

## THE NEED FOR LIBERALIZING THE REPRODUCTIVE RIGHTS OF WOMEN IN INDIA: ABORTION RIGHTS AND LEGAL FRAMEWORK

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### ABSTRACT

*The Medical Termination of Pregnancy Act, 1971<sup>1</sup> (hereinafter referred to as “MTP Act”), governs the law regarding the termination of pregnancy in the country, and by an amendment in 2021, the horizon of this statute has considerably increased. When it comes to the Reproductive Rights of Women against the Rights of Unborn Child, the parliament is silent as to whose right shall prevail upon the definition of “Unborn Child” and also the Apex Court and High Courts have different points of view in deciding the cases. The Parliament by amending the MTP Act, had tried to create a balance between the Reproductive Rights of Women and the Rights of Unborn Children, however, there exist some lacuna in the Act, which needs to be addressed, to name a few, “What is the definition of Unborn Child, why the Right of Unborn child should prevail over Reproductive Rights of Women, having complete autonomy over his Body and Choice regarding Reproduction.” Through this Article, the Author aims to analyze the Rights of Unborn Children and the Reproductive Rights of Women and the judicial point of view in handling the cases falling under the MTP Act. This Article aims to address the lacuna existing in the act and uphold the point of view that the Reproductive Rights of Women should prevail over the Rights of Unborn Children. Also, the validity of the duration of termination of pregnancy after 24 Weeks is analyzed as it can negatively impact pregnant women, especially in the case of unwarranted pregnancy which can lead to health deterioration in women. The Article further suggests the prospective solution to this problem.*

**Keywords:** Reproductive Rights of Women, Right of Unborn Child, MTP Act, pregnancy, Article 21.

### INTRODUCTION

The Supreme Court in its various judgments by applying its judicial mind had strived to decode the legislative intent behind the incorporation of the MTP Act<sup>2</sup>. The court tried its best to

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<sup>1</sup> The Medical Termination of Pregnancy Act 197

<sup>2</sup> The Medical Termination of Pregnancy Act 1971

maintain the nexus between the Reproductive Rights of Women and the rights of unborn children. In doing this the court has adopted the broadest possible approach to interpreting Article 21 of the Constitution of India <sup>3</sup>and held that women's right to make reproductive choices is also a dimension of personal liberty as understood under Article 21 of the Constitution of India. It is important to recognize that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman's right to privacy, dignity, and bodily integrity should be respected.

In the modern world where concepts like Live-In Relationships, casual dating, and one-night stands are becoming the new normal, there arises the need to make the existing abortion laws more liberal, especially concerning unmarried women and girls who have to face the social stigma in countries like India. Moreover, female's being a Single Parent has to bear a lot of pain and courage to raise a child, and if they are unemployed or a student, then it will only contribute to the misery of the women who have been forced to keep the pregnancy and bear the consequences of the childbirth against her will.

Therefore, keeping in view the aggravated factors and majorly the Consent of Pregnant Women the pregnancy of the woman has to be terminated, as the woman has absolute autonomy over her body and she is the only person, who should decide whether to keep the pregnancy or not.

Let's understand the reason behind this viewpoint, by an example of an unmarried woman or adult who does not have any financial source of income to sustain on their own. If this woman gets pregnant and realizes that her pregnancy has already crossed the statutory time duration of 24 Weeks according to the Amended MTP Act of 2021.

Then not allowing this woman to medically terminate her pregnancy would violate her reproductive rights as well and it is a denial of her autonomy over her body. This may lead to grave mental agony and injury because the social stigma prevalent in society will cause her to suffer more mentally as compared to physically. Also, there is a great chance that this woman may attempt to commit suicide to end her misery in total.

Also, suppose women were not allowed to terminate the pregnancy beyond 24 weeks except for the reasons mentioned in the MTP Act. In that case, it may result in two outcomes that may

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3 Constitution of India 1950, art 21

impact the lives of women as well as children who are born against the will of pregnant women.

These are:

Violating the Right to Life of Women to live with dignity, as the present social stigma will create unnecessary struggle and suffering for the mother of the child, if she is forced to bear the pregnancy.

Also, if the unborn child is born against the will of the mother, and then it may also lead to a violation of the Right to Life of the child under Article 21, as receiving adequate love, care, affection from the mother is also a fundamental aspect of Right to Life.

Also, if we observe the present remedy adopted by courts of giving the unwanted child to adoption, does not prove to be a satisfactory one. This may be due to several reasons as the child has to face several hardships during its growth, also every adequate means and care that will be provided to the child is not ensured by the institution having custody of the child.

If such things happen then there is a high chance that the child may develop some criminal behaviour within himself, as there is no one who can guide and monitor him about right and wrong, if we see the plight of this child who is entitled to receive education and healthy childhood but on the contrary is indulged in criminal activity then it is not wrong to say that is more devastating as compared to the violation of the right of the unborn child.

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Before we delve deep further into the topic, let us understand the meaning, definition and position of unborn children and Women in Indian Society

## MEANING AND DEFINITION OF FOETUS

The Black's Law Dictionary defines the "FOETUS. In medical jurisprudence, an unborn child. An infant en ventresa mere<sup>4</sup>. EnVentre Sa Mere" as per Merriam Webster Dictionary means "in the womb: In Utero<sup>5</sup>.

Fetus refers to a human organism during the time duration of its development initiating from the 57<sup>th</sup> day of pregnancy or after the fertilization of a human female egg by a human male sperm till the birth of this human organism as a Child. A Fetus in layman's terms may also be

<sup>4</sup> Bryan A Garner (ed), Black's Law Dictionary (11th edn, Thomson Reuters 2019) 780

<sup>5</sup> 'EnVentresa mere,' (Merriam-Webster.com Legal Dictionary, Merriam-Webster) <[www.merriam-webster.com/legal/en%20ventre%20sa%20mere](http://www.merriam-webster.com/legal/en%20ventre%20sa%20mere)> Accessed 1 Jul. 2024.

defined as a living entity or body which comes into existence as the result of the fertilization (in vivo or in vitro) of a human female's egg with a human male's sperm and develops in the uterus of a woman or that is physically separated from a woman's body, but capable of surviving outside the uterus to some extent and can transform itself into a Human Being.

There are divergent views amongst the various experts on the legality of the rights of Fetus or Unborn Child in India, while some exponents believe that the unborn child is protected under Article 21 of our Constitution, on the contrary, some experts believe that the unborn child is a part of women's body until it is born, hence the unborn child cannot be considered as a living person until it is born.

### **POSITION OF UNBORN CHILD IN INDIAN LEGAL FRAMEWORK**

The "Unborn Child" is nowhere defined under the Indian Statutes. However, there are legal positions under the Hindu Succession Act, 1956, the Transfer of Property Act, 1882, the Indian Penal Code, 1860, the Limitation Act, 1963, the Indian Succession Act, 1925, the Code of Criminal Procedure, 1973 and the Indian Constitution which somehow protects the legal right of the unborn child and Foetus in India.

#### **Let's take a look at the position of the Unborn Child in the Indian Legal Framework**

<b>Sr. No</b>	<b>Name of Statute</b>	<b>Legal Provision</b>
<b>1.</b>	<b>Indian Limitation Act, 1963</b>	The explanation of Section 6 <sup>6</sup> states that an infant in the mother's womb will be considered a minor.
<b>2.</b>	<b>Indian Succession Act, 1925</b>	According to Section 2(e) of the Act <sup>7</sup> , a minor is a person who is below the age of eighteen years. However, this section does not include the unborn child until it is given a broad

<sup>6</sup> Indian Limitation Act 1963, s 6

<sup>7</sup> Indian Succession Act 1925, s 2(e)

		interpretation, and only by doing so the fetus is assumed as a minor.
3.	<b>Indian Penal Code, 1860</b>	Section 312- 316 of the Indian Penal Code <sup>8</sup> , protects the right of pregnant women against any act which could hamper their pregnancy by the act of any person against their will. These sections prescribe punishments for a person who voluntarily causes a woman to miscarry.
4.	<b>Hindu Succession Act, 1956</b>	Section 20 of the Hindu Succession Act, 1956 <sup>9</sup> , treats the child in the womb or an unborn child equivalent to a child born normally, for the purpose of inheritance of intestate of a dead person.
5.	<b>Code of Criminal Procedure, 1973</b>	Section 416 of the Cr.P.C. <sup>10</sup> aims to protect the life of an unborn child in cases where the mother of the unborn child has received capital punishment. By Section 416 the punishment of capital punishment awarded to pregnant convicted women shall be postponed.
6.	<b>Transfer of Property Act, 1882</b>	Section 13& 20 of the Transfer of Property Act, 1882 <sup>11</sup> deal with the transfer of property with regard to the unborn child.  Section 13 of the Act states that the property can be transferred in the interest of the

<sup>8</sup> Indian Penal Code 1860, ss 312-316

<sup>9</sup> Hindu Succession Act 1956, s 20

<sup>10</sup> Code of Criminal Procedure 1973, s 416

<sup>11</sup> Transfer of Property Act 1882, ss 13, 20

property to a person who has not yet been born or, who is an Unborn person.

Section 20 of the Act deals with the vested interest in the property created for the benefit of an unborn person. The person may acquire his interest in the property at a later stage say upon attaining the age of majority, but he will acquire an absolute interest in the property as soon as he takes birth.

## MEANING AND DEFINITION OF WOMEN

The Black's Law Dictionary defines the term "Women"<sup>12</sup> as "Women. All the females of the human species. All such females who have arrived at the age of puberty."

The Black's Law Dictionary also defines the term "Female"<sup>13</sup> as "Female. The sex which conceives and gives birth to young. Also, a member of such sex. The term is generic, but may have the specific meaning of 'women' if so indicated by the context."

Section 10 of the Indian Penal Code, 1860<sup>14</sup> defines both the terms i.e., "Man & Women". According to Section 10 of the Indian Penal Code, 1860, the word "Man" denotes a male human being of any age and on the other hand "Women" denotes a Female Human Being of any age.

Therefore, the term "Woman" refers to a Human Being having Female Anatomy and body structure different from Males and the LGBTQ Community; Also, it is capable of conceiving the human male sperm and is capable of giving birth to a Human Being.

## POSITION OF WOMEN UNDER THE INDIAN LEGAL SYSTEM

The Constitution of India along with various statutes time being in force strives to protect the position of women in the society. There are multiple provisions in the Indian Statutes that aim to establish equality between men and women.

<sup>12</sup> Bryan A Garner (ed), Black's Law Dictionary (11th edn, Thomson Reuters 2019) 744

<sup>13</sup> Bryan A Garner (ed), Black's Law Dictionary (11th edn, Thomson Reuters 2019) 1779

<sup>14</sup> Indian Penal Code 1860, s 10

Let us understand the position of Women in the Indian Legal Framework with the help of the table as elucidated below:

Sr. No	Particular	Legal Provision
1.	<b>Right to Maintenance</b>	Every woman has the right to receive support from her husband or her in-laws in case they are living separated under a judicial decree or in cases, where the death of the husband occurs. Section 125 of Cr.P.C. <sup>15</sup> also deals with the maintenance to be given to the wife by the husband.
2.	<b>Right to Equal Pay</b>	<p>Article 39 of the Indian Constitution<sup>16</sup> provides for the provisions regarding equal pay for equal work. Article 39 falls under part 4 of the Indian Constitution<sup>17</sup> which is the Directive Principle of State Policy, these policies are however, not enforceable in a court of law and rather they are just guidelines that a state ought to follow while formulating the policies for the welfare of its citizens.</p> <p>The Equal Remuneration Act, 1976<sup>18</sup> is legislation in India that ensures equal pay for equal work for both men and women. This Act also prohibits any form of discrimination, against women based on inequality with regard to recruitment and promotion.</p>

<sup>15</sup> Code of Criminal Procedure 1973, s 125

<sup>16</sup> Constitution of India, art 39

<sup>17</sup> Constitution of India, pt 4

<sup>18</sup> Equal Remuneration Act 1976

3.	<b>Right to Dignity and Decency &amp; Right of Women at Workplace</b>	<p>Article 21 of the Constitution ensures the Right to Life and Dignity to the citizens of our country. The women also being part of citizens are also protected under the aegis of Article 21. The right to life does not only include mere existence but also to life with dignity, which means that every individual has the right to live their life according to their will and the state should protect the interest of its citizens.</p> <p>Indian Penal Code<sup>19</sup> and Sexual Harassment of Women, at Workplace (Prevention, Prohibition and Redressal) Act, 2013<sup>20</sup>, are some of the major statutes which endeavor to protect the dignity and decency of women in the household and in the work environment.</p> <p>Also, the Maternity Benefit Act, 1961 and Equal Remuneration Act, 1976, contribute to protecting the interest of women at the workplace and also contribute to protecting the dignity of women, especially in the workplace.</p>
4.	<b>Right against Domestic Violence and Dowry</b>	<p>Section 304B and Section 498A of the Indian Penal Code<sup>21</sup> provide for punishment for Dowry Death and Cruelty inflicted upon the woman by her Husband or Relative in pursuance of the demand of Dowry.</p> <p>In Addition to this, there is specific legislation such as The Protection of Women from</p>

<sup>19</sup> Indian Penal Code 1860

<sup>20</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013

<sup>21</sup> Indian Penal Code 1860, ss 304B, 498A



		Domestic Violence Act, 2005 <sup>22</sup> and The Dowry Prohibition Act, 1961 <sup>23</sup> that extends the protection to women against social evils, such as “Dowry” and “Cruelty”.
5.	<b>Right to Free Legal Aid</b>	Article 39A <sup>24</sup> of the Constitution provides for Equal Justice and Free Legal Aid. This article provides that the state shall secure the operation of the legal system and shall endeavour to promote justice and should provide free legal aid by suitable legislation or scheme.
6.	<b>Right to Self- Defense</b>	<p>Chapter IV of the Indian Penal Code<sup>25</sup> provides for the General Exception in which an accused can plead to terminate their criminal liability from the accusation leveled against him.</p> <p>Especially this chapter deals with the provisions regarding the Right of Private Defense. These rights can be exercised by the person against whom the crime is being attempted to be committed.</p> <p>Section 100 of the Indian Penal Code<sup>26</sup> confers power upon any person including women to cause the death of any person who attempts to violate or make an attempt to injure or damage to the body or property of such person.</p>

Beyond these legislations, there are other statutes that protect women. The basic rationale of enacting these legislations by parliament is to promote and protect the rights of women and to

<sup>22</sup> Protection of Women from Domestic Violence Act 2005

<sup>23</sup> Dowry Prohibition Act 1961

<sup>24</sup> Constitution of India, art 39A

<sup>25</sup> Indian Penal Code 1860, ch IV

<sup>26</sup> Indian Penal Code 1860, s 100

bring women into the mainstream of society so that women may contribute equally to society as of men.

## **ARTICLE 21 OF THE INDIAN CONSTITUTION AND WOMEN'S RIGHT**

Article 21 is the heart of the Indian Constitution. It has been expanded significantly by the Indian Judiciary to protect the interest of the aggrieved person who knocks on the door of the Apex Court of the Land for the protection of their fundamental right. The Protection under Article 21 can be invoked when the person is deprived of his 'life or personal liberty' or 'dignity' by the act of the state.

Article 21 of the Indian Constitution is as follows; No person shall be deprived of his life or personal liberty except according to a procedure established by law.

Thus, Article 21 secures two rights:

Right to Life;

Right to Personal Liberty

Right to Life under the Indian Constitution is much similar to the Universal Declaration on Human Rights (UDHR). Both Right to Life and UDHR aim to protect human rights.

The Supreme Court of India has given the broadest interpretation possible to Article 21, and it continues to follow the same course so that with the development of society the new demands of the society cannot be denied and the person whose fundamental right has been violated could be given the best possible remedy.

As far as the scope of Article 21 is concerned the Supreme Court in its various decisions has amply expanded the scope of Article 21 and upheld the following rights as the part of Right to Life under Article 21, to name a few:

### **Right To Live with Human Dignity<sup>27</sup>**

The Supreme Court of India provided a new dimension to Article 21 by including the Right to Live with Human Dignity under the aegis of Article 21 of the Indian Constitution. The court explains the Right to Live with Human Dignity as the right that not only includes mere

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<sup>27</sup> Maneka Gandhi v Union of India (1978) AIR 597, (1978) 2 SCR 621

existence but also freedom from exploitation of any kind. Moreover, this right includes the bare necessities of life, freedom of movement, freedom to express oneself in diverse forms and also the right to carry on functions and activities.

### **Right Against Sexual Harassment at Workplace<sup>28</sup>**

Sexual Harassment in the Workplace was one of the most condemnable social evils that existed in Indian Society. Women often fall prey to this social evil and there was a high time that this social evil should be addressed. The Supreme Court of India in the Vishakha Judgment held that sexual harassment of women is violative of a most cherished fundamental right in the Indian Constitution.

The Supreme Court declared sexual harassment at the workplace to be violative of the right to equality, life and liberty. Thus, a violation of Article 14, Article 15 and Article 21 of the Indian Constitution the court also laid down guiding principles to ensure gender equality in the workplace. This was one of the most welcoming steps in the history of the Indian legal framework which expanded the scope of Article 21.

### **Right to Reputation<sup>29</sup>**

Good Reputation is one of the most crucial elements of personal security and goodwill of the person and it is very well established that the reputation whether good or bad, attached to the person will be carried during his lifetime and after the death of the person.

The Supreme Court while analyzing the importance of reputation in a person's life held that good reputation forms an important part of personal security and thus was protected by the Constitution along with the right to enjoy life and personal liberty. Thus any wrong action of the state or any other agency that harms the reputation of a virtuous individual will definitely fall under the purview of Article 21.

### **Right To Livelihood<sup>30</sup>**

The Supreme Court of India while upholding the Right to Livelihood implied that no person can live without the means of living that is the means of livelihood. If the right to livelihood

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<sup>28</sup>Vishakha v State of Rajasthan AIR 1997 SC 3011, (1997) 6 SCC 241

<sup>29</sup> State of Maharashtra v Public Concern of Governance Trust AIR 1989 SC 714

<sup>30</sup> Olga Tellis v Bombay Municipal Corporation AIR 1986 SC 180

will not be regarded as part and parcel of the constitutional right to life, then it would be the easiest way to deprive a person of his right to life.

Therefore the Supreme Court by upholding the Right of Livelihood not only widens the ambit of Article 21 but also extends protection to citizens to work and acquire adequate means of livelihood.

### **Right To Health and Medical Care<sup>31</sup>**

Good Health and Medical Care are important facets of life and if any person is deprived of good health and medical care it will be eventually considered as depriving the person of life. Thus it is of prime importance that the Right to Health and Medical Care should be given due importance and in doing so the Supreme Court of India has held that the right to life guaranteed under Article 21 of the constitution includes the right to health and medical care.

The Court also emphasized that a healthy body is the foundation of all human activities, thus the protection of the human body from all potential danger is important because once life is lost, the status quo ante cannot be restored.

### **Right to Clean Environment<sup>32</sup>**

The right to a Clean Environment means the right to live in a clean and healthy environment that is free from any danger of disease, infection et cetera. The right to Life governs the right to a clean environment because it is closely associated with the health and life of an individual, causing the right to a clean environment to fall under the purview of the right to life.

There are catena of cases in which the Supreme Court has time and again reiterated the importance of a clean and healthy environment because the poor environment will adversely affect the life of the citizens which results in reducing the life of the citizens. Thus it can be said that the Right to Clean Environment and the Right to Life are closely associated with each other and the right to clean environment falls within the purview of the right to life.

The Supreme Court has worked significantly in protecting the interest of women under Article 21, and numerous judgments uphold and protect the rights of women.

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<sup>31</sup> State of Punjab v M.S. Chawla AIR 1997 SC 1225

<sup>32</sup> Vellore Citizens Welfare Forum v Union of India AIR 1996 SC 2721, (1996) 5 SCC 647

## **ROLE OF ARTICLE 21 IN UPLIFTING THE RIGHTS OF WOMEN**

The role of the Indian Judiciary in protecting the interest of women can be highly applauded as the Courts in India have ensured that the stream of justice shall not get contaminated by any arbitrary action on the part of the state or any individual. Also, the essential basic rights should be conferred upon the women so that they can live a dignified life, also any atrocities faced by them must be checked.

The various High Courts and Supreme Court of India in its various decisions have expanded the scope of Article 21 to meet the ends of justice and to ensure that no women shall be deprived of their basic rights and face any discrimination based on their gender and position in society.

Article 15(3)<sup>33</sup> empowers the state to formulate any number of policies that assist in the development of women in particular also, Article 39 of the Indian Constitution<sup>34</sup>, provides for equal pay for equal work, which impregnates the seed of equality in terms of economic interest between the men and women.

It is undeniable that specific legislation protecting women's rights such as "Sexual Harassment of Women, at Workplace (Prevention, Prohibition and Redressal) Act, 2013, Maternity Benefit Act, 1961, Equal Remuneration Act, 1976, The Protection of Women from Domestic Violence Act, 2005 and The Dowry Prohibition Act, 1961 and Medical Termination of Pregnancy Act, 1971 and so on." derive their essence from Article 21 itself as the objective of parliament behind enacting these statutes is to cover the lacuna that was prevailing in statutes in protecting the women and also to protect the women from atrocities that was prevailing in the society.

However, the Reproductive Rights of Women are still a debatable issue that the legislature has not yet resolved appropriately this is because the Medical Termination of Pregnancy (Amendment) Act, 2021, is silent on some viewpoints raised by many experts. There are some lacunae which are violating the Right to Life and Reproductive Rights of Women. And the parliament while filling these gaps should take the liberal view so that the women's choice of reproduction is respected.

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<sup>33</sup> Constitution of India, art 15(3)

<sup>34</sup> Constitution of India, art 39

## REPRODUCTIVE RIGHTS OF WOMEN: ABORTION RIGHTS AND LEGAL FRAMEWORKS

The horizon of the reproductive rights of women neither has limited jurisdiction nor is confined to having or not having children. On the contrary, it also includes freedom and the right of women to decide freely on all matters regarding their sexual reproductive health<sup>35</sup>.

The Reproductive Right of women covers other aspects also, such as the right to access education and information regarding the usage of contraceptives and sexual health, the right to decide what type of contraceptives to use, the right to decide at a point time in life to procreate and right to choose the number of children and most important of them to have the bodily autonomy over its body<sup>36</sup>.

Abortion Laws in India are governed by the Medical Termination of Pregnancy Act, 1971 and the parliament has amended the previous act and enacted the Medical Termination of Pregnancy (Amendment) Act, 2021 considering the new societal needs of society. This newly enacted Medical Termination of Pregnancy (Amendment) Act, 2021 is more liberalized in nature and covers those aspects also, which are not covered under the Medical Termination of Pregnancy Act, 1971.

The Preamble to the Medical Termination of Pregnancy Act, 1971 states that; the Act to provide for the termination of certain pregnancies by registered medical practitioners and for matters connected therewith or incidental thereto.

By a literal reading of this preamble, it is clear that the Medical Termination of Pregnancy Act, 1971 was created to allow certain pregnancies by medical practitioners upon fulfillment of certain events or conditions which are essential for terminating a pregnancy. The Act was enacted by the legislature with the purpose, to by-pass the criminal liability under Indian Penal Code under Section 312- 316<sup>37</sup>. Also, the Act not only legalizes abortion by Registered Medical Practitioners but also provides for grounds, gestational limits and procedures to be followed by Registered Medical Practitioners while conducting any abortion.

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<sup>35</sup> X v Principal Secretary, Health and Family Welfare Department, Govt of NCT of Delhi and Another [2022] SCC OnLine SC 1321, p 96

<sup>36</sup> ibid

<sup>37</sup> Indian Penal Code 1860, ss 312-316

This Act aims to provide women the right to have safe and legal termination of their pregnancy so that their health cannot be compromised.

### **Medical Termination of Pregnancy Amendment Act, 2021 and Rules there under**

In the year 2021, India witnessed the amendment in 50 years old abortion law. The Parliament of India passed the Medical Termination of Pregnancy Amendment Act, 2021 in 2021. This amendment took place intending to reduce the maternal mortality ratio from the current level of 122 per lakh live births to 70 lakh live births by 2030. Also, the advocates frequently call for steps to be taken to make safe and quality abortions because the criminalization of abortion stigmatizes it and this stigmatization compels women to seek unsafe abortions which are often carried out at unregistered facilities by unqualified practitioners. Another reason to amend the Medical Termination of Pregnancy Act, 1971 is to make abortion more accessible and to address the issue of unwed pregnancies that needs urgent attention. This Amendment brought much-needed reform to the previous abortion laws existing in the country.

Section 3 of the Medical Termination of Pregnancy Amendment Act, 2021, provides that the Registered Medical practitioner shall not be held liable for any punishment for committing any offence under the Indian Penal Code under Section 312- 316 or under any other law for the time being in force, if the act of termination of pregnancy is done according to the Medical Termination of Pregnancy Amendment Act, 2021.

Section 3(4) of the Medical Termination of Pregnancy Amendment Act, 2021<sup>38</sup>, the termination of pregnancy shall not take place except with the consent of women. Thus, it can be said that the consent of women forms an important factor while conducting an abortion under the Medical Termination of Pregnancy Amendment Act, 2021. However, Section 3(4)<sup>39</sup>, also provides that in case the woman is Minor or is Mentally Ill the consent of the Guardian of the woman is important and without the consent of the Guardian the termination of pregnancy cannot take place.

Section 3(2) of the Medical Termination of Pregnancy Amendment Act, 2021<sup>40</sup>, provides that, a pregnancy of a woman can be terminated by a registered medical practitioner as per the following conditions:

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<sup>38</sup> Medical Termination of Pregnancy Amendment Act 2021, s 3(4)

<sup>39</sup> Medical Termination of Pregnancy Amendment Act 2021, s 3(4)

<sup>40</sup> Medical Termination of Pregnancy Amendment Act 2021, s 3(2)



Where the length of the pregnancy is up to Twenty Weeks and does not exceed the stipulated time limit of 24 Weeks as mentioned in the Act. In this case, the opinion of One Registered Medical Practitioner is required<sup>41</sup>,

Also, the pregnancy can be terminated in a case where the length of pregnancy is above twenty weeks and within twenty-four weeks for a category of women as may be prescribed by the rules made under the act, and with the approval of two registered medical practitioners. In this case, the opinion of Two Registered Medical Practitioners is required<sup>42</sup>,

Pregnancy of women can only be terminated by a registered medical practitioner having bona fide opinion that:

If the pregnancy is continued then there is a risk to the life of the pregnant woman or there may be a chance of occurrence of grave physical or mental injury.

If the pregnancy is continued then there is a substantial risk that if the child is born, it will suffer from any grave physical or mental abnormality<sup>43</sup>.

To determine the gravity of substantial risk to the woman's mental or physical health due to the continuation of pregnancy her actual or reasonable foreseeable environment may be considered.

Section 3 (2) provides for two Explanations that are equally important as the mental health of women can be ascertained by correct interpretation of these two explanations. Also, in "Explanation 1." the words "any woman or her partner" are deliberately included in the Medical Termination of Pregnancy Amendment Act, 2021, which is not present in the previous Medical Termination of Pregnancy Act, 1971, by this inclusion the scope of Medical Termination of Pregnancy Amendment Act, 2021 has been considerably increased.

Explanation 1 states that the pregnancies which occur as the result of the failure of the contraceptive devices or methods opted by the woman or her partner to limit the number of children or prevent the pregnancy shall be presumed to have inflicted a grave injury to the mental health of the women, for sub-clause (a) of Section 3(2)<sup>44</sup>.

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<sup>41</sup> Medical Termination of Pregnancy Amendment Act 2021, s 3(2)(a)

<sup>42</sup> Medical Termination of Pregnancy Amendment Act 2021, s 3(2)(b)

<sup>43</sup> Medical Termination of Pregnancy Amendment Act 2021, s 3(2)

<sup>44</sup> Medical Termination of Pregnancy Amendment Act 2021, s 3(2)(a)



In a similar fashion, Explanation 2 stipulates that, where any pregnancy has been caused to women by way of rape and sexual assault, it shall be presumed that the anguish caused by such pregnancy will constitute a grave injury to the mental health of women, for sub-clause (a) and (b) of Section 3(2)<sup>45</sup>.

The Medical Termination of Pregnancy Act, 1971 provides that the pregnancies may only be terminated in a Government Hospital or at any place as approved by the Government or by a District Level Committee constituted as per Section 4(b) to achieve the objective of the Medical Termination of Pregnancy Act, 1971<sup>46</sup>.

The provisions of Section 4 and Section 3 (2) of the Act shall not apply to the termination of the pregnancies by a Registered Medical Practitioner, in good faith opined that the termination of pregnancy is immediately necessary to save the life of the pregnant woman<sup>47</sup>.

Another important change in the Medical Termination of Pregnancy Act, 1971 took place by way of the Medical Termination of Pregnancy Amendment Act, 2021, which seeks to protect the privacy of women who are willing to terminate their pregnancies and this amendment also imposes a punishment of imprisonment up to One Year, Fine or both on any Registered Medical Practitioner who reveals the name or any particular of such women<sup>48</sup>.

It is also pertinent to note that the Medical Termination of Pregnancy Act, 1971, extends power to the Central Government<sup>49</sup> and State Government<sup>50</sup> to formulate rules to carry out the provisions of the Medical Termination of Pregnancy Act, 1971.

### **Features of Medical Termination of Pregnancy Amendment Act, 2021**

The Medical Termination of Pregnancy Amendment Act, 2021 confers the right of women to have a safe and legal abortion. Medical Termination of Pregnancy Amendment Act, 2021 has the following features:

Unmarried women are also covered under the Medical Termination of Pregnancy Amendment Act, 2021, keeping in view the new societal norms and prevailing practices such as Live-In

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<sup>45</sup> Medical Termination of Pregnancy Amendment Act 2021, s 3(2)(a), 3(2)(a)

<sup>46</sup> Medical Termination of Pregnancy Amendment Act 2021, s 4(a)

<sup>47</sup> Medical Termination of Pregnancy Amendment Act 2021, s 5

<sup>48</sup> Medical Termination of Pregnancy Amendment Act 2021, s 5(a)

<sup>49</sup> Medical Termination of Pregnancy Amendment Act 2021, s 6

<sup>50</sup> Medical Termination of Pregnancy Amendment Act 2021, s 7

Relationships and Pre-marital sexual Relationships. Rule 3B (c) is based on the recognition of the fact that the change in marital status of women often leads to a change in her material circumstances and there is no rationale behind excluding unmarried or single women. Therefore, the inclusion of unmarried women has increased the ambit of the Medical Termination of Pregnancy Amendment Act, 2021.

Termination of pregnancy due to failure of Contraceptive Methods or Devices used to limit the number of children or to prevent pregnancy is also allowed under the Medical Termination of Pregnancy Amendment Act, 2021, which is a welcoming step to avoid grave mental injury to women on account of the failure of Contraception and to all women immaterial of their marital status.

The opinion needed for termination of Pregnancy by a Registered Medical Practitioner has also been amended, now opinion of 1 Registered Medical Practitioner in case of Gestation Period is up to Twenty Weeks, while the opinion of 2 Registered Medical Practitioners in case of Gestation Period is between Twenty Weeks to Twenty Four Weeks is required this change was done to provide safe and accessible abortion to the pregnant women also to keep both the women and unborn child safe.

The duty conferred upon the Medical Board by the appropriate Government to decide on abortion beyond Twenty-Four Weeks under specific circumstances is another legal effort to check the health status of women undergoing the termination. The aim of constituting the Medical Board is to provide security to the physical and mental health of women and to assess the impact of termination and continuance of pregnancy on the minds of women.

The Medical Termination of Pregnancy Amendment Act, 2021 increased the Medical Abortion Timeline from Seven Weeks to Nine Weeks, this was done to ensure and enhance the medical safety of women. The aim of increasing the gestational limit is to provide medical methods of abortion i.e., abortion using approved Pharmaceutical drugs for abortion.

The incorporation of the **“Confidentiality” provision under Section 5A** by the Medical Termination of Pregnancy Amendment Act, 2021 is another significant feature of the MTP Act, as it not only protects women from unnecessary social stigma but also ensures dignity, autonomy, and justice for women who need to terminate pregnancy.

## **MTP (AMENDMENT RULES) 2021**

The Central Government has exercised this rule-making as conferred to them by the Medical Termination of Pregnancy Act, 1971 and notified rules governing the Medical Termination of Pregnancy. These rules are called MTP Rules and they cover various aspects regarding medical termination of pregnancy. These rules are formulated by the Central Government regarding:

### **District Level Committee**

The District Level Committee is constituted in accordance with MTP (Amendment Rule) 2021, to assist and facilitate the medical board to decide whether to approve for the medical termination of pregnancy or not.

### **The Medical Board**

The Medical Termination of Pregnancy Amendment Act, 2021 provides for the constitution of Medical Boards. These boards are established at approved facilities, the role of these boards is to allow or deny the termination of pregnancy beyond 24 weeks.

### **The Registered Medical Practitioners**

Section 3 of the Medical Termination of Pregnancy Amendment Act, 2021 provides for Registered Medical Practitioners and their role in the termination of Pregnancy. This section confers immunity to the Registered Medical Practitioners from the offences under Section 312-316 of the Indian Penal Code, 1860 or any other law for the time being in force if they terminate the pregnancy in accordance with the MTP Act.

### **The place at which the pregnancy may be terminated**

Section 4 (a) of the Medical Termination of Pregnancy Amendment Act, 2021 provides that the pregnancies may be terminated only in a hospital maintained by the government or in any place approved by the District Level Committee or by a government for the MTP Act.

The Central Government by Medical Termination of Pregnancy Amendment Act, 2021, amended Rule 3B of MTP Rules. Rule 3B governs the category of women as per Section 3 (2) (b) of the Act, who want to get their pregnancy terminated and the duration of their pregnancy is between the period of Twenty Weeks and Twenty Four Weeks.

Rule 3B of the MTP (Amendment) Rules 2021<sup>51</sup> lays down the category of eligible women who can terminate their pregnancy up to Twenty- Four Weeks:

Any woman who is survival of sexual assault or rape or incest;

Minors

Change of Marital Status during the ongoing pregnancy( widowhood and divorce);

Women with Physical Disability as per the criteria enshrined in Persons with Disabilities Act, 2016;

Women who are Mentally Ill and Mentally Retarded

A foetus has a substantial risk that if born, and then it may be incompatible with life and may also suffer from any grave physical or mental abnormality or be seriously handicapped.

Also, women having pregnancy in humanitarian settings or at the time of disaster or emergencies as may be declared by the Government.

## **REPRODUCTIVE RIGHTS OF WOMEN**

Reproductive Rights refer to the inherent right of women to have a choice between the procreation of a child and to abortion of the child. It is an inherent right which is conferred upon the woman by Article 21 to have complete autonomy over her body. Reproductive Rights include the legal right to contraception, abortion, treatment concerning fertility and also, the right to access information about the usage of contraceptive methods and the right to have information about one's reproductive body.

It is not wrong to state the fact that women are often enmeshed in complex notions of family, community, religion, and caste. These factors often contribute to external societal factors that affect the way women exercise autonomy and control over their bodies, specifically in matters of reproductive decisions. It is also pertinent to note that the choice to have an abortion or not to have an abortion is borne out of life circumstances, which the woman can choose on her terms without external interference or influence<sup>52</sup>.

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<sup>51</sup> Medical Termination of Pregnancy (Amendment) Rules 2021, r 3B

<sup>52</sup> X v Principal Secretary, Health and Family Welfare Department, Govt of NCT of Delhi and Another [2022] SCC OnLine SC 1321, p 98

Also, Reproductive autonomy requires that every pregnant woman has the inherent right to choose to opt for abortion or not, without any consent or authorization from a third party. Moreover, it can be submitted that the right to reproductive autonomy shares a close nexus with bodily autonomy. Bodily Autonomy<sup>53</sup> refers to the right to make decisions with respect to one's body. It is pertinent to note that if the woman does not want the pregnancy then the consequence of an unwanted pregnancy on a woman's body and on her mind may have a detrimental effect on her mind and body. Also, we cannot ignore the fact that the foetus depends upon the pregnant woman's body for its nourishment and sustenance until it is born.

Thus, the foetus can be considered as the part of a pregnant woman until it is born alive, and hence the women derive the firm right of bodily and reproductive autonomy over anything. Therefore, it can be held that it is the decision of women that matters', regarding carrying the pregnancy to its full term or to terminate it and this right is firmly imbibed in the bodily autonomy and decisional autonomy of the pregnant women.

The role of the Judiciary in securing the reproductive rights of women cannot be ignored as it ensures women's reproductive rights as a guarantee of their constitutional and human rights.

### **The Extent of Reproductive Rights of Women in India**

The Supreme Court of India, while dealing with the case of K S Puttaswamy V. Union of India<sup>54</sup>, recognized the right to privacy as the fundamental right enshrined under Article 21 of the Indian Constitution. In this judgment, the court reiterated that the right to privacy enables the individual to retain and exercise autonomy over the body and mind and this autonomy exercised by the individual will include every decision made concerning every aspect of life.

Chelameshwar, J. in Puttaswamy(Supra) Judgment<sup>55</sup> held that the woman's freedom to choose whether to bear a child or abort her pregnancy is the area that falls in the realm of privacy and right to bodily integrity is an important facet which is inherent in the Right to Privacy under Article 21. Also, the court in this case has recognized that Decisional Autonomy is an integral part of the right to Privacy.

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<sup>53</sup> *ibid*

<sup>54</sup> K S Puttaswamy v Union of India (2017) 10 SCC 1

<sup>55</sup> K S Puttaswamy v Union of India (2017) 10 SCC 1, [Chelameshwar J]

Decisional Autonomy refers to the ability to make decisions regarding intimate relations, and the right to privacy protects the decisional autonomy of the individual to have intimate personal choices over the vital aspects of their body and life.

The Apex Court in *Suchitra Srivastava V. Chandigarh Administration*<sup>56</sup> recognized the concept of reproductive autonomy and emphasized that the consent of pregnant women forms an essential requirement to proceed with the termination of pregnancy under the MTP Act. In this case, the court has also, recognized that the right of women to make reproductive choices is an inherent dimension of personal liberty under Article 21.

The Supreme Court in *Common Cause V. Union of India*<sup>57</sup> has observed that decisional autonomy is protected by the right to privacy in matters relating to bodily integrity and the right to decisional autonomy means that women have the right to choose the course of their lives. Unwanted Pregnancy, besides physical consequences, may have detrimental effects on the woman for the rest of their life, interrupting her education, life, career, and other aspects of mental, social and physical effects.

#### **Attack on the Right of Dignity, in case the Woman is forced to carry on Pregnancy**

Article 21 of the Indian Constitution gives the person the right to live with human dignity and upholds that Reputation is an essential aspect of one's life. The Supreme Court in the *State of Maharashtra v. Public Concern of Governance Trust*<sup>58</sup> held that a good reputation forms an essential element of personal security and it was equally protected by the Constitution with the right to enjoy life, liberty and property.

Thus it can be said that the Right to Dignity of the women will be severely impacted in case if the women are forced to carry on their pregnancy.

We cannot ignore the fact that if women with unwanted pregnancies are forced to carry on their pregnancy for the full term, the state is not only depriving the women of their bodily autonomy but also putting detrimental injury to the dignity of the women.

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<sup>56</sup> *Suchita Srivastava & Anr v Chandigarh Administration* (2009) 14 SCR 989, (2009) 9 SCC 1

<sup>57</sup> *Common Cause v Union of India* (2018) 5 SCC 1, AIR 2018 SC 1665

<sup>58</sup> *State of Maharashtra v Public Concern of Governance Trust* AIR 1989 SC 714

Kesavananda Bharti v State of Kerela<sup>59</sup> held that dignity is an essential part of the basic structure of the constitution and the concept of dignity forms the very basis of the constitution and the rights enshrined in it.

Thus it can be said that, if we force the pregnant woman to have an unwanted pregnancy this will not only violate her right to bodily autonomy but also violate her right to dignity.

Let's understand this with an example of un-married women, if the unmarried woman is forced to carry on her pregnancy then the social stigma present in the society will only increase the hardships for this single mother and this may also lead to attempts to commit suicide on the part of women, which is violative of Article 21 of the Constitution.

### **Should The Reproductive Rights Of Women Prevail Over The Rights Of Unborn Children?**

Which right should prevail between the Reproductive Rights of Women and the Rights of Unborn Children is a debatable issue among various scholars. However, the major contention that needs to be addressed by the parliament is whether or not the Termination of Pregnancy could be permitted after the exhaustion of the Gestational Limit of Twenty-Four Weeks.

Given the author of this Article, the Reproductive Rights of Women should prevail over the Rights of Unborn Children. The rationale behind this point of view is stated as follows.

Journal of Legal Research and Juridical Sciences

Although, Medical Termination of Pregnancy (Amendment) Rules, 2021, by Rule 3A (a) (i) of Medical Termination of Pregnancy (Amendment) Rules, 2021<sup>60</sup>, provides for the constitution of Medical Boards at approved facilities, which has the power to “allow or deny termination of pregnancy” beyond Twenty-Four Weeks upon two factors:

To save the lives of the pregnant women

Approval from the Medical Board, and only if there is substantial foetal “abnormality”

This seems to be an erroneous point of view as women having the right to bodily autonomy shall not rely upon the approval of a third party for exercising their rights. Also, several chances and events lead women to recognize their pregnancy very late, and many a time this delayed

<sup>59</sup> Kesavananda Bharati v State of Kerala (Supreme Court, 1973) 4 SCC 225

<sup>60</sup> Medical Termination of Pregnancy (Amendment) Rules 2021, r 3A(a)(i)



recognition of pregnancy exceeds the Upper Gestational Period of Twenty-Four Weeks due to the occurrence of any Medical Issue or any other factor incidental thereto.

Also, if the late realization of pregnancy takes place after twenty-four weeks, in the case of an unmarried woman who does not want to carry on her pregnancy, then forcing the woman to carry on her pregnancy will lead to a gross violation of her Right of Reproductive Choice and Bodily Autonomy.

The Medical Termination of Pregnancy Amendment Act, 2021, did great work by increasing the gestational limits, but also at certain points it lacks its efficiency as it continues to restrict abortion access and creates additional barriers. Let us discuss these barriers in great detail below:

The Medical Termination of Pregnancy Amendment Act, 2021, retains the lack of rights-based framing from the original Act. Instead of relying on rights, it simply provides immunity from criminal liability under the Indian Penal Code. This stands in contradiction with international law standards, which provide that the restrictions imposed on abortion violate various Human Rights including the Right to Life, Privacy, and Freedom from gender discrimination et cetera<sup>61</sup>.

The CEDAW or UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) advises that States should ensure access to abortion and health services for women and not impose any restrictions on access to abortion and medical health<sup>62</sup>.

The most recent report<sup>63</sup> submitted by the World Health Organization or WHO recommends the decriminalization of abortion completely, the grounds-based abortion access removed, the removal of any gestational limit so that the prevention of delayed abortion is ensured, the inclusion of provisions regarding abortion on demand for Girls and Women or any other pregnant person, and last but not the least the removal of mandatory waiting period to access abortion.

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<sup>61</sup> K L v Peru, Human Rights Committee, Communication No 1153/2003, para 6.4, UN Doc CCPR/C/85/D/1153/2003 (2005)

<sup>62</sup> Center for Reproductive Rights, 'WHO's New Abortion Guideline: Highlights of Its Law and Policy Recommendations' (2022) <https://reproductiverights.org/wpcontent/uploads/2022/03/CRR-Fact-sheet-on-WHO-Guidelines.pdf> accessed 31 May 2024

<sup>63</sup> Center for Reproductive Rights, 'WHO's New Abortion Guideline: Highlights of Its Law and Policy Recommendations' (2022) <https://reproductiverights.org/wpcontent/uploads/2022/03/CRR-Fact-sheet-on-WHO-Guidelines.pdf> accessed 31 May 2024



The introduction of “Severe Foetal Abnormalities” as an essential requirement for abortion after Twenty-Four Weeks, finds its origination from Eugenics. This condemns the person with disabilities and aims to promote the Ableist Framework by ignoring the framework based on bodily autonomy and self-determination<sup>64</sup>.

The introduction of “third party authorization<sup>65</sup>” from Medical Boards constituted under the Medical Termination of Pregnancy Amendment Act, 2021 for dealing with cases seeking termination of pregnancy after twenty-four weeks, acts as a significant barrier to accessing safe abortion. This creates an issue, especially for the women and girls living in tribal areas or rural areas and also those women and girls who are coming from marginalized socio-economic backgrounds.

Various International Bodies and Institutions have time and again reiterated<sup>66</sup> that requiring a woman to obtain permission or authorization from a third party including Courts, Medical Boards, and a Panel of Doctors or even from a Spouse violates the women’s right to equality and constitutes discrimination. Moreover, third-party authorization manifests as a huge barrier for women to access other reproductive health services.

Another, trend that needs to be re-analyzed is the judicial trend of giving the child in adoption. This trend is adopted by the court to save the rights of an unborn child who will give birth as a result of an unwanted pregnancy or by forcing the woman to carry on the pregnancy to its full term.

This takes place when the court has rejected the request of a woman to terminate the pregnancy after 24 weeks. This rejection was based on the ground that the statute does not permit the court

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<sup>64</sup> CREA, 'Nairobi Principles on Abortion, Pre-Natal Testing, and Disability' (2019)

<https://nairobiprinciples.creaworld.org/principles/> accessed 31 May 2024

<sup>65</sup>Dipika Jain et al, 'Medical Boards for Access to Abortion Untenable: Evidence from the Ground' (Jindal Global Law School, 2021) 3 [https://jgu.s3.ap-south-1.amazonaws.com/cjls/CJLS\\_Medical\\_Boards\\_Report\\_Final.pdf](https://jgu.s3.ap-south-1.amazonaws.com/cjls/CJLS_Medical_Boards_Report_Final.pdf) accessed 2 July 2024

<sup>66</sup> Committee on the Elimination of Discrimination against Women, 'Concluding Observations on the Combined Second and Third Periodic Reports of Timor-Leste' (25 November 2015) UN Doc CEDAW/C/TLS/CO/2-3, para 31(a);

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 'Report of the Special Rapporteur on the Right to Health' (27 April 2010) UN Doc A/65/255, para 23;

K L v Peru, Human Rights Committee, Communication No 1153/2003, para 6.4, UN Doc CCPR/C/85/D/1153/2003 (2005);

L M R v Argentina, Human Rights Committee, Communication No 1608/2007, para 9.3, UN Doc CCPR/C/101/D/1608/2007 (2011);

Committee on the Rights of the Child, 'Concluding Observations on the Combined Third and Fourth Periodic Reports of India' (7 July 2014) UN Doc CRC/C/IND/CO/3-4, para 66(b)

to do so, for any other reasons forwarded by the woman to terminate her pregnancy except for the reasons as enshrined under Medical Termination of Pregnancy (Amendment) Rules, 2021.

According to this judicial trend the Government is given responsibility of the child who is born under the abovementioned circumstances for its overall care and development. Also, the government is only responsible for giving the child to adoption.

However, the increasing offences against children at an alarming rate should also not be ignored, as according to the report of the National Commission for Protection of Child Rights (NCPCR) <sup>67</sup> the cases of crime against children are increasing expeditiously and pose a horrifying and future threat to the country.

If this duty on the part of government conferred upon them by the court to look after the care and development of the child and the duty regarding giving of a child in adoption is not fulfilled properly, then the child may fall as easy prey to the perpetrators of crime and criminal. We also cannot ignore the fact that the child being a minor does not have the mental capacity to differentiate between right and wrong and may develop criminal behavior or tendency within him, if not provided the requisite care and necessities.

If this event took place, then it would be more harmful to protect the rights of an unborn child than to violate the rights of an unborn child which the Women's Right of Reproduction has already violated earlier to safeguard the rights of the unborn child.

Another, crucial consideration that could be raised regarding the acknowledgment of the rights of an unborn child is if the legislature considers that it is not right to terminate the pregnancy after 24 Weeks because the fetus has started breathing. His movements in the mother's womb depict he is living. This viewpoint of the legislature can be contested, on the point that it is not only after 24 weeks that the child starts breathing or becomes quick inside the mother's womb, but it is before the period of 24 weeks that the fetus has become quick and breathing inside the womb of mother.

And if the termination of pregnancy up to 24 weeks is allowed then why not after 24 weeks? Will it not fall under feticide?

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<sup>67</sup> National Commission for Protection of Child Rights (NCPCR), 'Annual Report 2020-2021' (NCPCR, 2021) [https://ncpcr.gov.in/uploads/165648813162bc00c370bdd\\_annual-report-2020-2021-11046-kb.pdf](https://ncpcr.gov.in/uploads/165648813162bc00c370bdd_annual-report-2020-2021-11046-kb.pdf) accessed 31 May 2024

Therefore, the school of thought that supports in favour of prevailing of the Reproductive Rights of Women over the Rights of Unborn Children should be validly upheld. And the present Medical Termination of Pregnancy Amendment Act, 2021 should be amended in such a way, which makes it more liberal. Also, the upper gestational limit of Twenty-Four Weeks should be removed, as it violates the Reproductive Rights of Women which is inherent in Article 21 of the Constitution.

## ANALYSIS

On careful consideration of the viewpoints above, there is scope for extending the horizon of the MTP Act. This is because of the prevailing societal practices which demand to amend the MTP Act. By removing the upper gestational period and incorporation of Abortion on demand, the present lacunae existing in the act can be addressed and further Right to Life of pregnant women enshrined under Article 21 of the Constitution can be protected. Moreover, if the criminalization of abortion is removed the women wanting to terminate their pregnancies will get benefit as they will not be compelled to seek any unapproved or unqualified health professional to conduct their abortion.

Also, the social stigma present in society about the pre-marital relationship and pregnancies arising out of it can be bypassed with the incorporation of abortion- on demand to the Act. Another significant viewpoint regarding removing third-party authorization could be validly upheld as by removing the present third-party authorization the Right to Bodily Autonomy of women, accompanied by the Right of Reputation and the Right of Privacy could be secured.

Thus, to address new challenges and societal needs the MTP Act should be amended and be made more liberalized in nature. So, that it can become future-friendly and a women-centric law protecting the essential rights of women neglecting hurdles and barriers.

The Judiciary also while dealing with cases regarding Medical Termination of Pregnancy should be more focused on protecting women's rights and must consider the consent of women seeking termination of pregnancy because it is the women only, which has to suffer the pain and consequences of childbirth. Also, the Judiciary should take a lenient approach for the women seeking abortion after the termination of the upper gestational period prescribed by the MTP Act, because it's her right under Article 21 to choose whether to keep or not keep the child.

## CONCLUSION

It is applauded that the Central government has taken such a bold initiative by amending the MTP Act, 1971 to balance the rights of unborn children and women. However, the amendment still leaves women with certain conditionalities which may become a barrier to safe and accessible abortion in the country. Also, the Constitutional Right of women to make reproductive choices still seems dicey because the power to terminate the pregnancy has been conferred to a third party and not to women seeking abortion.

Not providing the provision for abortion on demand leads to forced pregnancy, which is a denial of a woman's human rights under Article 21 of the Indian Constitution. Moreover, Article 16 of CEDAW or UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) guarantees women to decide the number of children and the gap between the two children and it also provides for a right to not have forced pregnancy.

Upon careful consideration, the school of thought supporting the prevailing of the Reproductive Rights of Women over the Rights of Unborn Children seems justified. Also, it is an attempt made to bring the focus of all legal luminaries, academicians and veterans who are associated closely with this area of law to identify the existing lacunae and bring forward possible solutions.

Therefore, it is of prime importance that Laws and Policies framed regarding abortion should respect women's right to bodily autonomy and reproductive choices.