



Balancing Reproductive Autonomy and Unborn Child's Rights

For Prelims: [Supreme Court of India, Medical Termination of Pregnancy \(MTP\) Act, 1971, Abortion Law in India](#), Reproductive Rights

For Mains: Legal Provisions Related to Abortion in India, Major Issues Related to Women.

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Why in News?

The [Supreme Court of India](#) recently **denied permission to terminate a 26-week pregnancy** for a married woman under the provisions of the [Medical Termination of Pregnancy \(MTP\) Act, 1971](#).

What was the Issue in the Case?

▪ Case:

- The case involved a 27-year-old married woman who was in her 26th week of pregnancy, seeking legal permission to terminate her pregnancy.
 - The woman asserted her physical, emotional, mental, financial, and medical inability to carry, deliver, or raise another child, citing her pre-existing conditions and experiences with postpartum depression.
- The woman sought recourse to the [Medical Termination of Pregnancy \(MTP\) Act of 1971](#) to plead her case.

▪ Judgment:

- The Court expressed **reluctance to order a medical termination when the pregnancy is viable** and does not pose an **immediate threat to the woman's life**.
 - The decision is grounded in the interpretation of **Section 5 of the MTP Act, 1971**, which allows abortion only if the woman's **life** and health are in immediate danger.
 - The three-judge Bench, led by the [Chief Justice of India \(CJI\)](#), emphasized that a **woman cannot claim an "absolute, overriding right" to abort**, particularly when medical reports confirm that the **pregnancy doesn't pose immediate danger to her life or that of the fetus**.
 - CJI distinguished the term 'life' in Section 5 of MTP Act, 1971 from its **broader usage in Article 21 of the Constitution**, emphasizing its application to life-and-death situations.
 - Article 21 protects an individual's **fundamental right to a dignified and meaningful life**.

▪ Government Stance:

- The government argues that the **woman's reproductive autonomy cannot infringe upon the rights of her unborn child**.
- Refers to the **Medical Termination of Pregnancy (Amendment) Act of 2021**, which extended the abortion deadline to **24 weeks** in cases of substantial foetal abnormalities.

- Believes that **once a viable baby is present**, the relief should not be one-sided, and the **woman's right to bodily autonomy should not go beyond the Act**.
- Argues that the woman's fundamental right to choice can be curtailed.
- **Implications and Challenges**
 - The case raises fundamental questions about **women's reproductive rights**, even in **late stages of pregnancy**, and the ethical considerations surrounding abortion.
 - Legal experts and advocates have differing opinions on whether an absolute right to terminate pregnancy should exist, especially in the absence of abnormalities.
 - This complex legal and ethical dilemma highlights the need for further discourse and clarity on reproductive rights in India.
 - The case also highlights the **challenges women face in accessing legal abortion services in India**.

What are the Legal Provisions Related to Abortion in India?

- Until the 1960s, abortion was illegal in India. The **Shantilal Shah Committee** was formed in the mid-1960s to examine the need for regulations. As a result, the **Medical Termination of Pregnancy (MTP) Act, of 1971** was passed, legalizing safe **abortions and protecting women's health**.
 - The MTP Act, of 1971, permits licensed medical professionals to perform abortions in specific predetermined situations as provided under the legislation.
 - The **MTP Act was amended in 2021** to allow certain categories of women, such as rape victims, minors, mentally ill women, etc., to **obtain abortions up to 24 weeks of gestation**, raising it from the previous 20 weeks.
 - It sets up state-level **Medical Boards to decide if a pregnancy may be terminated after 24 weeks** in cases of substantial fetal abnormalities.
 - The MTP Act also provides for the protection of women's privacy, confidentiality, and dignity in accessing safe abortion services.
- The **Preconception and Prenatal Diagnostic Techniques (PCPNDT) Act, 1994**, which **prohibits sex-selective abortions** and regulates the use of prenatal diagnostic techniques for detecting genetic or chromosomal abnormalities in the foetus.
- The Constitution of India, which guarantees the right to life and **personal liberty to all citizens under Article 21**. This right has been interpreted by the Supreme Court of India to include the right to reproductive choice and autonomy for women.

Conclusion

- The case underscores the need for a **delicate balance between women's reproductive rights and the protection of unborn children**, involving all stakeholders. It emphasizes the ongoing importance of maintaining open dialogues and legal frameworks to address these complex ethical challenges while respecting the **dignity and autonomy of women**.

Legal Insight: [Supreme Court Rejects Plea to Abort 26-Week Pregnancy](https://www.drishtijudiciary.com/en)

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