, it is ultimately up to the woman whether or not to continue the pregnancy. This loophole can lead to unfavourable circumstances like that which arose in Ms. Z v. State of Bihar, where the maximum termination limit of 24 weeks was exceeded by a rape victim due to a delay in approval on the part of the medical board.[27]

5. Overlap with POCSO Act: In cases of childbearing, doctors are often caught in a conflict between the MTP Act and the POCSO Act. On one hand, the privacy policy of the MTP Act instructs physicians to protect personal identity of the woman, and on the other hand, the POCSO Act and the Criminal Procedure Code (CrPC) require mandatory reporting of child sexual offenses. Some doctors say that mature adolescents who choose to indulge in consensual sexual relationship should not be punished. The state should protect the right to safe and legal abortions for girls between the ages of 16 and 18 who suffer from accidental pregnancies and infections. Although the purpose of the MTP Act and the POSCO Act is very different, there are areas where they converge, which is why consensual sex between adolescents should not be criminalised. In a recent petition seeking the consolidation of the juvenile delinquency, the Supreme Court observed that open-minded provision could be induced in POCSO cases to

[25] *Why amendments to medical termination of pregnancy bill don't go far enough* THE WIRE (April, 18, 2023, 4:32 PM), https://thewire.in/health/medical-termination-of-pregnancy-amendment-bill-women-abortions.
[26] *Id.*
[27] Sheikh, S.R. and S. (2021) *Amended pregnancy termination act is progressive – but warrants a revisit*, THE WIRE SCIENCE (April, 18, 2023, 3:45) https://science.thewire.in/law/amended-pregnancy-termination-act-is-progressive-but-warrants-a-revisit/.

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separate teenage consensual sexual relationships after 16 years from sexual harassment of teenagers.[28]

6. Lack of autonomy for minor girls: A minor girl, determined to have an abortion, may not be allowed to do so, and she may be forced to carry it until the guardian does not give consent to get an abortion. Such a denial of consent has inevitable consequences for the young child. On the other hand a minor girl, who does not want to abort, may be forced to have an abortion by her guardian. The husband of a young married girl is considered her guardian.[29] When a married girl seeks an abortion, the requirement to obtain caregiver consent is equal to the consent of the spouse, and as a result, is a major obstacle to the abortion process. In a society where women 's sexuality is monitored, and premarital pregnancy leads to social exclusion, it is unlikely that any decision made by parents about a young girl will be neutral with best interests at heart. The rationale behind not giving minors the right to consent is that they are considered incapable to make sound legal decisions. It is argued that the decision to have an abortion is fundamentally different from any other medical decisions and therefore deserves special attention. Abortion decisions are fundamentally different from other types of medical decisions because the minor's parents have a vested interest in the pregnancy by allowing or prohibiting the abortion and also because this decision is extremely time sensitive.[30]

7. Forced continuation of unwanted pregnancy: It is of paramount importance to end the current upper gestational limit where the pregnancy can not be legally terminated if the conditions proposed by the Act exists. There should be no restriction on medical abortion, if the fetus has a serious problem or if the continuation of the pregnancy is detrimental to the mother's physical or mental health. However, a 24-week limit to terminate a pregnancy in some cases which has been provided under the amendment act appears to be reasonable. But if a woman feels that she is not in a position to bear the responsibility of a child in her life, then that in itself should be a sufficient reason to terminate the pregnancy. Continuation of unwanted pregnancy, in itself, is detrimental to a woman's mental health.

IX. WAY FORWARD

1. Educating young women: In a study conducted on young unmarried women seeking maternal healthcare services, it was found that only 22% of respondents were aware that unmarried women can legally abort their pregnancy. Moreover, women were more likely to be aware of this if they had a high school education rather than less education. Medical

[28] THE WIRE, *supra* note 23.
[29] Hindu Guardians and Wards Act, 1956, § 6(c).
[30] supra note 22, at 43.

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professionals also need to be informed of the needs of special patient groups, such as adolescents, and their lack of knowledge about sexuality and contraception, the difficulties they face when talking to adults about such issues and their financial problems, leading to delays in seeking care. It is imperative that the state makes unfeigned efforts to spread awareness about women's right to make freestanding and unrestrained reproductive choices.

2. Widen scope of legal abortion providers: India has a "physician only" abortion law by default. The number of providers could be significantly increased by amending the law to allow medical practitioners with a bachelor's degree in Unani, Ayurveda or homeopathy to perform abortions. Moreover, allowing AYUSH health workers to carry out abortions will abridge the gap created due to lack of sufficient qualified medical practitioners.[31]

3. Minimal state interference: Autonomous decisions about women's sexual and reproductive health must be recognized and respected at their core. Considering that the government does not provide prior support for the proper care of children, the proposal for the fetus' right to life should be reconsidered. It is the woman and her family who have to take care of the child, and state control must be kept to a minimum. We must not forget that it is the woman's womb that gives birth to the fetus. It is her body that secretes hormones. This affects her mental and physical health. Therefore, it is up to her to decide whether to continue her pregnancy or abort. Choosing an abortion is exercising a woman's sexual and reproductive rights.[32]

4. Time boundation for medical board: In order for a woman to avail abortion service she has to seek the consent of medical practitioners and in some cases has to wait for the decision of a medical board or a court. Also there is no provision for a time bound decision by such a medical board. This is where judicial activism must come into picture as there is a need to amend the existing law to introduce a specified time limit within which the decision for abortion has to be made by the medical board so that the women does not exceed the point in her pregnancy where abortion becomes fatal.

5. Remove ambiguity around right to privacy: Without a doubt, the 2020 amendment to the MTP Act 1971 did not take into account the women's choice of abortion, instead leaving open the argument over the need-based approach versus the right-based approach, and pro-choice

[31] *13 women die in India every day due to unsafe abortions* (2018) INDIA TODAY (April, 20, 2023, 7: 42 PM), https://www.indiatoday.in/india/story/13-women-die-in-india-every-day-due-to-unsafe-abortions-1296850-2018-07-26.

[32] Sheikh, S.R. and S. (2021) *Amended pregnancy termination act is progressive – but warrants a revisit*, THE WIRE SCEINCE (April, 20, 2023, 8:36 PM), https://science.thewire.in/law/amended-pregnancy-termination-act-is-progressive-but-warrants-a-revisit/.

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versus pro-life. The question is whether we are truly following it in spirit or only in text if we do not provide women with the option of abortion. Furthermore, privacy, as defined by many judgments, is a complex and multifaceted term that extends beyond disclosing a person's identity and encompasses the privacy of choice. As a result, the right to privacy must be defined and reflected in this manner, with limitations, while also balancing other existing fundamental rights.[33]

X. CONCLUSION

In India, the gender equality movement has progressed significantly, and Indian women now have access to services and amenities at par with men in a variety of fields. But no one talks about abortion, and no one wants to think about a woman's autonomy over her body, blaming it on "fetal rights" to hide the more fundamental issue, which is that Indian society still frowns on premarital sex and believes that women who engage in it are unchaste or filthy. This leads to women aborting their pregnancies in secret, which is likely to be damaging.

The problem requires a shift of perspective, the identification of grey zones, and the fortitude to bring the predicament of women to the forefront. A balanced approach is required to ensure that life is lived with dignity. It is past time for us to rise from our slumber, not only to save women's lives and the lives of their children, but also because it is the most valuable and least negotiable right for a woman.

The conditions must be even more flexible than the socio-economic criteria in the MTPA if abortion laws are intended to emancipate women. To ensure the law's success, the Indian government will need to make many more financial provisions. To ensure that the advantages of the law reach all parts of society, large-scale education and communication would be required. Finally, if the MTPA is to succeed, more incentives will need to be provided to both women and doctors to encourage them to have and perform safe abortions.The obstacles to the MTPA's proper implementation are considerable, but they are not insurmountable. Greater governmental and mass-organizational initiatives could, over time, alter the current social atmosphere in India and ensure the procedure's ultimate approval in Indian society.

This research paper has aided in the examination and comprehension of India's abortion regulations and it is hoped that similar work will be done in the future.

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[33] *Id.*

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