

## ABORTION RIGHTS IN INDIA: CONFLICT BETWEEN LAW AND PERSONAL CHOICE

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### ABSTRACT

The debate over abortion rights arose again after the Supreme Court of India recently, in its judgment rejected the plea for abortion of 26 weeks pregnant woman, with two children. A married woman who claimed that she was going under postpartum psychosis, requested the court that she wish to terminate her medical pregnancy, to which the Supreme Court upheld the right to live of an unborn baby. This initiated a debate on PRO-LIFE v. PRO-CHOICE in India. The termination of pregnancy is generally allowed up to 24 weeks for both married and unmarried women on certain grounds given under The Medical Termination of Pregnancy Act, 1971 which was amended in 2021. Though abortion is a criminal offence in India the said Act contains exceptions to this rule. All over the world women are fighting for abortion rights as it is their personal liberty and choice while on the other hand giving abortion rights can mean giving protection to killing a life which will amount to a violation of the rules of natural justice. Now the dilemma is whose fundamental right shall be protected, the Mother or the Unborn Child?

**Keywords:** Abortion, Medical Termination Of Pregnancy, Freedom Of Choice, Pro-Life, Right To Life Of An Unborn Child.

### MEDICAL TERMINATION OF PREGNANCY

Medical Termination of Pregnancy (MTP), also known as abortion, refers to the medical procedure that terminates a pregnancy before the foetus reaches the stage of viability. It is a significant aspect of reproductive healthcare that addresses complex personal, medical, and ethical considerations. MTP allows women to make informed decisions about their bodies, health, and futures. The importance of MTP lies in providing women with the autonomy to choose whether to continue or end a pregnancy based on their circumstances. Reasons for seeking MTP can range from health risks to the mother, fatal abnormalities, contraceptive

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failure, economic factors, or personal choices. By offering safe and legal options for abortion, society recognizes and respects women's right to control their reproductive destinies.<sup>1</sup>

Further, Section 3 of the Medical Termination of Pregnancy (Amendment) Act, 2021, which also covers unmarried women in its ambit unlike the MTP ACT, 1971, provides certain grounds where a pregnancy may be terminated by registered medical practitioners. Some of these grounds are<sup>2</sup>:

1. Where the length of the pregnancy does not exceed twenty weeks and the medical practitioner is of the opinion formed in good faith that the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health; or there is a substantial risk that if the child is born, it would suffer from any serious physical or mental abnormality.

2. Where the length of the pregnancy exceeds twenty weeks but does not exceed twenty-four weeks in case of such category of woman as may be prescribed by rules made under this Act if not less than two registered medical practitioners are of the opinion formed in good faith that the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health; or there is a substantial risk that if the child is born, it would suffer from any serious physical or mental abnormality.

This Act also provides provisions for the confidentiality of such women. It prescribes that the name and other particulars of a woman whose pregnancy has not been terminated shall not be revealed except to a person authorised in any law that is currently in force.<sup>3</sup>

## **ABORTION RIGHTS AND WOMEN'S STRUGGLE FOR IT**

Women have been fighting for the right to make choices about their own bodies for a very long time. Many women and their supporters have protested, written, and spoken up to make sure that women can have safe and legal abortions if they need or want one. It's an important and complex issue that people around the world have different opinions about. Several countries have decriminalized abortion to varying extents. Some countries that had decriminalized abortion depending upon certain grounds or had more liberal abortion laws at that time

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<sup>1</sup> <https://www.medicoverhospitals.in/procedures/medical-termination-of-pregnancy-abortion/>

<sup>2</sup> THE MEDICAL TERMINATION OF PREGNANCY (AMENDMENT) ACT, 2021.

<sup>3</sup> THE MEDICAL TERMINATION OF PREGNANCY (AMENDMENT) ACT, 2021.

included: Canada, The United States (varies by state), France, Germany, South Africa, India, Australia (varies by state), the United Kingdom, Sweden, Norway. There have been several protests over the past years in support of abortion rights.

**Some notable examples of abortion rights protests include:**

- Women's March: The Women's March movement, which began in the United States but has spread to other countries, addresses a wide range of women's issues, including reproductive rights.
- "Ni Una Menos"<sup>4</sup> (Not One Less): This feminist movement in Latin America has protested against gender-based violence and also advocated for women's reproductive rights.
- Pro-choice rallies: Various pro-choice groups and organizations organize rallies and protests to support women's access to abortion services.
- "Repeal the Eighth" campaign in Ireland: This campaign successfully advocated for the repeal of the Eighth Amendment to the Irish Constitution, which had previously restricted access to abortion.
- Protests in Poland: Poland has seen significant protests in response to changes in abortion laws that tightened restrictions on access to abortion.
- Global actions: Women's rights activists have organized global days of action, such as International Safe Abortion Day, to raise awareness and advocate for safe and legal abortion access.

These protests reflect the ongoing global debate over abortion rights, with people both supporting and opposing women's access to abortion services. The nature and scale of these protests can vary widely depending on the political and social context of each country.

**ARGUMENTS OF ANTI-ABORTION RIGHTS ADVOCATES**

Anti-abortion rights activists, often referred to as "pro-life" advocates, have various arguments to support their position. It's important to note that these arguments represent one side of a

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<sup>4</sup> How #NiUnaMenos grew from the streets of Argentina into a regional women's movement by Jaclyn Diaz (<https://www.npr.org/2021/10/15/1043908435/how-niunamenos-grew-from-the-streets-of-argentina-into-a-regional-womens-movemen>)

complex and highly debated issue. Some common arguments made by anti-abortion rights activists include:

**Sanctity of Life:** Many pro-life advocates believe that life begins at conception, and therefore, ending a pregnancy through abortion is morally wrong because it takes a human life.

**Right to Life:** They argue that every human being, including unborn foetuses, has a fundamental right to life, and this right should be protected and upheld.

**Potential for Personhood:** Some pro-life advocates argue that foetuses have the potential to become persons with full rights, and therefore, terminating a pregnancy is equivalent to denying a future person their rights.

**Alternatives:** Anti-abortion activists often emphasize the availability of adoption as an alternative to abortion, suggesting that it allows women to carry the pregnancy to term while providing a child with a loving home.

**Ethical Concerns:** Concerns about the ethical implications of abortion, such as the physical and emotional impact on women, are also brought up as reasons to restrict or oppose abortion.

**Belief-Based Arguments:** Many anti-abortion activists base their views on religious or moral beliefs, asserting that their faith or personal convictions require them to oppose abortion.

**Scientific Definitions:** Some argue that advances in embryology and medical technology have shown that a foetus is a distinct and separate life from the moment of conception, reinforcing their stance against abortion.

It's important to recognize that the abortion debate is highly polarized, with strongly held opinions on both sides. Proponents of abortion rights argue that women should have the autonomy to make choices about their own bodies, while anti-abortion activists emphasize the protection of potential life and moral or ethical principles. Public policy and laws regarding abortion vary widely around the world, reflecting these differing viewpoints.

## **ABORTION RIGHTS IN INDIA**

There have been several judgments that played a crucial role in shaping the legal landscape of abortion rights and regulations in India, some of them are:

Suchita Srivastava v. Chandigarh Administration (2009)<sup>5</sup>: The Supreme Court, in this case, emphasized the need for clear guidelines and standard operating procedures for medical professionals to ensure that women's reproductive rights are not violated. It also highlighted the importance of preserving the mental and physical health of pregnant women.

Nikhil D. Datar v. Union of India (2016)<sup>6</sup>: The Supreme Court considered the issue of abortion beyond 20 weeks of gestation when foetal abnormalities were detected. The court ruled that the 20-week gestational limit for abortion can be extended in cases where the life of the mother is in danger or where there is a substantial risk of the child being born with severe abnormalities.

Devika Biswas v. Union of India (2016)<sup>7</sup>: The Delhi High Court, in this case, emphasized the need for the government to make the public more aware of the existing legal provisions regarding abortion and to ensure that women's reproductive rights are protected.

X v. The Principal Secretary Health and Family Welfare Department & Another<sup>8</sup>: The Supreme Court while delivering a landmark judgement emphasised that in a gender-equal society, it is imperative that the interpretation of the MTP Act and Rules consider current social realities. The court held that every pregnant person in India has a right to reproductive decisional autonomy, including transgender and gender-variant persons. Everyone is entitled to reproductive health, including access to safe, effective, and affordable methods of family planning, access to contraception, and sex education. The Court also acknowledged that the MTP Act is a provider-centric law that does not focus on the rights of pregnant persons. Since the right to access abortion depends on approval from an RMP, denial of services compels women to approach courts or seek abortion in unsafe conditions. RMPs are reluctant to provide abortion services due to fear of prosecution under the IPC, which has a chilling effect on the behaviour of healthcare service providers. Therefore, the Court held that the decision to terminate a pregnancy vest solely with the pregnant person.

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<sup>5</sup> Suchita Srivastava v. Chandigarh Administration (2009) 14 SCR 989, (2009) 9 SCC

<sup>6</sup> Nikhil D. Datar v. Union of India, SLP © 5334 Of 2009

<sup>7</sup> Devika Biswas v. Union of India (2016) 10 SCC 726

<sup>8</sup> X v. The Principal Secretary Health and Family Welfare Department & Another, (2022) 2022 SCC OnLine SC 1321.

Second, the Court expanded the scope of access to abortion services from 20 to 24 weeks, taking note of the factors and circumstances changing the material realities of women and how individuals' unique circumstances cannot be exhaustively accounted for by the law.

Third, the Court clarified that rape as grounds for abortion includes marital rape.

Fourth, the Court empathetically noted that the MTP is a beneficial legislation meant to enable access to abortion services for all pregnant persons. Therefore, the RMPs should offer abortion services without any extra-legal conditions like spousal or family consent, documentation requirement or judicial authorisation.<sup>9</sup>

### **VERDICT OF 26 WEEKS PREGNANCY CASE WHICH AGAIN STARTED THE DEBATE ON PRO-LIFE V. PRO-CHOICE:**

In this case, a married woman with two children, the youngest one was only one year old, filled out a petition seeking directions to be given to respondents for her ongoing medical pregnancy. She claimed that she was unaware of her pregnancy until 20 weeks and she is not psychologically and financially ready for this pregnancy. The Supreme Court in its verdict rejected the plea of a married woman to abort her third pregnancy which has crossed 26-week on the ground that she was suffering from postpartum psychosis after her previous delivery in September 2022. The court also noticed that the pregnancy had crossed 24 weeks, the court stated that permitting the petitioner to carry on with the termination of pregnancy would violate Sections 3 and 5 of the Medical Termination of Pregnancy Act. The Court also noted that there was no immediate threat to the mother and that it was not a case of foetal abnormality. These are the only two exceptions to terminate a pregnancy beyond the outer limit of 24 weeks as per the MTP Act.<sup>10</sup>

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<sup>9</sup> Supreme Court of India judgement on abortion as a fundamental right: breaking new ground by Dipika

Jain(<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10321178/#:~:text=The%20Supreme%20Court%20of%20India's,to%20abortion%20as%20married%20women.>)

<sup>10</sup> 'No immediate threat to mother's life; No foetal Abnormality': Supreme court rejects married woman's plea to abort 26-week pregnancy( live law)

<https://www.google.com/amp/s/www.livelaw.in/amp/top-stories/supreme-court-rejects-married-womans-plea-to-abort-26-week-pregnancy-240265>

The bench clarified that the cost of all medical procedures in the matter would be borne by the State and the petitioner would have the ultimate say on whether she wanted to keep the child upon being born or give it up for adoption.

## CONCLUSION

Both viewpoints regarding medical termination of pregnancy are correct on their side. It is indeed a dilemma to decide whether a mother's right to personal liberty shall be given preference or a child who is still in his mother's womb shall be given preference. While it can not be denied that the unborn child has a fundamental right to live the condition of a mother who is not mentally, physically or financially ready to grow the child, shall not be denied either. In many countries like India, the mental health of a pregnant mother is ignored often. But it is important to consider that a child born in such conditions most probably might end up living in poor conditions or get subjected to unwanted mental abuse. Thus, it is really important to consider the mental state of a pregnant woman in case of allowing medical termination of pregnancy or not. Just because she seems physically fit shall not give others an entitlement to decide whether she shall give birth or not.

