

MEDICAL TERMINATION OF PREGNANCY LAWS: A COMPARATIVE ANALYSIS BETWEEN INDIA AND USA LAWS

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ABSTRACT

This paper offers a thorough comparative study of medical termination laws from the viewpoints of Western, Middle Eastern, and Indian countries. The study explores the nuances of abortion legislation in these various areas through a multifaceted investigation that includes legal, socio-cultural, and public health aspects. Utilising a variety of academic fields such as public health, law, and social sciences, the study clarifies the social perspectives, legal structures, and historical development that support medical termination laws in each setting. Examining how religious, cultural, and legal variables interact, the study reveals the subtleties and complexity involved in influencing abortion laws in various sociopolitical and cultural contexts. Additionally, the comparative research clarifies differences in healthcare outcomes, reproductive rights frameworks, and access to abortion services, providing important information about the effectiveness and equality of current abortion laws. The findings underscore the significance of context-specific factors in policy formation by highlighting both similarities and differences in the regulatory systems and societal attitudes towards abortion. Additionally, the study suggests paths for legislative change and cross-border cooperation while highlighting the main obstacles to and opportunities for increasing access to healthcare and reproductive rights. In conclusion, this research advances our understanding of the nuances of medical termination laws and lays the groundwork for policy discussions and advocacy campaigns that support women's health and reproductive autonomy in a variety of legal and cultural contexts.

KEYWORDS: Medical termination of pregnancy, abortion, legal abortion, Indian perspective, USA Perspective

INTRODCUTION

Abortion regulation is still a divisive and complicated topic that is influenced by many legal, cultural, and religious contexts. The methods used to regulate medical termination range greatly between areas, reflecting the distinct historical developments and socio-cultural circumstances of individual societies. Scholarly interest in contrasting and comparing the abortion-related legal systems of different nations has grown recently as researchers look to identify the variables affecting the formulation and application of public policy.

In order to better understand medical termination legislation, this study will compare

and contrast them, highlighting the views of USA and Indian Laws. The study intends to give light on the complexity and subtleties involved in regulating abortion across various legal and cultural environments by looking at these varied situations.

This study aims to clarify the legal frameworks, societal attitudes, and historical development of medical termination laws in each environment by using a multidisciplinary lens that includes legal studies, social sciences, and public health viewpoints.

This study's comparative methodology provides a useful means of identifying similarities and

differences in abortion laws, access to reproductive healthcare, and the defence of reproductive rights. In order to identify the major influences on the creation and use of medical termination laws, the research will compare and contrast the experiences and legislative frameworks of Western, Middle Eastern, and Indian countries. Furthermore, this comparative approach offers a framework for investigating how sociopolitical, religious, and cultural issues influence abortion laws and medical practices.

Knowing the intricacies of medical termination regulations is critical as the worldwide conversation around women's health and reproductive rights continues to develop. This study adds to a better understanding of the potential and difficulties associated with regulating abortion in various socio-cultural contexts by examining the viewpoints of various locations. The results of this study may also influence activism and policy discussions targeted at expanding access to healthcare services and reproductive rights in a variety of legal and cultural contexts.

EVOLUTION OF MEDICAL TERMINATION LAWS IN INDIA

With the passage of the Medical Termination of Pregnancy (MTP) Act in 1971, India became one of the first countries to legalise abortion. This law sought to provide a safe and legal framework for the termination of pregnancies in order to reduce the high prevalence of illicit abortions. Before it was legalised, induced abortion was regarded as illegal and could only be performed to preserve the life of the woman. However, women's death rates and serious health hazards were associated with covert abortions, which were frequently carried out by untrained personnel in hazardous settings.

The MTP Act was amended in 1975 and 2002 to improve access to abortion services, notably in the private sector, and to improve its implementation. It was first put into effect nationwide in 1972, with the exception of Jammu and Kashmir. In 2003, regulations were enacted

that required the use of specific forms for documenting the opinions of medical practitioners, reporting to chief medical officers, and keeping records. In 2021, the parliament finally approved a new change to the statute that had been suggested in 2014. Expanding the accessibility, availability, and safety of induced abortion procedures is the main goal of India's current abortion policy. Nevertheless, problems still exist because of the unequal distribution of facilities and the existence of uncertified centres, especially in big states. Primary health centres allow medical abortions and manual hoover aspiration up to eight weeks of pregnancy; community health centres and primary health centres allow abortions up to twelve weeks of pregnancy. Abortions up to 20 weeks gestation can be performed in district hospitals and accredited private hospitals.

The new Act of 2021 mandates the establishment of medical boards with extra members recommended by each state or union territory, as well as specialists including paediatricians, radiologists, and sonologists. These boards serve as a kind of third-party authorization in the diagnosis of significant foetal anomalies that require termination of pregnancy after 24 weeks of gestation⁹⁴⁷

INDIAN PENAL CODE

According to Section 312 of the IPC, an individual who intentionally induces a miscarriage, also known as a spontaneous abortion, faces criminal charges for the miscarriage offence. The one caveat to this section is that if someone causes a miscarriage to save the life of a pregnant woman, they will not be prosecuted. The aforementioned clause addresses two types of miscarriages: those that result from a woman becoming pregnant and those that occur when a woman is quick with child. The second scenario occurs when the foetus begins to move (usually after 15–16 weeks of conception). When it comes to the first type of

⁹⁴⁷ Krupa H Shah, *Induced Abortion across the World and Evolution of Medical Termination of Pregnancy Law in India : A Review*, 13 JSAFOG. 426, 427-429 (2021)

miscarriage, the accused faces a maximum sentence of three years in prison and a fine; in the second scenario, the maximum sentence is up to seven years in prison and a fine. In addition, the clause holds the woman accountable if she is the reason behind the miscarriage.

Section 313 addresses miscarriage caused without the woman's permission. It does not matter if the pregnant woman gave birth quickly or not under this section; the punishment carries a 10-year maximum sentence that can be extended to life in prison and a fine.

Section 314 addresses the scenario in which a miscarriage results in a woman's death. Any act that is done with the goal to cause a miscarriage, which ultimately results in the woman's death, is considered a crime. If found guilty of the aforementioned offence, the offender faces a maximum 10-year sentence in addition to a fine.

The clause further states that the perpetrator of the conduct will face life in jail or a maximum of ten years in prison if the lady is not consulted before the act is carried out. Additionally, it declares that an offender need not have known that their conduct could result in the pregnant woman's death in order to be found guilty under this section.

Section 315 of the Indian Penal Code addresses an act that results in the death of a child shortly after birth or an act that prevents a kid from being born alive or in a stillbirth. A sentence of up to 10 years in jail, with or without blame, is imposed for such an act. A good-faith attempt to save the pregnant woman's life is exempt from this rule.

Section 316, the next clause, addresses an act that qualifies as culpable homicide. Any act under such circumstances that results in the quick child's death and, consequently, the child's death will be prosecuted under this

offence. The clause stipulates a maximum sentence of 10 years in prison and a fine.⁹⁴⁸

CONSTITUTIONAL PROVISIONS

The Indian Constitution contains no explicit provisions on abortion or miscarriage, the country's courts have however repeatedly held that the right to an abortion is protected by the constitution. According to the interpretation of the Apex Court and the High Courts in numerous judgements, Article 21 of the Constitution guarantees to all the right to life and personal liberty. This includes a woman's right to choose whether or not to procreate. *Suchita Srivastava & Anr v. Chandigarh Administration* (2009) and *Justice K. Puttaswamy v. Union of India* and others are two of these judgements that concluded that a woman's right to an abortion is protected by Article 21. (2017)

The Apex Court has also held that forcing sterilisation or abortion on a mentally impaired person violates their right to equality in accordance with Article 14 of the Constitution (*Suchita Srivastava* case).

PRECONCEPTION AND PRENATAL DIAGNOSTIC TECHNIQUE ACT, 1994

The Act's main goal was to limit prenatal diagnostic methods in order to address the growing problem of female foeticide and other problems associated with them. Though the Act does not specifically address the issues surrounding it, it does guarantee the practice of safe abortion.⁹⁴⁹

EVOLUTION OF MEDICAL TERMINATION OF PREGNANCY LAWS IN INDIA

2002 amendment

In order to improve implementation and give women more access to the private health sector, the MTP Act was modified. Tough sanctions were instituted for hazardous abortion practices. The phrase mentally ill

⁹⁴⁸ See The Indian Penal Code, 1860, § 313-316

⁹⁴⁹ Diksha Paliwal, *Abortion Law in India*, Ipleaders (July 19, 2023, 11:21 AM), <https://blog.ipleaders.in/abortion-law-in-india/>

individual was used in place of the word insane. It was agreed upon to approve a private location up to the district level.

2002-03 MTP Rules and Regulations

MTP regulations were improved in four areas:

- (1) district-level committee composition and tenure;
- (2) equipment, drug, facility, and referral linkage guidelines were established;
- (3) periodic inspections of private locations were addressed to ensure safety and hygienic conditions; and
- (4) approvals for deficiency or defect found on CMO inspections were approved to be cancelled or suspended. The TOP record should be kept for five years, and the CMO of the should get monthly reports.

2014

MTP Amendment bill was proposed

2020-21 amendment

The Amendment Bill 2020 was passed by the Loksabha in 2020 and the Rajyasabha in 2021, respectively.

The main points of the amendment are as follows:

- Raising the maximum gestation period to 24 weeks for certain groups of women, such as incest victims, rape survivors, minors, widows, divorcees, and other vulnerable (differently able) women; these women may also have foetal malformations that could cause severe lifelong disabilities.
- Views from two MTP providers between 20 and 24 weeks of gestation and one MTP provider up to 20 weeks of pregnancy
- Mother's name and other personal information will not be disclosed to anyone other than those permitted by law in cases of significant foetal abnormalities identified by the medical board.
- The upper gestation limit will not apply in these situations.
- Law will cover unmarried women for unintended pregnancies and the ground of

contraception has been extended to women and her partner

THE ETHICAL AND MORAL STANCE

Unquestionably, one conclusion from the Act is that a pregnant woman's health should be of paramount importance. The Act's main tenet was to prioritise reproductive health in light of the enormous number of maternal deaths linked to abortions. The foetus certainly has no rights granted by the Act. The greater risk to the health of the mother and the fact that it is not reliant on any rights granted to the foetus were the reasons for prohibiting MTPs after the designated time frames. This is compliant with Indian law, which grants an unborn foetus no rights whatsoever, regardless of gestational age. Nonetheless, there are a number of critics of this. The fervent pro-life advocate Mother Teresa famously declared, "Human rights are not a privilege conferred by government." Because of one's humanity, every human being is entitled to them. The right to life is independent of anyone else's will and should never be deemed to be so, not even a parent or a sovereign.

The right to bodily autonomy and the pregnant woman's choice of reproductive path are the ethical issues to be taken into consideration. In actuality, neither of them is taken into account by the Act since refusing to carry on with a pregnancy is not an acceptable reason for MTP. Given the historical background and setting of the Act's drafting, which took place in largely ignorant India in the 1970s, it is likely that the lawmakers did not want MTP to become a popular method of family planning. That would therefore be detrimental to women's health and contrary to their intention to maintain reproductive health. It's pertinent to note, though, that the legislators included a subjective language allowing for the continued use of such bodily autonomy and choice.

It has been assumed that pregnancy resulting from non-compliance with contraception causes severe harm to the woman's mental state. By all methods, the Registered Medical

Practitioner cannot definitively establish or refute that the pregnancy was caused by a failed contraceptive method. Therefore, in the event that a woman who is unwilling to carry the pregnancy must assert that it was caused by ineffective contraception, the responsibility of certifying, once more by subjective evaluation, whether the pregnancy is seriously harming the expectant mother would fall on the Registered Medical Practitioner

It's possible that the legislators created this arbitrary clause to protect women's physical autonomy and function as a safety measure to stop MTP from being abused as a method of contraception. This action seeks to balance upholding ethical principles with practical appropriateness in a developing nation, all the while making sure that pregnant women's health comes first.⁹⁵⁰

ISSUES PERTAINING TO ABORTION IN THE EYES OF JUDICIARY

After the 20-week period set by the MTP Act, abortions are scrutinised by the courts, and the Hon'ble Apex Court and High Courts have the discretion to grant or deny abortion requests. Because every person is unique, the courts have rendered unique decisions in each case by carefully examining various risk factors as well as the facts pertaining to the matter at hand. Since MTP is a welfare act, the courts should interpret it liberally and give careful thought to the legislative intent that went into creating the Act.

The following cases have seen the Hon'ble Apex Court and High Court order the Centre to amend the MTP Act:

Anusha Ravindra v. U.O.I

The court issued notice to the centre for the purpose of framing appropriate medico-legal guidelines for urgent and safe medical facilities, including abortion past 20 weeks in rare instances, in Anusha Ravindra v. U.O.I, which is currently under appeal in the Apex Court.

⁹⁵⁰ Pai, Satvi . N. ; Chanda, Krithi S., *Medical termination of Pregnancy Act of India: Treading the Pathe Between Practical and Ethical Reproductive Justice*, ijcm, July 2023,

Swati Agarwal and others vs. U.O.I

In the ongoing case of Swati Agarwal and others vs. U.O.I, which is under review in the Apex Court, the court has written a notice to the centre advocating for the decriminalisation of abortion and the affirmation of women's complete autonomy in making decisions pertaining to their reproductive rights.

On April 24, 2019, The Madras High Court sent notice to the federal and state governments requesting their answer about the extension of the abortion time. The notice stated that an urgent response to this subject is necessary, since an amendment is required. The courts are adopting a scientific stance regarding the use of sophisticated prenatal diagnostics to evaluate the health of the foetus. Since it has been previously determined that a foetus becomes a "life" after 20 weeks, it is only after 18 weeks that foetal anomalies can be observed and tested for.⁹⁵¹

USA POSITION ON ABORTION

Abortion is one of the most controversial issues in the United States of America, dividing the populace into "pro-choice" and "pro-life" camps. Women should have the freedom to choose how they want to reproduce, according to pro-choice activists. It is they that advocate for abortions. On the other hand, pro-lifers contend that a foetus has a right to life and is a "constitutional person." Their opposition to abortions stems from them. "Religious beliefs and include the Catholic Church, fundamentalist Protestants, and Orthodox Jews" constitute the majority of people who lead them. Even if these discussions just started in the early 1970s, the situation with regard to abortions was very different before then.⁹⁵²

Abortions were prohibited in the United States of America prior to the well-known Roe v. Wade case.

⁹⁵¹ Nitesh Bhatt, Pooja Suman, *Abortion Laws in India : Issues and Challenges in 21st Century*, MLU, 133, 135, 2020

⁹⁵² Chinki Verma, *Abortion Questions Answered Differently By Two Common Law Nations: A comparative Study of The Abortion Jurisprudence In India And USA*, 1, JLLS, 01, 03, 2021

except in the instance when they were carried out to preserve the woman's life. Because of this, aside from unusual circumstances, women seeking abortions had to find methods that were completely unsuitable as well as unlawful and detrimental to their physical well-being.

In the landmark decision of **Roe v. Wade**, the US Supreme Court declared that pregnant women have the constitutional right to an abortion and invalidated numerous abortion-related legislation.

In the said case, a twenty-one-year-old lady challenged the abortion law. At the age of 21, she became pregnant with her third child, but she wanted to abort the baby due to a belief that it would disrupt her livelihood and have an impact on her profession life as well. The court ruled that a woman's right to an abortion is a part of her right to personal liberty and that the US Constitution gives her the option to end an unintended pregnancy.

Planned Parenthood v. Casey,⁹⁵³ another case, The United States Supreme Court upheld the constitutional protection of the right to an abortion by citing the Roe v. Wade case. However, the court also imposed an excessive burden on the right to an abortion.

A criterion was mandated, by which it held the state responsible and demanded justifications if it placed any limitations on the right to an abortion.

The two abovementioned instances were regarded as precedents from 1973 to 2022, and the right to an abortion was considered to be one that the US constitution guaranteed. The US Supreme Court's ruling in the Dobbs case in 2022 marked a significant shift in the circumstances.

The judgements of Planned Parenthood v. Casey and Roe v. Wade were overturned in this one. It held that residents of the US do not have the constitutional right to an abortion.

The court gave each federal state the authority to control state legislation pertaining to abortion. The "Gestation Age Act", enacted by the Mississippi Legislature, was the pivotal subject of this case. The law prohibited having an abortion beyond fifteen weeks of pregnancy, with the exception of serious medical emergencies or foetal abnormalities.

Following the Gestation Age Act's passage, the clinics performed surgical abortions on patients who were more than 15 weeks pregnant. The act's ability to restrict abortion was contested in court. In this decision, the Supreme Court ruled that although a state cannot outright forbid abortions, it may limit the operation before viability as long as it does not place an undue burden on the woman's right. The court ruled that the state might regulate abortion in any way as long as it complies with the US Constitution's provisions and other federal laws, as well as the rational basis review.

The USA's circumstances changed following the ruling. Of all the states, about thirty-two require that an abortion be performed by a licenced physician, about nineteen allow abortions in hospitals, but only after a certain amount of pregnancy has passed, and seventeen require the presence of a second physician in addition to the primary one after a certain amount of time has passed. 43 states have laws governing abortion procedures and forbidding the procedure beyond a specific gestational age, with the exception of situations in which the woman's life or health is at risk.

The passing of judgment did not turn abortions completely illegal but authorized the states to impose restrictions on it which they were restrained from doing after Roe's case⁹⁵⁴

⁹⁵³ *Planned Parenthood v. Casey*, 505 U.S. 833 (1992)

⁹⁵⁴ Kapoor, Swanith, Abortion: Comparative Study between Indian Laws and US Laws (October 20, 2022). Available at SSRN: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4404250

COMPARISON BETWEEN USA AND INDIAN ABORTION LAWS

Pro life vs Pro choice

The argument over whether to be pro-life or pro-choice is at the heart of the whole dilemma surrounding the legality of abortion. The pro-life argument contends that the foetus has rights and is a person in and of itself. While this is somewhat true, it would be against women's rights to privacy and liberty to prioritise the rights of the foetus over those of the child bearer.

Since women bear the majority of the child's weight, they ought to have complete autonomy on whether or not to carry the child. Whenever determining whether the rights of the woman should take precedence over those of the foetus, "one must defend this hierarchy of rights by recourse to one or more of three reasons:

The unintended child's welfare could be determined by three factors: (1) the mother's health or happiness; (2) the foetus's welfare; or (3) the family's overall future.

Men and women alike must have the choice to choose how to have children in order to be autonomous over their bodies and sexuality. Global progress towards just and democratic societies as well as gender equality depend on women's reproductive rights. The rights to procreate, an abortion, and the freedom to select one's method of family planning and contraception are all included in the category of reproductive rights.⁹⁵⁵

INDIA

People's attitudes on abortion have long been divided and acrimonious. But laws are always evolving. Abortion has only been legalised when the mother's health is in jeopardy, apart from which it is illegal according to the Indian Penal Code 1980. The majority of countries did not

have legislation to such purpose when the MTP Act of 1971 was enacted. At the time, it was a noteworthy development because one of its objectives was to prevent prenatal sex determination and female foeticide in India .

Then, the most recent MTP Act amendments declare that women's medical condition is unquestionable. Women's privacy is valued highly, and violations of it may result in legal repercussions under the recently passed amendments. The gestational period has also been adjusted. Although there have been numerous changes made to India's abortion legislation, there is still a lack of social acceptance, and greater awareness needs to be raised about this.

UNITED STATES OF AMERICA

The Roe v. Wade⁹⁵⁶ decision made abortion legal in the United States; the court regarded the right to an abortion as a woman's right to privacy and liberty. Additionally, they believe that women should have the freedom to choose whether or not to end a pregnancy. USA becomes one of the first nations in the world to loosen abortion restrictions as a result of this judgement. Women could choose to terminate their pregnancies during the first trimester thanks to this decision.

Subsequently, additional limitations were placed on abortion regulations, such as requiring parental or spouse approval. However, the reversing of the decision nullifies the Supreme Court's precedent that declares that abortion is a constitutional right, granting all states the authority to restrict or outright forbid abortion in the majority of situations. There are some people who might not even be immune to these circumstances, such as rape or teen pregnancy. Abortion supporters have praised the Supreme Court's ruling, while proponents of the practice have denounced it.⁹⁵⁷

⁹⁵⁵ Ayush Lakshmi Vera & Kavya Maheshwari, *The Pro-Choice or Pro-Life Debate: A Comparative Analysis of the Abortion Laws in USA, India and Chile*, (CCAL, Apr. 19, 2024 11:46 AM), <https://www.calj.in/post/the-pro-choice-or-pro-life-debate-a-comparative-analysis-of-the-abortion-laws-in-usa-india-and-chi>

⁹⁵⁶ Roe v. Wade, 410 U.S. 113 (1973)

⁹⁵⁷ Dhand Shah, *Comparative Analysis of Abortion Laws in India and USA , Legally Flawless*, (Apr. 04, 2024, 11:29 AM), <https://legallyflawless.in/comparative-analysis-of-abortion-laws-in-india-and-usa/>

CONCLUSION

While abortion laws trace back to as early as 1803 in the UK, it was the landmark *Roe v. Wade* decision in the United States that truly revolutionized the recognition of a woman's right to terminate her pregnancy within the scope of liberty. However, efforts to diminish the impact of this ruling have been observed among senators and policymakers in several states. Legislation such as the Unborn Child Pain Awareness Act of 2005, which mandates informing women about the perceived pain to the fetus during abortion, and the Hyde Amendment, which restricts federal funds for abortion, serve as examples. Furthermore, states have implemented various restrictions, including mandatory waiting periods, scripted counseling, bans on late-term abortions, and requirements for parental notification for minors, reflecting a spectrum of regulatory approaches.

Following the landmark *Roe v. Wade* decision in 1973, which established a liberal approach to abortion rights, both legislative and judicial bodies in the United States have gradually shifted towards a more conservative stance. The recent decision by the US government in October 2020 to sign the Geneva Consensus Declaration, an anti-abortion initiative, underscores this shift. This declaration rejects the notion of an inherent right to abortion and emphasizes the importance of family and protecting the unborn. The move reflects a broader trend towards conservative, anti-liberal, pro-life ideologies. However, in 2021, the pro-choice Biden administration removed the USA from the list of signatories, signaling a potential reversal of this policy. In contrast, India's legal framework initially criminalized abortion under Section 312 of the Indian Penal Code, but exceptions were allowed under the Medical Termination of Pregnancy (MTP) Act of 1971. Over time, there has been a shift towards a more liberal approach in India, while the US has moved in a conservative direction. Despite federal laws in the US being relatively liberal, accessing abortion can be challenging due to

varying restrictions imposed by individual states. States like Alabama have enacted stringent abortion policies, implementing near-total bans with exceptions only for cases of lethal fetal anomaly or serious health risks.⁹⁵⁸

⁹⁵⁸ Chinki Verma, *Abortion Questions Answered Differently By Two Common Law Nations: A comparative Study of The Abortion Jurisprudence In India And USA*, 1, JLLS, 01, 03, 2021