



# An Ethical Controversy from the Socio - cultural, Lawful and Ethical Aspects of Abortion in India.

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## **Abstract:**

Abortion is still one of the most sensitive and contentious topics in modern culture, having been discussed for millennia. The discussion is sometimes presented as a choice between two opposed stances: \*Pro-Choice\* and \*Pro-Life\*. While pro-choice proponents support a woman's right to control her body, including the ability to end a pregnancy, pro-life supporters place more emphasis on the rights of the unborn child and frequently compare abortion to murder. The topic of abortion is complex and has connections to many different domains, such as social justice, ethics, medical, law, and religion. It calls into doubt not just the right of the person to autonomy but also the morality of moral obligations, social norms, and legal systems. Women who have access to safe and legal abortions can feel more empowered and take charge of their reproductive health *and future, it also raises ethical dilemmas concerning the fetus's right to life. In India, the discourse on abortion is further complicated by the widespread issue of female feticide, where gender-selective abortions have contributed to a skewed sex ratio. This alarming trend highlights the deep-rooted gender bias in society and underscores the need for a more nuanced approach to abortion, one that addresses both women's rights and the cultural practices that devalue female life.*

*Thus, the challenge lies in balancing the rights of the unborn with the liberation and autonomy of women. Any discussion on abortion must, therefore, consider these ethical, social, and legal complexities to arrive at a solution that respects both perspectives.*

**Keywords:** *Abortion, Ethical, Socio-Cultural, Fetus, Gygot*

**Introduction:**

*"There is no freedom, no equality, no full human dignity and personhood possible for women until they assert and demand control over their own bodies and reproductive process... The right to have an abortion is a matter of individual conscience and conscious choice for the women concerned." By Betty Friedan in **Abortion: A***

### **Woman's Civil Right**

After millennia of discussion, abortion remains one of the most delicate and divisive subjects in contemporary society. Occasionally, the debate is framed as a choice between *\*Pro-Choice\** and *\*Pro-Life\**, two diametrically opposed positions. Pro-life advocates prioritise the rights of the unborn child and frequently compare abortion to murder, whereas pro-choice advocates defend a woman's right to regulate her body, including the capacity to end a pregnancy. Abortion is a complicated subject with ties to social justice, ethics, medicine, the law, and religion, among other areas. *The complexity of abortion stems from the intersection of numerous factors, including law, medical, ethics, and religion. Abortion is a societal issue that empowers women and grants them autonomy over their own lives. At the same time, we may say that it is a deliberate termination of human pregnancy either through natural or medical presences. Whether safe or unsafe, legal or illegal, medically induced abortion has become a major part of the lives of people worldwide, both in developed and developing nations. India, one of the world's most populous nations, has one of the highest rates of unintended pregnancies worldwide, largely because of the country's limited access to family planning counselling centres and health care services..*

*Abortion has a major impact on the society as it touches on the cultural, economic, political, religious and social aspects. Abortion is deliberated to be a sin majority of religious and was a disapproval practice in most of the nations during the 17th and 18th century. With the onset of the modern era and in the years of policy framing on the issue of abortion majority of countries put a ban on the practice of abortion making it a legal offence. However, with the onset of 20th century, an awareness of rights of women and their health was given importance. As a matter of fact, the ban on abortion was allowed only in certain cases specified by the laws of their respective countries. Almost all religions have a strong position regarding abortion as there is a general belief that the issue related to abortion encompasses profound issues of life and death, nature of human relations, nature of the society and acceptable standards of right and wrong which makes it a major religious concern. Religious practices like Islam considers as Haram (sin) and Christianity, especially Roman Catholics have a very conservative view towards abortion and considers it to be a contrary to the moral law and that life is based on the doctrine of natural law and on the written word of God and believe that the inception of life happens when the male sperm*

fertilizes the woman egg .Therefore abortion at any stage is a sin as it is against the will of God. On the other hand, religious like Hinduism, Buddhism and Sikhism have a comparatively liberal approach when it comes to the issue, Although according to these religions, abortion or killing a life is a sin also.

### ***The Human Right to an Abortion:***

According to the Universal Declaration of Human Rights It states that "the peoples of the United Nations have... reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person, and in the equal rights of men and women." As "a common standard of achievement for all peoples and nations," it also describes the Declaration.<sup>4</sup> Everyone is entitled to these freedoms and rights just by virtue of being a human being, as further emphasised in the second article: "Everyone is entitled to all the freedoms and rights outlined forth without making any form of discrimination in this Declaration." Article three outlines the first universal right, which is "everyone has the right to life." The statement "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind" emphasises the reality that everyone has these freedoms and rights simply by virtue of being a person. The third article explains the first of everyone's rights. "Everyone has the right to life." The right to life is the foundation for all other human rights.<sup>6</sup> Although the declaration summarises the global community's understanding of human rights, it does not impose any legal obligations.

*Reiterating and upholding the declaration's right to life is the International Covenant on Civil and Political Rights (ICCPR). "Every human being has the inherent right to life," declares the Covenant. This right will be safeguarded by law. Nobody's life may be taken from them without cause."*<sup>7</sup>. Interestingly, the covenant states that every human being is entitled to this privilege. "Human being" refers to a living human being, but "person" has been used to leave the unborn outside the protection of the US legal system due to judicial interpretation. Therefore, one opinion holds that the fundamental human rights documents forbid abortion and do not establish an abortion right.

The historical idea that a person's right to life begins at birth is protected by the international bill of rights, according to certain jurists. This interpretation is supported by the history of international talks for human rights treaties. As part of the negotiation processes leading up to the adoption of several regional and international human rights instruments, a few states proposed incorporating language guaranteeing the right to life from the moment of conception in the human rights accords that were ultimately enacted. Most of these recommendations have been rejected.

"Everyone" and "every person" are used to refer to various rights, but "every human being" has an intrinsic right to life, according to Article 1 of the International Covenant on Civil and Political Rights. This usage of various phrases raises the question of whether "every human

being" has a wider connotation than "everyone" and might therefore be regarded to embrace the unborn child. While there is a paucity of trustworthy data to support the aforementioned assertion, it is well known that making abortion illegal may have an effect on an individual's right to life. The amount of young women who kill themselves when they are denied access to abortions due to state legislation—a blatant violation of their right to life—corroborates this. If laws against abortion don't prevent unnecessary deaths, it will be questionable if it is our responsibility to protect everyone's right to life. There is another interpretation provided by Article 12 of the CEDAW Convention. It provides that "States parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning."

- ***The Indian Constitution and Abortion:***

During the democratic establishment process, the framers of our Constitution exercised caution and ingrained in us the idea that citizens ought to be protected against the misuse of authority by the government and its agents. They incorporated provisions for fundamental rights in Article III of the Constitution as a result. The right to life, which includes the right to privacy, is guaranteed by Article 21 of the Indian Constitution. The right to life and personal liberty is the most precious, valued, inalienable, and fundamental right of all citizens. The Indian community's cultural and social consciousness is deeply embedded with this commitment, which imposes constraints on the government. In this specific situation, a woman's individual rights to life, liberty, and the pursuit of happiness support her right to an abortion, as well as the quest for happiness. Women are entitled to make decisions about their sexual health and reproductive choices because they have reproductive features. The international community acknowledged women's reproductive rights in order to ensure women's access to human rights and to advance progress. To comply with the global mandate, governments from all over the world have unprecedentedly accepted and validated women's reproductive rights. The government created formal rules and regulations that act as strong proponents of reproductive rights in order to keep this commitment. It is important to emphasise once more that every woman in the world has the inalienable right to control her own body.

***Act of 1971 Concerning Medical Termination of Pregnancy:***

*The fundamental rights are outlined in section 3\_ of the Indian constitution. Article 21 of the Indian Constitution guarantees every citizen the right to life and personal liberty, which are extremely valuable. In this situation, each woman has a personal right that supports her ability to have an abortion: the right to her own life and liberty. Women possess reproductive characteristics and are entitled to make decisions regarding their sexual health and reproductive choices. Because of this, on August 25, 1964, the Central Family Planning Board suggested that the Ministry of Health form a committee to investigate the necessity for legislation.*

*The suggestion was accepted in the latter part of 1964, and a committee was formed with representatives from a range of Indian public and commercial organisations. Shantilal Shah Committee was the name of the committee. This committee published its findings on December 30, 1966, following its analysis of the enormous amount of statistical data that was available at the time.<sup>12</sup> The government of India passed the Medical Termination of Pregnancy Act, 1971 (MTP Act of 1971) and liberalised abortion regulations in response to the findings of this report. The Government of India thereafter made many implementation decisions.*

### **Social-Ethical Concerns**

*Abortion affects political, social, religious, and financial spheres. There are two ways to look at its effects on society: positively and negatively. When policies first started to be formed, Western civilisations opposed abortion. By the nineteenth century, abortion was illegal in many countries. Only in the latter half of the 20th century, following several awareness campaigns and the recognition of women's rights, did certain countries—including the US—start to legalise abortion.*

*Given the changing social conditions, attitudes, and values in India—a country plagued by a significant deal of social baggage on top of societal evils like poverty and illiteracy—the MTP Act's impact should be evaluated. In its most basic form, the social ramifications of the MTP Act can be divided into two categories: abortion for married women and abortion for single girls. The meanings of these two are quite different. In the MTP Act, single females find it difficult to be accepted, yet married women are not viewed as social outcasts. Because it is not accepted, it can make safe abortions difficult or even negate the goal of the procedure—namely, the health of the woman having the abortion.*

*In remote areas without access to healthcare, girls are transported to other locations under the MTP Act with the intention of safeguarding their future and maintaining their social standing. The MTP Act's legalisation has undoubtedly helped those who require MTP, as seen by the decline in suicide rates and improvements in health and safety. There has been a greater acceptance of family planning techniques as well.*

*However, there are some unfavourable effects of the MTP, and they stem from inconsistent adherence to guidelines. Due to patient ignorance and a lack of government monitoring, this issue is particularly prevalent in rural areas. There is still much to learn about the safety and efficacy of these medical procedures. Infertility, irregular menstruation, and pelvic inflammatory illnesses are among the conditions that can arise from inadequate sanitation, staffing, and facilities. This also leads to death in a few cases.*

*The actual issue is with how the laws and current framework are being applied. The government is in charge of making sure that authorised surgeons performing MTP Act procedures at accredited clinics or hospitals. The legitimacy of the requests for pregnancy termination is another significant issue for the relevant authorities to address. There have been documented instances where the MTP Act has been used shakily, such as during exams, family weddings, tours, etc. These abortions are carried out by medical professionals for financial benefit and frequently go unreported because of false claims. There are both short-term and long-term consequences to these abortions.*

It is also regrettable that abortion frequently takes the place of conventional family planning methods.<sup>20</sup> Such issues can only be addressed by government initiatives and public awareness campaigns. It is the social responsibility of doctors to advise all patients seeking pregnancy terminations to utilise some kind of contraception. It is important to emphasise that utilising contraception is significantly safer than terminating a pregnancy. To minimise the detrimental effects of this social legislation on society, it is imperative to strike a balance between its positive and bad aspects.

*Enacting legislation that would reconcile the ethical and legal perspectives was developed by the long-running ethical discussion about the legal attitude regarding the prevention of unwanted pregnancies around the world. The ethical debates surrounding medical abortion termination of pregnancy persist in India despite legal and judicial regulation. Despite the widespread belief that medical abortion is unethical, women now have the right to this procedure and cannot have it taken away from them.*

The Supreme Court, including Justices Thakker and D.K. Jain, came to the conclusion in *Suman Kapur v. Sudhir Kapuras* that a woman's right to an abortion would amount to mental cruelty and be grounds for divorce if she had one without her husband's consent due to social stigma. As stated by the bench: <sup>22</sup> Mental harshness is an attitude of mind. When one partner feels deep sadness, disappointment, and annoyance about the other's actions for a long time, it can lead to mental cruelty. a prolonged duration of humiliating and abusive behaviour meant to torture, disrupt, or otherwise make the spouse's life uncomfortable.

The MTP Act, 1971 limited the scope of this right and only allowed "termination of pregnancy" in certain situations, hence it can be inferred in light of these verdicts that women's access to abortions is not guaranteed by the Indian Constitution.

The Supreme Court of India made a potentially significant ruling, holding that medically ending a pregnancy due to major foetal abnormalities may be justified even in cases where the foetus is older than twenty weeks. The Supreme Court granted an abortion to a raped twenty-four-week pregnant woman in the case of *Ms. X v. Union of India*.

The International Federation of Gynaecology and Obstetrics (FIGO) emphasises that in cases where a foetus is severely malformed, it is morally appropriate for women to be able to terminate the pregnancy; in these cases, "[t]he decision to terminate a pregnancy should rest primarily with the parents." This is an important point to note.<sup>25</sup> It is evident that many countries permit the lawful termination of a pregnancy when there is foetal impairment in order to preserve the expectant mother's health.

- ***Aspects Psycho-social***

*"No woman can call herself free until she can choose consciously whether she will or will not be a mother," said the well-known birth control activist Margeret Sanger. However, women have advanced significantly from the time when medically assisted pregnancy termination was frowned upon and abortion was prohibited. The psychological effects on the expectant mother and her family were the most significant outcome of this attitude towards abortion.*

*These people were distressed over their uncertain future. However, because it is now lawfully accessible in the majority of nations, there is less physical trauma and social isolation. It provides people a psychological sense of agency over their own destiny and the ability to make decisions. Still, in the better social conditions that have followed the legalisation of abortion, the patient's relief at ending the unintended pregnancy outweighs any guilt they may have felt from having undergone an illicit and socially taboo treatment. Psychological disorders such as serious psychoses or depression are seen in a small percentage of patients.*

The argument that carrying a pregnancy to term would endanger the woman's health was not yet recognised as a defence of abortion. Even though it hasn't been done, that plainly constitutes a greater violation of the fetus's right to life than a provision intended to safeguard the woman's life. Nonetheless, human rights and the freedom of the body belong to all people and are safeguarded by several international accords. It is therefore imperative to defend every woman's right to an abortion.

Since they contend that life begins at conception, pro-lifers oppose abortion on the grounds that it is an act of taking human life, comparable to murder. Abortion is a clear violation of the values of the sanctity of human life and the rule that no one in a civilised society may harm or take another person's life. Since millions of parents choose to adopt rather than have children, many believe that adoption is the answer to an unwanted kid. They argue that in circumstances of rape, incest, etc., abortion punishes the unborn child, who did not commit any crimes.

Their main argument is that for women who want complete control over their bodies. Control should involve reducing the chance of becoming pregnant accidentally by using

contraception responsibly or, in the event that this is not possible, by exercising self-control. To put it briefly, abortion shouldn't be utilised in place of another method of birth control.<sup>28</sup> Conversely, pro-choice advocates favour abortion and maintain that the foetus cannot be viewed as a distinct entity during the first trimester because it is unable to exist without the mother. Because it cannot exist outside of the mother's womb and is attached to her by the placenta and umbilical cord, it cannot be considered a separate entity and is therefore dependent on her health.

They further contend that the ideas of personhood and human existence are entirely distinct from one another. Human life begins at conception, but if fertilised eggs used for in vitro fertilisation are frequently discarded without being implanted and are not seen as murder, how can abortion be regarded as murder? Additionally, they think that adoption is not a substitute for abortion. Contraceptive pills are useless in situations where a woman is either uninformed that she is pregnant or is too scared to discuss it, even in cases of rape, incest, etc.

This group of people believes that even while abortion shouldn't be used as a means of contraception, pregnancy can still occur when contraception is used responsibly.<sup>30</sup> They also base their argument on the fact that adolescent moms face difficult future prospects, including dropping out of school, dealing with health problems, receiving poor prenatal care, and facing social shame. They therefore consider it to be in opposition to the most basic ideas of civil rights and the freedom of choice.

- **Conclusion:**

Before drawing conclusions and making any deductions, it would be important to comprehend the fundamental goal of abortion legislation. It follows that the primary goal should be to give all women access to high-quality, compassionate abortion care by making safe abortion services more easily and affordably accessible. This can be achieved by increasing the number of abortion facilities that have the required staff and equipment, as well as by mobilising material, financial, and human resources to offer care and safety throughout the abortion operation. Moreover, expanding the scope of abortion providers and increasing efficiency are the integration of abortion services into primary and community health centres, increased investment in public amenities, training paramedics to perform first trimester abortions, streamlining registration procedures, tying policy to contemporary technology, addressing the need for appropriate post-abortion care, and other initiatives.

The MTP Act, which made abortion legal in India in 1971, did not have the expected impact. Even with reasonable policies in place, most women still choose risky abortion methods. This has a significant impact on the burden of maternal mortality and morbidity. Currently, the MTP Act includes explanations for the clause that states that terminations for both contraceptive failure and rape are acceptable since the pain they give the victim is a "grave injury to her physical

or mental health."The MTP Act must acknowledge that, given that certain foetal anomalies cannot be detected within the allotted 20 weeks of pregnancy, a diagnosis of foetal impairment may cause distress that amounts to a serious injury to mental health. This exception must exist for the duration of the pregnancy. "The touch of children is the delight of the body; the delight of the ear is the hearing of their speech," declared the famous Tamil saint Thiruvalluvar. A mother's natural responsibility is to give her children the best. She occasionally engages in behaviours that could harm the foetus, though. It can happen as a result of ignorance, carelessness, or even deliberate actions.

Many social, moral, and financial concerns involve abortion. Thus, it might be said that a mother's right to a pregnancy abortion is restricted. The law bears the responsibility of protecting both the unborn child's life and the mother's independence and freedom. Women who become pregnant unexpectedly require love and support from the medical community and society at large, as well as assistance in finding compassionate alternatives to abortion.

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