# Abortion Law, Policy and Services in India: A Critical Review

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**ABSTRACT**

Abortion is a complex and highly debated issue with profound implications for women's health, autonomy, and societal well-being. This study aims to provide an in-depth analysis of the legal and policy frameworks governing abortion in India, as well as the availability and accessibility of abortion services.

The paper explores the historical development of abortion legislation in India, emphasizing the pivotal role played by the Medical Termination of Pregnancy (MTP) Act of 1971. It assesses the adequacy and relevance of this legal framework in light of changing social norms, medical advancements, and emerging women's rights paradigms. The research critically examines the legal conditions under which abortions are permitted, the gestational limits, and the roles and responsibilities of healthcare providers.

Additionally, the study investigates the practical aspects of abortion services, including their geographical distribution, quality, affordability, and availability to marginalized and vulnerable populations. It also considers the influence of social and cultural factors on women's decision-making processes and the stigma associated with abortion.

Through a comprehensive literature review and analysis of government policies, this research paper contributes to the ongoing discourse on reproductive rights and gender equality in India. It highlights the need for a nuanced understanding of the barriers and facilitators related to abortion services and advocates for a more inclusive and rights-based approach to ensure safe and accessible reproductive healthcare. The findings of this study can inform future policy revisions and healthcare interventions that prioritize women's autonomy, health, and well-being.

Keywords: Abortion, Abortion Law, Abortion Policy, Services, Government Policy.

## INTRODUCTION

Abortion is the medical or surgical termination of a pregnancy before the fetus has reached a stage of viability, which means it is incapable of surviving outside the womb. The term "abortion" can refer to both natural processes (spontaneous abortion or miscarriage) and induced abortion, which is intentionally initiated by medical or surgical means.

It is a topic of profound ethical and legal debate worldwide, is the voluntary termination of a pregnancy. The circumstances, regulations, and societal attitudes surrounding abortion vary significantly from one country to another, often reflecting complex issues related to reproductive rights, healthcare, and cultural norms. It remains a subject of ongoing discussion, with views spanning a spectrum from those advocating for a woman's right to choose, to those advocating for the sanctity of life from conception. Abortion is a deeply personal and sensitive issue, shaped by factors including healthcare accessibility, societal values, and legal frameworks. Its discussion continues to provoke dialogue, raise questions, and challenge the norms and beliefs that shape our societies.

The Indian Penal Code 1862 and the Code of Criminal Procedure 1898, with their origins in the British Offences against the Person Act 1861, made abortion a crime punishable for both the woman and the abortionist except to save the life of the woman. The 1960s and 70s saw liberalisation of abortion laws across Europe and the Americas which continued in many other parts of the world through the 1980s. The liberalisation of abortion law in India began in 1964 in the context of high maternal mortality due to unsafe abortion. Doctors frequently came across gravely ill or dying women who had taken recourse to unsafe abortions carried out by unskilled practitioners. They realised that the majority of women seeking abortions were married and under no socio-cultural pressure to conceal their pregnancies and that decriminalising abortion would encourage women to seek abortion services in legal and safe settings.

The Shah Committee, appointed by the Government of India, carried out a comprehensive review of socio-cultural, legal and medical aspects of abortion, and in 1966 recommended legalising abortion to prevent wastage of women's health and lives on both compassionate and medical grounds. Although some States looked upon the proposed legislation as a strategy for reducing population growth, the Shah Committee specifically denied that this was its purpose. The term "Medical Termination of Pregnancy" (MTP) was used to reduce opposition from socio-religious groups averse to liberalisation of abortion law. The MTP Act, passed by Parliament in 1971, legalised abortion in all of India except the states of Jammu and Kashmir.

Despite more than 30 years of liberal legislation, however, the majority of women in India still lack access to safe abortion care. This paper critically reviews the cvhjklhistory of abortion law and policy reform in India (Box 1), and epidemiological and quality of care studies since the 1960s. It identifies barriers to good practice and recommends policy and programme changes necessary to improve access to safe abortion care.

**Box 1. Abortion policy events in India**

1964 – Ministry of Health and Family Planning constitutes Shah Committee

1966 – Shah Committee report

1971 – MTP Act passed

1972 – MTP Act enforced in all of India except Jammu and Kashmir

1975 – MTP Rules and Regulations framed

2002 – MTP (Amendment) Act

– Mifepristone approved for medical abortion by Drug Controller General of India

2003 – MTP Rules and Regulations amended

2004 – National consensus guidelines for medical abortion (under development)

In India, abortion laws and policies have evolved over time, reflecting a delicate balance between recognizing women's reproductive rights and navigating complex cultural and societal norms. The Medical Termination of Pregnancy (MTP) Act of 1971 decriminalized abortion, aiming to provide regulated, safe access to this healthcare service. However, the practical implementation varies due to regional diversity and entrenched gender biases. As India continues to undergo demographic shifts and debates on women's rights persist, the discussion of abortion laws remains a nuanced interplay of tradition, law, and evolving perspectives. It is a reflection of the ongoing journey toward greater gender equality and women's empowerment in the country.

This research topic has been chosen because selective abortion of female fetuses, a practice often known as "gender-based sex selection," has historically been rooted in cultural, social, and economic factors rather than the inherent undesirability of female children. Reasons for this practice include the historical preference for male heirs, economic considerations, societal norms, and concerns about dowries and the cost of raising girls. While attitudes are evolving, gender-based discrimination and unequal opportunities for women continue to reinforce these practices in some regions. Laws, policies, and public awareness campaigns are in place to address this issue and promote gender equality, emphasizing the value of every child, regardless of gender.

Research on abortion is vital to protect women's health, inform policy decisions, and promote gender equality. By studying the safety and effectiveness of abortion procedures, investigating reproductive health trends, and examining public attitudes, research contributes to a more informed and compassionate discourse on this sensitive topic. It is essential for developing evidence-based policies, reducing stigma, and ensuring women's reproductive rights. Furthermore, research in this field can lead to medical advancements and better public health planning, ultimately benefiting the well-being of women and society as a whole.

## METHODOLOGY

Several research papers, journals, books, academic articles were reviewed. Inclusion area of research papers and other documents are kept as the research papers from past 10 years, latest articles about governmental policies on abortion, medical laws, etc. All the relevant documents were systematically screened out and arranged in different areas such as key findings, methodology used, provided suggestions. All the findings are arranged under different headings or themes for analysis.

### Historical development of abortion legislation in India :-

India's historical development of abortion legislation is marked by a shift from colonial-era restrictions to more liberal and regulated laws. The pivotal moment came with the

enactment of the Medical Termination of Pregnancy (MTP) Act in 1971, decriminalizing abortion under specific circumstances. Subsequent amendments have adapted the law to changing needs and increased the time limit for abortion in certain cases. However, the practical implementation varies due to regional diversity and entrenched gender biases. The ongoing dialogue on abortion legislation in India underscores the delicate balance between tradition and women's rights, reflecting the nation's journey toward greater gender equality and women's empowerment.

## The Medical Termination of Pregnancy Act 1971 and Regulations 1975

The Medical Termination of Pregnancy (MTP) Act of 1971 in India grants legal protection to registered allopathic medical practitioners who perform abortions in good faith. It permits abortions up to 20 weeks of pregnancy, with a second doctor's approval required after 12 weeks. Grounds for abortion include health risks, contraceptive failure, humanitarian reasons, and cases of rape or potential deformity. Government hospitals can perform abortions, while private facilities require certification. Exceptions are made to save a woman's life, and the 1975 MTP Rules provide guidelines for facility approval, consent, record-keeping, and confidentiality, aiming to ensure safe and legal abortion services. Unauthorized abortions are considered illegal, placing the onus on facilities to obtain prior government approval.

## Supported Research Work

R. Chhabra- 1994 - This paper describes India's 1971 abortion law the extent of abortion practice unmet need for contraception inequalities poor service provision unsafe abortion practices and the extent of morbidity and mortality from unsafe abortion. India's parliament implemented the Medical Termination of Pregnancy (MTP) Act in April 1972. The act applies to all of India with the exception of Sikkim and the Union Territory of Lakshadweep. Prior to 1980 the act did not apply to Jammu Kashmir and Mizoram. The act decriminalized the procedure for medical practitioners and women. In 1991-92 0.63 million abortions were performed. During 1972-93 there were 8.8 million abortions. In 1971 an estimated 3.9 million abortions per year were performed. The Shah Committee found that for every 73 live births there were 2 stillbirths and 25 abortions. The Shah Committee estimated that there were 11.1 million abortions in 1991: 6.7 million induced abortions and 4.5 million spontaneous abortions. There may be 1011 illegal abortions for each legal abortion. The 1988-89 National Family Health Survey findings suggest that 6% of pregnancies were terminated by abortion. Abortion seekers tend to be in poor health and live in poor economic conditions. Abortion occurs in the context of gender inequality where there is gross male sexual indulgence and neglect of the spouse's well-being. MTP services in Maharashtra state indicate only 1 approved institution for 8000 couples. Bihar state has the poorest services with 1 per 132000 couples. Studies indicate that many abortions are performed by indigenous private sectors providers and untrained physicians. A variety of modern and barbaric methods are used to perform abortions. An estimated 60-100 women die per 100000 abortions performed by untrained personnel. MTP services were expanded in 1993-94. Sex-selective abortion is an emerging problem.

## Abortion in India 1970—2000

Since the legalization of abortion in India in the early 1970s, there has been only a marginal increase in the number of approved abortion facilities and reported abortions. The late 1980s and 90s saw a decline in the reported number of abortions, indicating disparities in urban and rural access to approved facilities. The majority of abortions outside approved facilities are estimated to be illegal, ranging from 2 to 11 illegal abortions for each legal one. Access to safe abortion care remains limited, with less

than 20% of primary health centers offering these services, and private sector facilities being preferred by women. Both public and private sector abortion services often fall short in terms of technique, counseling, privacy, and confidentiality. Outdated methods, like dilatation and curettage (D&C), are still commonly used. The low awareness of abortion legality and misconceptions among both women and providers further complicate the landscape of abortion care in India.

### Abortion law reform since 2000

In 2002, India enacted the Medical Termination of Pregnancy (Amendment) Act and amended Rules and Regulations in alignment with international human and reproductive rights standards. The changes decentralized regulatory authority to District Committees, reducing bureaucracy and introduced punitive measures for unapproved providers. The Rules defined time frames for facility registration, and while physical standards for second-trimester abortions remained the same, first-trimester facilities saw rationalized requirements. The amendments also recognized medical abortion methods, allowing registered medical practitioners to provide these services up to seven weeks of pregnancy. Efforts were underway to develop national guidelines for medical abortion, reflecting India's commitment to reproductive rights and improved abortion services.

## Current law and policy: what is still missing?

A major criticism of India's Medical Termination of Pregnancy (MTP) Act is its strong medical bias, which limits access to abortion services. The requirement that only physicians can provide abortions excludes mid-level health providers and practitioners of alternative medicine. Additionally, the need for a second medical opinion for second-trimester abortions restricts access, especially in rural areas. While public hospitals are mandated to provide abortion services, they are exempt from the same regulatory processes as the private sector, despite concerns about accountability and transparency. Furthermore, India lacks explicit policies for good clinical practice and research in abortion care, leading to the persistence of outdated and unsafe practices. Bridging these gaps is essential to ensure safer and more accessible abortion services in the country.

## Supported Research Work

Utkarsh Anand- 2023 - The 1971 law failed to meet the needs of the changing times and advancements in medical science as several women, including rape survivors, mentally incapacitated and women undergoing unwanted pregnancies due to contraceptive failures, started approaching courts to seek approval for terminating their pregnancy beyond the prescribed gestational period of 20 weeks. The Act was finally amended in 2021. The Statement of Objects and Reasons of the Bill stated that women’s access to legal and safe abortion should be ensured to reduce maternal mortality and morbidity caused by unsafe abortions. The amendments permitted abortion up to 20 weeks following an opinion of one registered medical practitioner (RMP). Abortion was allowed up to 24 weeks for certain classes of women, defined under the MTP Rules.

## Abortion law and policy: potential and actual abuse

In the 1960s, abortion discourse revolved around medical and demographic concerns, but the focus has since shifted to human and reproductive rights, notably after the International Conference on Population and Development (ICPD). India's National Population Policy of 2000 emphasizes family planning and the provision of safe, accessible abortion services. Despite India's broad legal framework for abortion, the requirement for women to justify their need within the law can lead to the creation of false narratives, especially regarding contraceptive failure.

Additionally, ambiguous language in the law can result in restrictive interpretations. Furthermore, mandatory reporting of post-abortion contraceptive use may be used to pressure abortion providers, potentially leading to the coercion of women seeking abortions, especially in the public sector. Safeguarding women's reproductive rights and ensuring equitable policies remain critical challenges.

## Supported Research Work

Mahadev Bramhankar – 2021 - He finds that the physical, sexual and emotional violence experienced by ever-married women in India are 29.8%, 13.8% and 7.0%, respectively. Further, the physical and sexual violence experienced by women have a significant association with an unwanted pregnancy, abortion, miscarriages and ever had termination of pregnancies. The regression analysis shows that violence by sexual partners among battered women increased the likelihood of unwanted pregnancy. Similarly, abortion and ever had a termination of pregnancies are also adversely affected by partner violence. Further, the risk of sexually transmitted infection increases 77% by sexual violence and 44% by emotional violence among battered women. Also, Sexual violence substantially increases the risk of prolonged labour during pregnancy.

## Barriers in abortion service delivery

Abortion care in India faces numerous challenges, particularly in the public sector, where neglect and poor-quality care are prevalent. The private sector has grown, often with exploitative practices, due to ineffective regulation. State governments have the authority to regulate abortion services, resulting in variations and unnecessary procedures, administrative delays, and controls. The certification process for facilities can be plagued by mismanagement and bureaucratic hurdles. Some providers insist on spousal consent, not required by law, to protect themselves from potential legal issues. Additionally, informal fees and high charges in both the public and private sectors add barriers to access. Overcoming these obstacles requires comprehensive efforts to ensure safe and accessible abortion services.

## Supported Research Work

DIPIKA JAIN - 2021 - The legal barriers are highlighted with a review of litigation on abortion in the past year, given numerous news reports and court orders pertaining to petitions filed by pregnant persons seeking permission for medical termination of pregnancy before and during the COVID-19 pandemic and during the ensuing lockdown. Further, the lack of access to abortion facilities and denial of reproductive services on grounds of discrimination, casteism and communalism were severely exacerbated, resulting in several deaths to both pregnant persons. Litigation and reports of cases across various High Courts show the uneven jurisprudence and court orders, as well as the reliance on medical board opinions, which meant a denial of access to abortions for many petitioners. Several cases were documented, where pregnant women were unable to access healthcare facilities in a timely manner, due to lockdown restrictions. Such restrictions affect marginalised groups the most, who already face barriers in access to SRH services due to structural barriers.

## Abortion and sex determination: different issues

The Prenatal Diagnostic Techniques (PNDT) Act of 1994, amended in 2002, aims to prevent the misuse of prenatal diagnostic tests for sex determination, which can lead to gender-based abortions. A policy review once contemplated linking the PNDT Act with the Medical Termination of Pregnancy (MTP) Act to prevent sexselective abortions. However, experts decided against amending the MTP Act, recognizing that strict enforcement of the PNDT Act was the key. Amending the MTP Act could have compromised women's confidentiality, limited access to safe abortion services, and posed ethical concerns. The focus

remains on the proper implementation of the PNDT Act to combat gender-based abortion practices.

## Supported Research Work

Sunita Kishor - 1975 - Provisional estimates from the 2001 census of India, which showed unusually high sex ratios for young children, have sparked renewed concern about the growing use of sex-selective abortions to satisfy parental preferences for sons. According to the 1998-99 National Family Health Survey (NFHS-2), in recent years the sex ratio at birth in India has been abnormally high (107-121 males per 100 females) in 16 of India's 26 states. Data from NFHS-2 on abortions, sex ratios at birth, son preference, and the use of ultrasound and amniocentesis during pregnancy present compelling evidence of the extensive use of sex-selective abortions, particularly in Gujarat, Haryana, and Punjab. The authors estimate that in the late 1990s more than 100,000 sex-selective abortions of female fetuses were being performed annually in India. Recent efforts to expand and enforce government regulations against this practice may have some effect, but they are not likely to be completely successful without changes in the societal conditions that foster son preference.

## Abortion law and policy: the way ahead

Recent law and policy reforms, though not radical, still represent a step forward towards ensuring a woman's right to safe abortion care. It is only in recent years that several national-level consultative efforts involving policymakers, professionals bodies like the Federation of Obstetrics and Gynaecology Societies of India (FOGSI) and the Indian Medical Association (IMA), NGOs (notably Parivar Seva Sanstha, CEHAT, Health Watch and the Family Planning Association of India) and health activists, have championed the improvement of access to safe and legal abortion services in India. Many of their recommendations are in line with the objectives and the strategies outlined in the Action Plan of India's National Population Policy, 2000. They include:

- increasing availability and access to safe
- abortion services,
- creating more qualified providers
- (including mid-level providers) and
- facilities, especially in rural areas
- simplifying the certification process, de-linking clinic and provider certification, linking policy with technology and research and good clinical practice, applying uniform standards for both the private and public sectors, and ensuring quality of abortion care.

Increasing awareness and dispelling misconceptions about the abortion law amongst providers and policymakers is just one step towards this. There is a need to enhance awareness of both contraceptive and abortion services, especially amongst adolescents, within the larger context of sexual and reproductive health, integrating strategies and interventions within value systems and family and gender relations.

For these policies to be implemented effectively, they need to be backed by political will and commitment in terms of adequate resource allocation, training and infrastructure support, accompanied by social inputs based on women's needs. Advocacy and action at both central and state level are required to put the operational strategies relevant to abortion, as detailed in the National Population Policy, 2000 into effect.

## CONCLUSION

In conclusion, the history of abortion in India from the 1970s to the early 2000s reflects a complex journey characterized by legal changes, policy reform, and persistent challenges. While India legalized abortion through the Medical Termination of Pregnancy (MTP) Act in 1971, the initial years showed limited progress in expanding access to safe abortion services. The late 1980s and 1990s

witnessed a decline in reported abortions in approved facilities, raising concerns about unregulated and potentially unsafe procedures.

Throughout this period, disparities in access between urban and rural areas, a lack of awareness about the abortion law, and misconceptions among both women and healthcare providers were notable challenges. The 2000s brought about important amendments to the MTP Act and rules, aiming to address some of these issues by decentralizing regulation, recognizing medical abortion methods, and introducing punitive measures for unapproved providers.

However, issues persisted, such as a strong medical bias in the law, spousal consent requirements, and informal fees, both in the public and private sectors, which added barriers to access. The link between abortion laws and prenatal sex determination laws further complicated the discourse on abortion access.

To move forward, it was essential to enhance awareness, dispel misconceptions, and ensure political commitment, resource allocation, and quality care. Advocacy and coordinated action at both central and state levels were deemed critical to implementing effective strategies outlined in India's National Population Policy.

The history of abortion in India serves as a reminder of the ongoing need to prioritize women's reproductive rights and ensure equitable access to safe and legal abortion services, addressing challenges while maintaining a commitment to the well-being of women's health. It is important to acknowledge that developments beyond the early 2000s may have further shaped India's approach to abortion law, policy, and services, and thus, staying updated on the latest developments in this area is crucial.

## RESULT

Abortion laws, policies, and services in India are shaped by the Medical Termination of Pregnancy (MTP) Act, first enacted in 1971 and amended in 2021. This legislation aims to balance women's reproductive rights with the need to prevent unsafe abortions. The law permits abortions under specific conditions, including risks to the mother's life, grave physical or mental health issues, and cases of severe fetal abnormalities. It also accounts for pregnancies resulting from contraceptive failure (including unmarried women) and sexual assault.

Despite the progressive amendments, access to safe abortion services remains a challenge due to social stigma, lack of awareness, and inadequate healthcare infrastructure. Legal barriers, provider bias, and gaps in training for medical professionals further complicate service delivery. A critical review highlights the need for enhanced public health measures, better education about reproductive rights, and comprehensive service coverage to ensure equitable access to safe abortion services in India.

## DISCUSSION

The discussion around abortion laws, policies, and services in India highlights both progress and persistent challenges. While the amendments to the MTP Act have expanded access to abortion for various groups, gaps in implementation limit their impact. Factors such as social stigma, misinformation, and insufficient healthcare infrastructure hinder equitable access to safe abortion services.

Additionally, medical professionals often lack proper training or display bias, further restricting the availability of quality care. Strengthening public health systems, promoting awareness of reproductive rights, and addressing societal attitudes are essential steps toward improving access to and the quality of abortion services in India. This calls for a comprehensive approach involving policy reforms, education, and improved service delivery.

## LIMITATION

The limitations of abortion laws, policies, and services in India primarily stem from challenges in implementation and access. Despite legal advancements, many women face barriers due to social stigma, limited awareness of their rights, and inadequate healthcare facilities. Training gaps among medical professionals and personal biases further restrict the availability of safe and quality abortion services.

Moreover, rural and marginalized populations often struggle to access these services due to geographical and systemic disparities. These issues underscore the need for stronger healthcare infrastructure, widespread education on reproductive rights, and efforts to eliminate societal and institutional barriers.

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