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LEGAL PROVISIONS IN RELATION TO ABORTION IN INDIA AND ITS IMPACT ON SOCIETY

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Abstract

The abortion laws in India have undergone significant changes over time, attempting to come to a middle ground between humane positions, medical ethics, and legal control. The Medical Termination of Pregnancy (MTP) Act of 1971 and its amendments have allowed a reasonably safe access to abortions within certain boundaries. The recent changes brought by the Bhartiya Nyaya Sanhita 2023 (BNS) which replaced the code Indian Penal, has brought about changes that affect the legal regulation of abortion. This article assesses the current state of law, case law, and political constitutionalism regarding abortion in India. It also looks at the impact of new criminal legislation on reproductive rights, proof, and societal notions. The evaluator identifies key issues such as the lack of healthcare provisions, gender discrimination, and legal vagueness and recommends changes to more liberally progressive perspectives. This article seeks to contribute towards the debate concerning abortion rights and legal protections in India by considering the relationship of law, policy, and public opinion.

Introduction

The abortion laws in India have grown up very rapidly, reflecting those peaks and valley of different kinds of factors including law, medicine and ethics are interacting in the country. Historically abortion has been made illegal in India, under Sections 312 to 316 of the Indian Penal Code 1860, the IPC. The law stayed that way with its exception to not consider it illegal if the abortion was done in order to save a woman's life. Acknowledging the really important business of reducing unsafe abortions and lowering maternal death rates and very risky deliveries, the Indian government passed the Medical Termination of Pregnancy Act 1971.¹ This piece of legislation introduces a legal foundation allowing women to choose to end early pregnancies in specific cases. Over the years, the legislation has undergone revisions, most

¹ Hirve SS, 'Abortion Law, Policy and Services in India: A Critical Review' (2004) 12 Reproductive Health Matters 114

notably in 2021, to expand accessibility by extending the gestational limit for some instances and recognizing the rights of unmarried women. While these legislative changes are very important steps forward, abortion remains a tricky topic full of serious ethical concerns, strong religious views, and a dark shadow of shame hanging over many people.

Legally speaking, it's supposed to be easy to get safe abortion services. But in practice things are a lot harder, specifically for folks who live in rural areas or places where abortion rights are frowned upon. Sadly, still today, many women continue to rely on very risky ways to terminate pregnancies because they simply lack understanding of safer alternatives, they just don't have good access to healthcare and due to issues of taboo and shame around abortions. The MTP function, 1971, however progressive, includes limits such as obtaining medical practitioners' clearance, which may function as a barrier rather than encouraging reproductive autonomy.² Additionally, India's legal debate on abortion has been moulded by judicial rulings that interpret the right to abortion under Article 21 of the Constitution, which protects the right to life and personal liberty. Courts have broadened abortion rights to reflect strong respect for bodily autonomy and reproductive choice and have therefore been supportive of strong liberal law protections.

With the roll out of Bhartiya Nyaya Sanhita 2023 (BNS) which supersedes Indian Penal Code (IPC), there's a new look at legal rules concerning terminations of pregnancy. The BNS preserves laws criminalizing unlawful abortions while also complying with the existing MTP framework. But it's also important to consider whether there have been improvements which enhance reproductive rights or whether they actually just introduce more limits. Furthermore, the Bhartiya Sakshya Adhiniyam, 2023 (BSA), which controls evidentiary procedures, brings new issues involving medical data, secrecy, and the burden of proof in abortion-related situations. The interplay between these new criminal legislations and the MTP Act warrants a thorough consideration of their combined impact on abortion rights and access to reproductive healthcare in India.

Beyond just the legal stuff and the formalities, there are some really important and serious social implications about how different laws impact abortion. In a society where deeply rooted cultural and religious beliefs shape core views on reproductive rights, abortion remains an

² 'ABORTION LAWS in INDIA: A REVIEW of COURT CASES NAAC Accreditation -"A" Grade CENTRE for HEALTH LAW, ETHICS and TECHNOLOGY Jindal Global Law School with Support from Ipas Development Foundations' <https://pure.jgu.edu.in/id/eprint/3255/1/Report-on-Abortion-Laws-in-India.pdf> accessed 27 April 2023

important and sometimes heated area of moral conversation. A lot of women who want to have an abortion and don't fit within legal guidelines often face shunning from their community and discrimination.³ No surprise they can actually go to jail for it too, worrying everyone they know and never really have a say in what happens to their own bodies. When families, communities, and doctors are all involved in deciding things related to abortion it only adds to the difficulty. While lawmakers try to balance women's right to control their own reproduction against government goals, social values still limit where and when easy and safe services for abortions are actually available.⁴

This article wants to go deep into India's legal rules which surround doing abortions, to see how new criminal laws doing this have a big impact and to explore also the effects of these rules on society at large. Doing a literature review on the MTP Act (Medical Termination of Pregnancy Act) and court opinions and rulings as regards really controversial stuff like BNS and BSA, this paper aims to add to a larger conversation on reproductive rights and on solving issues around abortion in India as they appear and evolve.

Legal Framework for Abortion in India

The legal framework for abortion in India has changed over the years to balance women's reproductive rights, medical safety, and societal concerns. Initially the Indian Penal Code from 1860 went really strict and abortion was effectively banned, with exceptions only for cases where it was needed to save a mother's life. Recognizing that proper and safe access to abortions was important to not only protect ladies' lives but also to stop serious operations from harming women and their health, the Medical Termination of Pregnancy Act was put into place as part of the Family Planning Law in 1971. This bill put in place safeguards that allowed abortion in specific situations.⁵ They also made sure to be careful not to let there be too many abortions. They also required monitoring to make sure that this did not happen and to keep the practice safe.

- If the continuation of the pregnancy posed a risk to the life of the woman or may cause significant harm to her bodily or mental health.

³ DALVIE S, BARUA A and APTE H, 'Safe Abortion as a Women's Right: Perceptions of Law Enforcement Professionals' (2015) 50 Economic and Political Weekly 61 <https://www.jstor.org/stable/24482410>

⁴ Gupte M, Bandewar S and Pisal H, 'Abortion Needs of Women in India: A Case Study of Rural Maharashtra' (1997) 5 Reproductive Health Matters 77

⁵ 'ILE JOURNAL of WOMEN STUDIES VOLUME I and ISSUE I of 2023 STATUS of ABORTION LAWS in INDIA' <https://jws.iledu.in/wp-content/uploads/2023/07/V1I11.pdf> accessed 10 March 2025

- If the pregnancy came from rape or contraceptive failure (thought to cause emotional anguish).
- If there was a considerable danger that the child, if born, would suffer from physical or mental defects.

Initially, the Act legalised abortion only up to 20 weeks of gestation, requiring the opinion of a single medical practitioner for termination up to 12 weeks and two medical practitioners for termination from 12 and 20 weeks. However, this framework had obvious shortcomings, notably with cases of congenital abnormalities found later in pregnancy and the exclusion of unmarried women under the contraceptive failure clause.⁶

Recognizing the need for more progressive and comprehensive abortion legislation, the Indian government revised the MTP Act in 2021, adopting the following important changes:

- Extended gestational limits: Extended gestational limits:
 - ❖ Going to 20 weeks for abortion in Australia requires the assessment and opinion of at least one qualified doctor.
 - ❖ Abortion between 20 to 24 weeks is authorised for certain types of women (including survivors of rape, incest, and children) with the agreement of two certified medical practitioners.
- Removal of the married status condition: The new amendment broadened the right to abortion for people who got pregnant when they didn't want to. This new law also equals access to reproductive health care for unmarried people.
- Protection of privacy: The modification included a secrecy clause, assuring that the identity of women seeking abortion is not divulged, save to authorized individuals.
- Medical Board for late-term abortions: Sure, when there are serious problems with the baby that show up after 24 weeks of pregnancy, the doctors who work for the government recommend and then do a termination.

The MTP Act Amendment of 2021 was a huge step forward in making more access to abortion available while at the same time ensuring that there is good medical and legal protection for all

⁶ Mishra R, Singla K and Thakral S, 'Taboo to Acceptance: The Legal Transformation of Abortion Rights in India' [2025] Archives of Legal Medicine 200556
<https://www.sciencedirect.com/science/article/abs/pii/S2950394924001341>

involved. However, it still creates loopholes, notably in circumstances where women seek abortion after 24 weeks owing to socio-economic reasons or personal choice.⁷

Indian courts have played a major role in developing abortion rights by interpreting them within the context of Article 21 of the Constitution (Right to Life and Personal Liberty). The Supreme Court of India has repeatedly made it clear that women must have freedom of choice when it comes to reproduction and it really matters to human liberty too.

In *X v. Principal Secretary, Health and Family Welfare Department*⁸, the Supreme Court declared that unmarried women are also allowed to obtain abortion under the MTP Act, recognizing reproductive autonomy as a basic right. Similarly, in *Suchita Srivastava v. Chandigarh Administration*⁹, the Court stressed that a woman's reproductive decision is a part of human liberty, and the state cannot impose unjustified limits on abortion.

Judicial precedents have been essential in broadening the scope of abortion regulations, notably in circumstances of prenatal abnormalities, rape survivors, and mental health issues. Courts have also by special circumstances gone beyond the legally set times at which employees can be fired, which highlights the need for a legal framework that's more flexible.

New Criminal Laws and Abortion: Bhartiya Nyaya Sanhita, 2023 (BNS)

The Bhartiya Nyaya Sanhita, 2023 (BNS), which replaces the Indian Penal Code, 1860 (IPC), provides revisions to India's criminal justice system, including measures pertaining to abortion. While the law that allows doctors to end pregnancies when necessary, called the Medical Termination of Pregnancy (MTP) Act from 2021 revision, rules the legal playing field for having an abortion, the Biological Nuisance Suppression Act still punishes anyone who performs unsafe terminations. Setting up the BNS has been an effort to update India's legal system. But there is room for some careful thought in deciding its influence over abortion law.¹⁰

Under the IPC, Sections 312 to 316 criminalized abortion, with exceptions only when conducted in good faith to preserve a woman's life. The BNS carries forward comparable rules, ensuring that wrongful terminations remain penalised while respecting exceptions permitted

⁷ Ravindrareddy K, Bajracharya P and Dutta B, 'Examining Access to Abortion in India and Nepal from a Reproductive Justice Lens' (2024) 15 Jindal Global Law Review 437

⁸ AIR 2022 SC 4917

⁹ [2009] 13 SCR 989

¹⁰ Singh S and others, 'The Incidence of Abortion and Unintended Pregnancy in India, 2015' (2018) 6 The Lancet Global Health

under the MTP Act. Section 115 of the BNS penalizes inducing a miscarriage without a woman's permission, keeping the essential framework of prior criminal legislation. This is really crucial to ensure that no one has an abortion that has been forced upon them—problem is really, really big in India especially for women who are victims of domestic violence or at the hands of violence based on their gender. Plus, even with woman consent, miscarriage is still criminal felony punishable by law unless the Medical Termination of Pregnancy Act allows it.¹¹

One of the key characteristics of the BNS is its emphasis on physical autonomy and consent. And now the legislation bans third party interference in decisions about when women get to decide whether to have an abortion. This fits with developing legal interpretations where courts have regarded a woman's reproductive rights as essential under Article 21 of the Constitution. While criminalizing forced or coercive abortions is very important, there are concerns because the Barbados National Strategy or BNS does not also include steps to guarantee accessible safe abortion care. Leaving out important matters makes it hard to fix the major problems related to abortion access systematically.

Another major legal reform is the Bhartiya Sakshya Adhiniyam, 2023 (BSA), which supersedes the Indian Evidence Act, 1872. The BSA oversees evidentiary processes in abortion-related proceedings, specifically addressing medical data, patient confidentiality, and consent paperwork. Ensuring tight anonymity in abortion situations is crucial, especially given the stigma surrounding the surgery. When it gets stricter what the law says about unlawful abortion, it's not just doctors who get nervous. They're really worried that the courts might come after them if something goes awry in their work. They don't want to get in legal trouble.

Although the BNS does not materially alter the legal environment for abortion, its implementation has to be watched regularly. The prosecution of illicit abortions must be balanced with guaranteeing access to legal and safe treatments. Moving ahead, clearer rules and harmonization of the BNS with the MTP Act are needed to ensure that criminal provisions do not become a vehicle for curtailing reproductive rights.¹²

¹¹ Gupta B and Gupta M, 'THE SOCIO-CULTURAL ASPECT of ABORTION in INDIA: LAW, ETHICS and PRACTISE' (2016) https://ili.ac.in/pdf/p10_bhavish.pdf

¹² Yokoe R and others, 'Unsafe Abortion and Abortion-Related Death among 1.8 Million Women in India' (2019) 4 BMJ Global Health <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6509605/>

Impact of Abortion Laws on Society

The system of laws that lets abortion happen in India has a huge deal of influence. Not just directly on reproductive health but also on things like gender rights, economy, and culture. It navigates and changes the way different communities deal with this matter. While progressive changes to the Medical Termination of Pregnancy (MTP) Act, 1971, have extended access to abortion, problems persist in terms of social stigma, healthcare accessibility, and legal complications. The adoption of the Bhartiya Nyaya Sanhita, 2023 (BNS) further enforces the criminal laws surrounding unlawful abortions, affecting public attitudes and access to reproductive rights.

1. Public Health and Women's Safety

One of the most significant repercussions of abortion regulations on society is their influence on women's health and safety. The legalization of abortion under the MTP Act has contributed to reduce maternal mortality rates by enabling women access to safe and regulated medical treatments.¹³ Prohibitive requirements such as medical boards requiring permits for late abortions continue to push women to seek very dangerous abortions performed illegally, especially in places where the health facilities are lacking. Rural areas such places lack the necessary equipment and trained people to do abortions safely so gruesome illegal work becomes inevitable. Truly, where there isn't reliable infrastructure for safe health services, sometimes women seek very risky forms. The prevalence of unsafe abortion methods leads to significant health consequences, infections, and even fatalities, underscoring the need for more accessible healthcare services.

2. Gender Equality and Reproductive Rights

The legal regulations surrounding abortion have a key role in defining women's autonomy and gender equality. The 2021 modification to the MTP Act, which expanded abortion rights to unmarried women, was a positive step in achieving equality in reproductive choices. However, cultural views typically lag behind legislative developments. Women seeking abortions still face a lot of moral policing, criticism and rejection from healthcare professionals and family. This makes free exercise of reproductive rights much harder to do. The BNS 2023 is a step forward in that it strengthens the protection of women from forced abortions and it puts limits

¹³ Hooda S and Agarwal K, 'Testing Limitations, Legal and Sociological Aspects of Abortion Laws in India - Publications Repository (PURE)' [2022] Jgu.edu.in <https://pure.jgu.edu.in/id/eprint/3641/> accessed 10 March 2025

against discouraging medical abortions through family consent or other means. Overall, however this law doesn't provide for new legislative measures to guarantee women can get an abortion at any time without family putting up barriers.¹⁴

3. Social Stigma and Cultural Barriers

Despite the fact that abortion is officially legal in India, it's still a big taboo topic. It's especially hard to talk about among conservative circles who really don't like to discuss it much at all. Women who seek abortion, even for medically acceptable reasons, may experience social ostracization, shame, and emotional pain. This stigma is much more prominent in situations of births arising from rape, extramarital relationships, or contraceptive failure among unmarried women. The reluctance of healthcare practitioners to give abortion services owing to personal biases further exacerbates the situation, forcing many women to seek dangerous alternatives. Addressing these cultural hurdles needs awareness campaigns, sex education, and healthcare training to destigmatize abortion and encourage informed reproductive choices.¹⁵

4. Economic and Social Consequences

And restrictions for abortion affect the economy and social scene too, especially for folks who are poor or not so lucky economically. Women, from low income backgrounds especially, find themselves in a pickle when trying to get safe clinics for abortions, so they end up going to sketchier places that use out of date methods for the procedure. But these methods are unsafe and that's a huge health danger. Additionally, undesired pregnancies can create a financial hardship on women and families, particularly when they lack enough social and economic support. Making it easy to get abortions helps a lot with the money worry women face. It means they can decide what is important to them rather than just what fits their bank account. That way, they can have more control over what happens in their lives.

The influence of abortion legislation in India extends beyond legislative restrictions, impacting healthcare accessibility, gender rights, societal attitudes, and economic realities. While legislative modifications have improved abortion access, societal stigma, lack of understanding, and procedural impediments continue to hamper women's capacity to make informed reproductive decisions. Moving forward, there is a need for stronger healthcare

¹⁴ Schwartz RA, 'The Social Effects of Legal Abortion.' (1972) 62 American Journal of Public Health 1331

¹⁵ Ishola F, Ukah UV and Nandi A, 'Impact of Abortion Law Reforms on Women's Health Services and Outcomes: A Systematic Review Protocol' (2021) 10 Systematic Reviews
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8240208/>

infrastructure, legislative reforms, and awareness initiatives to guarantee that abortion rights are fully fulfilled in practice. A comprehensive strategy that incorporates legislative safeguards, medical accessibility, and cultural acceptability is crucial for building an atmosphere where reproductive rights are fully valued and preserved.

Challenges and Gaps in the Legal Framework

Despite tremendous advances in abortion legislation, various obstacles and loopholes continue in the legal framework, influencing access, implementation, and the protection of reproductive rights. While India has laws in place like the Medical Termination of Pregnancy Act of 1971 and updates that broaden and make guaranteed safe abortion legal, barriers rooted in reality and confusion born of unclear law still severely limit women's rights when it comes to reproduction.

One of the key issues is the restricted autonomy afforded to women in abortion decisions. The law still wants to force some kind of medical stamp of approval before women get to decide themselves if they should terminate a pregnancy. Women should really have full control about making that decision. This dependence on medical practitioners can result in delays, moral policing, and denial of care, particularly in situations involving unmarried women or survivors of sexual abuse. There's also the danger that the process of needing permits to get abortions after twenty four weeks can be long and tangled, and complicated enough that women wind up facing court injunctions and have important medical care postponed. Court intervention becomes an unappetizing balance scale for those that need medical care fast.¹⁶

Another huge gap is the lack of healthcare that's close to people living in rural areas and marginalized parts of society. While abortion is constitutionally authorised, a dearth of educated medical personnel and inadequate healthcare facilities hinder many women from obtaining safe and legal procedures. This often results in them turning to very dangerous illegal abortions and this causes big health risks and even maternal death. The legislative framework does not fully address the need for developing healthcare facilities and assuring availability of safe abortion services across all areas.

The Bhartiya Nyaya Sanhita, 2023 (BNS) keeps criminal penalties against unlawful abortions but does not provide new measures for improving accessibility or decreasing stigma. Long

¹⁶ Chakraborty A and Chakraborty S, 'The Reform of Abortion Law in India: A Critique' (2022) 3 Contemporary Challenges: The Global Crime, Justice and Security Journal 99

length prohibitions against illegal abortions could prevent doctors and people who strongly care about health from doing very important work like providing abortion care. Fear of getting into big trouble and having their jobs put at risk is keeping them from doing what they think is right. There is a need for legislative clarity, procedural improvements, and awareness efforts to overcome these gaps and guarantee that abortion rights are protected in both law and practice.

Conclusion

India has certainly shaken things up a bit in terms of laws related to abortion. Making decisions about pregnancy and birth matters now and is a big deal for women because it involves women's rights and ethics at the same time as balancing sensitivities in society. The Medical Termination of Pregnancy law passed in 1971, and revised several times since, has made abortion more common. Along with this, though, there are still some rules and boundaries that have to be followed. But things like delays because of bureaucratic red tape and stigma around abortion also really hinder abortion rights from coming into play smoothly. There are also major deficiencies with the healthcare infrastructure, things that need a lot more work. The group called Bhartiya Nyaya Sanhita (they often just call it BNS) has new rules and they make things very strict about not allowing abortions for people who aren't legally allowed to have them. BNS really pays close attention as well to punishing those who commit crimes. But BNS hasn't really solved the problem though—that there are still lots of ladies who have trouble getting the services they need. It's as if these women are swimming in a sea of legal obstacles and unclear paths to getting the help they really need and want. Sure enough, it seems to be still an uphill struggle for women and mothers to find any legal help if there is a risk of an illegal abortion despite all the protections in place. They've been putting some laws into action and trying hard, but the BNS hasn't really stepped up and tackled the nitty gritty day to day difficulties for folks who are seeking help like this.

While legal advances have come far, making decisions about their bodies for women still feels very much subject to medical and legal gatekeepers. Having to consult with a doctor and even a medical board before getting an abortion, especially later in pregnancy, puts up some barriers that delay really important healthcare decisions. It feels like too much red tape that causes unnecessary delays when this kind of info and making important choices should be a lot quicker and smoother. Also, unfortunately, there is still an awful lot of stigma and taboos attached to abortion and so many women don't feel safe accessing healthcare safely. Because of this, some

people resort to using very dangerous and illegal methods instead. Bad news indeed especially for vulnerable women who live in remote rural areas where healthcare facilities are rare and high quality people to work with such women are extremely hard to come by.

To bridge these gaps, significant legal and policy reforms are essential. Efforts should focus on facilitating simpler access to safe abortion services, decreasing procedural hurdles, and increasing reproductive rights education. Making healthcare places super solid and keeping strong awareness campaigns is super important too. Promising abortion rights is like a key piece for bigger plans toward making gender equality stronger. All together this kind of really critical work is going to help the law actually make a meaningful difference in people's lives. It's really about making real change that really makes a big difference.

Ultimately, law has to find a middle path between protecting the life of a fetus and ensuring women's physical freedom and autonomy as well. The future of abortion rights in India floating out there will depend quite a lot on some really progressive thinking from lawmakers and judges, along with improvements in policy that really value the health of women, their dignity and their freedom to choose. A holistic and inclusive strategy is needed to turn abortion legislation into an enabling framework that really defends reproductive rights.