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THE LEGAL AND SOCIAL EFFECT OF ABORTION RIGHTS IN INDIA

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Hyderabad, Telangana***Received on 1 August 2025, Accepted on 4 August 2025, Published on 17 August 2025***ABSTRACT:**

Abortion is legal in India, but in India, there are some conditions in the MTP Act 1971. According to that, if you are doing an abortion that is not an offense, but if you are doing illegal, then that is an offense under Bharatiya Nyaya Sanhita (BNS)¹. If you see so many effects, legal and social. If you got pregnancy before marriage or by rape so that type of pregnancy is not accept in society, so that reason abortion is need for women and so many other reason women need abortion, this is under your constitution we have body right, If I don't want pregnancy so, we can abort pregnancy but that is not easy that much.

KEY WORDS: - Abortion, Legal, right law, medical practitioner, implication, termination, pregnancy.

INTRODUCTION:

Abortion is one of the subjects that has been discussed extensively at both the national and international levels. It has become a controversial issue all over the world. If we're talking about women's abortion rights, then what about the unborn's life rights? In India we have specific act MTP Act 1971, in this act giving some condition related abortion and another Indian Constitution article 21 is taking about abort and also fetus have right to life, so that right is vary controversy if going right to women that right against to fetus right, if than giving right to fetus so that is against to women's body right. In society, if anyone goes for abortion before marriage so that is not accepted by society; if a woman is impregnated by rape, that is also not accepted by society, abortion is against society. In the legal aspect, which is very strict, but after the amendment of 2021 came, they gave some rights to women.²

¹ Bhartiya Naya Sanhita Act, 3, No. 45 of 2023, Act of Parliament (India).

² William L. Saunders, Understanding International Law: The ABC's of an International Right to Abortion, 84 Human Life Review 4 (2010), Ave Maria Int'l L.J. (July 20, 2025, 8:00 P.M.)

Abortion as a Human Right:

At the international level, so many conventions, declarations, and Protocols are there, but abortion rights are not given directly; that right is included with other rights. The Preamble of the Universal Declaration of Human rights describes the Declaration as, “a common standard of achievement for all people and nations” and stat “the people of the United Nation have reaffirmed their faith in fundamental human right, in the dignity and worth of the human person, and in the equal rights of men and women.”³ The article is “Everyone is entitled to all the rights and freedoms set forth in this Declaration without distinction of any kind.” In the third article, the article explains the first of the rights belonging to everyone, “Everyone has the right to life”. The right to life is the foundation of all other human rights. Though the declaration states the understanding of the international community regarding human rights, it does not create legal obligations. The International Covenant on Civil and Political Rights (ICCPR) supports and strengthens the right to life mentioned in the Universal Declaration of Human Rights. It clearly states that every human being has an inherent right to life, and this right must be protected by law. No one should be unfairly or unlawfully deprived of their life. Interestingly, Article 1 of the ICCPR specifically uses the term "every human being" when referring to the right to life, while for other rights, it generally uses terms like "everyone" or "every person." This use of different terminology raises the question whether ‘every human being has a wider connotation than ‘everyone’ and could therefore be understood to include the unborn child.

Abortion and the Constitution of India:

In the Indian Constitution, Article 21 in Part III is the Magna Carta of our Constitution⁴, the right to life. In Article 21, so many rights are included in this article, and also included right to privacy under this article; women’s abortion rights are also included. Under Article 21 fetus also has the right to life. Under Article 21 women’s having body right, they will use that right to abort their pregnancy. Women have bodily rights, that why if she doesn’t want her

<https://aul.org/wpcontent/uploads/2021/06/WilliamSaundersSanJoseArticlesandIn271RighttoAbortion4AveMariaIntlLJ-2015.pdf>

³ Betty Friedan, Abortion: A Woman’s Civil Right, speech delivered Feb. 16, 1969, in Before Roe v. Wade 38–39, Iowa State Univ. Catt Ctr.(July 20, 2025, 8:00 P.M.)

<https://awpc.cattcenter.iastate.edu/2022/02/23/abortion-a-womans-civil-right-feb-16-1969/>

⁴ S.K. Kapoor, International Human Rights, 156 (Central Law Agency 2021).

pregnancy, she can abort it, so she has reproductive rights. Thus, it can be reiterated that all over the world and every woman has an unconditional right to have control over her own body.

Medical Termination of Pregnancy Act 1971⁵:

After the Roe vs Wade case, European and American countries started to legalize abortion. During the last thirty years, since the 1970's many countries have liberalized their abortion laws. The Roe case has been subsequently modified by the US Supreme Court in Planned Parenthood vs Casey, where the legality of the abortion law is now linked to the viability of the fetus rather than the rigid third-trimester test laid down in the Roe case. On August 25, 1964, the **Central Family Planning Board of India** suggested that the **Ministry of Health** should form a committee to examine whether there was a need to introduce a law regarding abortion. The recommendation was adopted in the latter half of the 1964 constitution, a committee that consisted of members from various Indian public and private agencies. The committee is called the Shantilal Shah Committee⁶. After analyzing a vast expanse of statistical data available at that time, this committee issued its report on December 30, 1966. Based on the findings of this report, the government enacted the **Medical Termination of Pregnancy Act, 1971 (MTP Act)**, which marked a significant step in relaxing abortion laws in India. The committee acknowledged that there did not exist and would not exist in the predictable facilities to support an extensive abortion program.⁷ It also specifically denied that its intention was to force down the legislation on abortion only for population control in India. Abortion is only for population control in India. The committee further pointed out that it is felt that legalizing abortion with a view to obtaining demographic results is impractical and may even defeat the constructive and positive practice of family planning through contraception. It is worth noting that the MTP Act was implemented in the month of April 1972 and again revised in the year of 1975 to eliminate time-consuming procedures for the approval of the place and to make the service more readily available. This Act was amended in the year 2002 and again in 2005. The Preamble of the Act states, The **Medical Termination of Pregnancy Act** was introduced to allow the termination of certain pregnancies by qualified medical professionals and to address related matters. The Act is brief, with only 8 sections, but it outlines key details such as when,

⁵ The Medical Termination of Pregnancy Act, 5, No. 34 of 1971 Act of Parliament (India).

⁶ Jai Narayan Pandey, The Constitution of India, 55(Central Law Agency 2024).

⁷ Amar Jesani & Aditi Iyer, Women and Abortion, Economic & Political Weekly, JSTOR (July 20, 2025, 8:00 P.M.) <https://www.jstor.org/stable/4400452>

where, and under what conditions a pregnancy can be legally ended. It permits abortion in situations where contraceptives have failed or if continuing the pregnancy could harm the woman's physical or mental health. The pregnant woman's **consent is essential** for the procedure, except in cases where she is a **minor** or **mentally ill**, in which case her **guardian's consent** is required.⁸

❖ **Important section of MTP Act 1971:**

Section 3 – When Pregnancies may be terminated by registered medical practitioners⁹ –

1. **Protection from Criminal Liability**

Even though abortion is generally considered a criminal offence under the **Indian Penal Code (IPC)**, a **registered medical practitioner** will not be held legally responsible if the pregnancy is terminated following the rules laid out in the **MTP Act**.

2. **When Pregnancy Can Be Terminated**

A registered medical practitioner can legally terminate a pregnancy under the following conditions:

- a. If the pregnancy is **up to 12 weeks**, it can be ended based on the opinion of **one registered medical practitioner**.
- b. If the pregnancy is **more than 12 weeks but not more than 20 weeks**, it can be terminated only if **two registered medical practitioners** agree that:
 - i. Continuing the pregnancy would seriously harm the woman's **physical or mental health**, or
 - ii. There is a significant chance that the child would suffer from serious **physical or mental disabilities** if born.

3. **Considering the Woman's Environment**

When deciding whether continuing the pregnancy would harm the woman's health, her current or likely living conditions can be taken into account.

⁸ Universal Declaration of Human Rights, <https://documents.law.yale.edu/sites/default/files/UDHR2013FullText.pdf> (last visited on July 20, 2025).

⁹ International Covenant on Civil and Political Rights, <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf> (last visited on July 20, 2025).

4. Consent Requirements

(a) If the woman is **under 18 years of age** or is **mentally ill**, abortion can only be done with **written consent from her guardian**.

(b) In all other cases, abortion is only allowed if the **pregnant woman herself gives written consent**.

Section 4- Place where pregnancy may be terminated –

No termination of pregnancy shall be made in accordance with this Act at any place other than.

(a) A hospital established or maintained by the Government or

(b) A place for the time being approved for the purpose of this Act by the Government.

Case- Nikhil D. Dattar v. Union of India [SLP (civ)No. 2008] S. C¹⁰.

In this case, the fetus was diagnosed with complete heart block; thus, the Petitioner, in her twenty-sixth week of pregnancy, had sought termination of pregnancy. The petitioner contended that section 5(1) of the MTP Act should be read down to include the eventualities in section 3 and consequently, a direction should be issued to the respondents to allow the petitioner to terminate the pregnancy, And the remedy under section 5 can only be available when the non-termination of pregnancy would be dangerous to life of pregnant woman. While dismissing the petition, the court further held that dismissing the petition the court further held that for twenty-six weeks of pregnancy having already passed, the court could not pass any direction for exercise of the right under section 3.

Socio-ethical effect:

Abortion touches social, religious, economic, and political aspects. Its impact on society can be looked at both in a positive and a negative manner. In the early years of forming abortion policy, Western civilizations disapproved of the practice. By the nineteenth century, many nations passed laws banning abortion. It wasn't until late in the twentieth century that women's rights were given importance, and after many awareness movements, that some nations, including the US, began to legalize abortion.¹¹ In society, if any girl gets pregnant, she goes to the hospital. Lack of proper cleanliness, staff, and facilities sometimes results in conditions

¹⁰ S.L.P. (Civ.) No. 2008 of 2009.

¹¹ Human Rights Watch, Access to Abortion Is a Human Right, <https://www.hrw.org/news/2022/06/24/qa-access-abortion-human-right> (last visited on July 20, 2025).

such as infertility, menstrual disturbances, and pelvic inflammatory diseases, and some women have died from complications of abortion.

Case - Mr. X v. Union of India, (Writ Petition No. 593 of 2016)¹²:

The Supreme Court of India has decided that severe fetal abnormality can be a valid ground for the medical termination of pregnancy, even if the fetus is more than twenty weeks old. The Supreme Court granted a twenty-four-week pregnant woman and a rape survivor permission to go for an abortion.

Psychosocial aspects:

The famous birth control activist Margaret Sanger once said that “**A woman cannot truly be free unless she has the right to decide for herself whether or not she wants to become a mother.**” Today, women have made significant progress from the times when abortion was considered illegal and choosing to end a pregnancy was heavily criticized by society.¹³ The crucial consequence that followed this attitude toward abortion was the psychological implications for the pregnant woman and her family. In the past, many people faced emotional distress and uncertainty about their future due to unwanted pregnancies. Today, however, abortion is legal in most countries, which has helped reduce both the emotional trauma and the social stigma that once surrounded it. For many women, having the legal right to end a pregnancy gives them a sense of control over their own lives and choices. In supportive social environments, the relief of ending an unwanted pregnancy often outweighs any guilt that might have come with undergoing an illegal or socially condemned procedure. However, in a small number of cases, some women may still experience serious emotional issues like depression or mental illness after an abortion. On the other hand, people who are **pro-life** strongly oppose abortion. They believe that life begins at conception, so ending a pregnancy is the same as taking a human life — something no civilized society should allow. For them, the solution to an unwanted pregnancy is **adoption**, especially since many children need loving families. Even in difficult cases such as **rape or incest**, pro-life advocates argue that the unborn child should not be punished for a crime it did not commit. They emphasize that if women want full control over their bodies, this responsibility should also include preventing unwanted pregnancies by

¹² Writ Petition (Civil) No. 593 of 2016.

¹³ MoSPI gateway, <https://mospi.gov.in/publication/annual-report-ministry-2001-2002> (last visited on July 20, 2025).

using **contraceptives** or practicing **self-restraint**.¹⁴ To sum up, many agree that **abortion should not be treated as a substitute for contraception**. However, those who support the **pro-choice** perspective argue in favor of a woman's right to choose abortion, especially during the early stages of pregnancy. They believe that during the **first trimester**, the fetus cannot be considered a separate life, as it depends entirely on the mother for survival. It is connected to her body through the **placenta and umbilical cord**, and its health is entirely tied to hers. Therefore, it cannot exist independently and should not be viewed as a distinct human being. Pro-choice advocates also raise the point that **fertilized eggs used in in vitro fertilization (IVF)** are often not implanted and are routinely discarded — yet this is not labeled as murder. So, they ask, how can abortion be considered murder in such cases? They further argue that forcing **teenagers** to carry pregnancies often leads to **serious challenges**, including dropping out of school, poor health outcomes, limited access to prenatal care, and the burden of **social stigma**. For these reasons, pro-choice supporters see access to safe and legal abortion as a matter of **civil rights** — the right of every individual to make decisions about their own body and future.

ABORTION RELATED LAW UNDER BHARTYA NAYA SANHITA:

Section 88 of the Bharatiya Nyaya Sanhita (BNS), 2023, replaces Section 312 of the Indian Penal Code and addresses the offense of causing miscarriage. It makes it a criminal act to intentionally cause a woman to miscarry, unless it is done in good faith to save her life.¹⁵ Section 89 of the Bharatiya Nyaya Sanhita (BNS), which replaces the Indian Penal Code (IPC)¹⁶ Deals causing a miscarriage without the woman's consent are treated as a serious offense under the Bharatiya Nyaya Sanhita (BNS), 2023, and can lead to imprisonment, a fine, or both. Additionally, Section 92 of the BNS, which replaces a corresponding provision in the Indian Penal Code (IPC), deals with cases where an act causes the death of a "quick unborn child" — meaning a fetus that has reached a stage where it shows signs of life. If that same act were considered culpable homicide had it resulted in the mother's death, then causing the unborn child's death is also considered a punishable offense.

¹⁴ NHM, <https://www.nhm.gov.in/images/pdf/monitoring/rhs/rural-health-care-system-india-final-9-4-2012.pdf> (last visited on July 20, 2025).

¹⁵ Government of India, <https://indianculture.gov.in/reports-proceedings/report-committee-study-question-legalisation-abortion> (last visited on July 20, 2025).

¹⁶ Indian Penal Code, 5, No. 45 of 1860 Act of Parliament (India).

CONCLUSION:

Abortion in India is a complex legal and social issue. While legal abortion services are available, despite the legalization of abortion, several challenges still exist — including limited access to services, social stigma, and complex ethical and moral concerns. Women who undergo abortions often face both physical and mental health impacts, especially when the procedure is done illegally or in unsafe conditions, which can sometimes even lead to death. While the Medical Termination of Pregnancy (MTP) Act allows abortion under certain specific circumstances, its limited scope sometimes pushes women toward unsafe, illegal procedures. To prevent this, the Act should be further expanded or revised to include broader and more inclusive provisions, ensuring that women do not feel forced to seek dangerous, unregulated abortions. In our society, also giving importance to women if she has another choice, she is not going to illegal abortion.



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