

---

# FROM RIGHTS TO DISCRETION: A CRITICAL EMPIRICAL ANALYSIS OF THE IMPLEMENTATION OF THE MTP ACT, 2021

---

Samiksha Sharma, Faculty of Law, University of Delhi

## ABSTRACT

The Medical Termination of Pregnancy (Amendment) Act, 2021, was enacted to expand access to abortion and move Indian law closer to a rights-based framework. At the level of statutory design, the amendment reflects a shift towards greater inclusivity. Its implementation, however, tells a different story. This paper examines how the provisions of the MTP Act operate in practice through a pilot empirical study conducted in government and private hospitals in the Delhi-NCR region.

The study draws on responses from gynecologists and forensic experts and identifies a recurring pattern: awareness of legal provisions does not ensure their consistent application. Practices relating to counseling, referrals, and post-abortion care vary across institutions and are shaped by infrastructural constraints, perceived legal risks, and institutional culture. In this setting, access to abortion is not determined solely by legal eligibility but by how individual practitioners interpret and apply the law.

Situating these findings within constitutional jurisprudence on privacy and personal liberty, the paper argues that reproductive autonomy under the MTP framework remains mediated by medical discretion. The result is a form of conditional access, where the exercise of a right depends on institutional and professional filters. Without addressing these structural conditions, the expansion of statutory rights is unlikely to translate into meaningful access in practice.

**Keywords:** Reproductive Autonomy; MTP Act, 2021; Abortion Law in India; Empirical Legal Research; Medical Discretion; Healthcare Regulation.

## Introduction

The regulation of abortion in India has undergone a gradual but uneven transition. Under the Indian Penal Code, termination of pregnancy was treated as a criminal offense, with limited exceptions grounded in necessity.<sup>1</sup> The Medical Termination of Pregnancy Act, 1971 marked a shift by permitting abortion under specified conditions, subject to medical approval.<sup>2</sup> The 2021 amendment extended gestational limits and broadened eligibility, signaling an attempt to improve access within the existing framework.<sup>3</sup> While these changes appear progressive, they do not alter the underlying structure through which abortion is regulated.

Judicial interpretation has reinforced the recognition of reproductive choice as a protected interest. In *Suchita Srivastava v. Chandigarh Administration*, the Supreme Court located reproductive decision-making within the domain of personal liberty under Article 21.<sup>4</sup> This understanding was strengthened in *K.S. Puttaswamy v. Union of India*, where privacy was framed to include decisional autonomy over one's body.<sup>5</sup> More recently, the Court has interpreted the MTP Act to emphasize access and non-discrimination, particularly by extending its protections to unmarried women.<sup>6</sup> Taken together, these developments indicate a movement towards recognizing reproductive autonomy as part of constitutional rights.

At the level of implementation, however, the structure of the law continues to center medical authority. The MTP Act does not treat abortion as a right that can be exercised independently; it requires the opinion of registered medical practitioners, thereby placing decision-making within a professional framework.<sup>7</sup> This design introduces a layer of discretion that shapes how the law operates in practice. Access to abortion is therefore influenced not only by statutory provisions but by the interpretation, caution, and institutional context within which medical practitioners operate.

Existing scholarship has largely examined abortion law through doctrinal and constitutional analysis. Scholars such as Upendra Baxi and Ratna Kapur have highlighted the broader

---

<sup>1</sup> Bharatiya Nyaya Sanhita, 2023, §§ 88, 89, 90.

<sup>2</sup> The Medical Termination of Pregnancy Act, 1971.

<sup>3</sup> The Medical Termination of Pregnancy (Amendment) Act, 2021.

<sup>4</sup> *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1.

<sup>5</sup> *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.

<sup>6</sup> *X v. Principal Secretary, Health and Family Welfare Department*, (2022) 10 SCC 1.

<sup>7</sup> The Medical Termination of Pregnancy Act, 1971, § 3.

relationship between rights, state control, and institutional power in the Indian legal system.<sup>8</sup> In the context of reproductive rights, Prabha Kotiswaran has pointed to the regulatory nature of legal frameworks that simultaneously enable and restrict access.<sup>9</sup> While these perspectives provide important theoretical insights, they do not fully address how the law is implemented in everyday clinical settings.

There is comparatively little work examining how medical professionals understand and apply the provisions of the MTP Act in practice. Studies on reproductive health in India have noted the role of stigma, infrastructural gaps, and provider attitudes in shaping access to abortion services.<sup>10</sup> However, legal scholarship has not sufficiently engaged with these operational dimensions. This gap is significant, given that the realization of reproductive autonomy depends on how the law functions within institutions rather than how it is framed in legislation.

This paper addresses that gap through an empirical inquiry into the implementation of the MTP Act, 2021. Based on a pilot study conducted in government and private hospitals in Delhi-NCR, the study examines how practitioners interpret and apply the law. The findings suggest that while the legal framework has expanded, its operation remains shaped by discretion, institutional constraints, and procedural uncertainty. In this sense, reproductive autonomy under the MTP Act functions less as a direct entitlement and more as a mediated outcome.

## Literature Review

Legal scholarship on abortion in India has often described the Medical Termination of Pregnancy Act as a framework that balances access with regulation. The Act is frequently characterized as an exception to criminal law rather than a recognition of a standalone right, reflecting its origins within a penal structure.<sup>11</sup> The 2021 amendment has been interpreted as an attempt to liberalize access, particularly by extending gestational limits and recognizing a broader range of circumstances under which abortion may be sought.<sup>12</sup> At the level of statutory reform, therefore, the trajectory appears to move towards greater inclusivity.

---

<sup>8</sup> Upendra Baxi, *The Crisis of the Indian Legal System* (1982); Ratna Kapur, *Gender, Alterity and Human Rights* (2018).

<sup>9</sup> Prabha Kotiswaran, *Dangerous Sex, Invisible Labor* (2011).

<sup>10</sup> Susheela Singh et al., "The Incidence of Abortion and Unintended Pregnancy in India," *Lancet Global Health* (2018).

<sup>11</sup> Law Commission of India, Report No. 264 (2017).

<sup>12</sup> Ministry of Health and Family Welfare, *Comprehensive Abortion Care Guidelines* (2018).

Judicial developments have reinforced this trend by expanding the constitutional understanding of reproductive rights. Decisions such as *Suchita Srivastava* and *Puttaswamy* have been read as affirming autonomy over reproductive choices, while more recent rulings have emphasized access in practice.<sup>13</sup> However, scholars have noted that judicial recognition does not necessarily translate into structural change within regulatory frameworks.<sup>14</sup> The continued reliance on medical authorization means that the exercise of reproductive choice remains mediated through professional judgment.

This has led to a line of critique that focuses on the role of medical practitioners within the legal framework. The requirement for medical approval has been described as a form of gatekeeping, in which access depends on the willingness and interpretation of healthcare providers.<sup>15</sup> In this model, the law does not operate as a direct guarantee of access but rather as a framework through which decisions are filtered by institutional processes. This raises concerns about consistency, particularly in cases where legal provisions allow for discretion.

Policy-oriented studies have highlighted the practical conditions under which abortion services are delivered. Research by the World Health Organization and the Ministry of Health and Family Welfare points to disparities between public and private healthcare systems, uneven availability of trained providers, and the influence of stigma on both patients and practitioners.<sup>16</sup> These factors shape how legal provisions are applied in practice and often determine whether access is effectively available.

Despite these contributions, there remains limited empirical engagement within legal scholarship with the perspectives of medical practitioners themselves. Much of the existing literature identifies a gap between law and practice but does not examine how that gap is produced in everyday decision-making. The role of discretion, particularly in the interpretation of statutory requirements, remains underexplored in doctrinal writing.

This study seeks to contribute to this area by incorporating empirical insights from practitioners who operate within the framework of the MTP Act. By examining how legal provisions are understood and applied in institutional settings, it moves beyond abstract analysis to consider how reproductive autonomy is negotiated in practice. In doing so, it highlights the extent to

---

<sup>13</sup> *Suchita Srivastava; Puttaswamy; X v. NCT Delhi*.

<sup>14</sup> Ratna Kapur, *supra* note 8.

<sup>15</sup> Law Commission of India, *supra* note 11.

<sup>16</sup> World Health Organization, *Safe Abortion Guidelines* (2012).

which access to abortion is shaped by factors that lie outside the formal structure of the law.

### **Research Methodology**

This study adopts an empirical approach to examine how the Medical Termination of Pregnancy Act, 2021, is implemented within healthcare institutions. It is designed as a pilot inquiry aimed at understanding how the law operates in practice rather than measuring compliance statistically.

The research was conducted in government and private hospitals in the Delhi-NCR region. A total of 10 respondents were selected through purposive sampling, focusing on individuals directly involved in implementing the MTP Act. The respondents include gynecologists and forensic experts, whose roles place them at the center of decision-making under the statutory framework.<sup>17</sup>

Data collection was conducted using structured questionnaires and unstructured interviews. The questionnaire was used to obtain responses on specific aspects of implementation, including awareness of legal provisions, counseling practices, referral mechanisms, and post-abortion care. The interviews allowed respondents to elaborate on their experiences, particularly regarding institutional constraints and perceived legal risks. This combination of methods made it possible to capture both response patterns and the reasoning underlying them.<sup>18</sup>

The analysis draws on both quantitative and qualitative inputs. Numerical responses are used to identify trends across participants, while qualitative insights are used to interpret these trends within the context of institutional functioning. In several instances, interview responses reveal that decisions are influenced as much by infrastructural limitations and legal uncertainty as by the statutory provisions themselves.<sup>19</sup> The limitations of the study are acknowledged. The sample size is small and limited to a single region, and the findings are based on self-reported responses. These factors restrict the extent to which the results can be generalized. However, the purpose of the study is exploratory. It aims to identify patterns not readily apparent in doctrinal analysis and to provide a basis for further research.

---

<sup>17</sup> Pilot study conducted by the author (2024).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

Ethical considerations were observed in the conduct of the study. Participation was voluntary, and respondents were assured that their identities would not be disclosed. The data has been used solely for academic purposes.

### **Findings and Analysis**

The empirical findings of this study indicate that the implementation of the Medical Termination of Pregnancy Act, 2021, is marked by a consistent gap between statutory provisions and institutional practice. This gap does not arise from a complete absence of awareness but from how legal requirements are interpreted, prioritized, and operationalized in healthcare settings. Across responses, a pattern emerges: compliance with the law is uneven, and key aspects of care are shaped more by institutional conditions than by statutory mandates.

One of the clearest indicators of this gap is the limited emphasis on patient counseling. While the MTP framework presupposes informed decision-making, a majority of respondents (70%) reported that counseling on the legal aspects of abortion is not routinely provided. This suggests that, in practice, the process often remains confined to medical evaluation rather than extending to legal awareness. The absence of consistent counseling has implications not only for patient autonomy but also for the meaningful exercise of rights within the statutory framework.

A similar pattern is visible in referral practices. The Act permits termination beyond prescribed gestational limits under specific conditions, subject to appropriate approvals. However, responses indicate that such cases are not consistently referred to higher-level facilities. A significant proportion of respondents (80%) reported that they do not routinely refer cases falling beyond the permissible gestational limit. In several instances, practitioners either decline to proceed or do not initiate referrals, particularly where legal ambiguity or procedural complexity is perceived. This reluctance reflects a cautious approach shaped by concerns over liability rather than a clear application of statutory provisions.

Post-abortion care presents another area where implementation varies. Only a small proportion of respondents (30%) indicated that post-abortion counselling and follow-up care are routinely provided, while others described such care as conditional or dependent on individual circumstances. The absence of a uniform approach suggests that post-procedural care is not consistently treated as an integral part of the service. This inconsistency points to a broader issue: the law sets out conditions for termination but offers limited clarity on the continuum of

care that should follow.

The findings also highlight differences between public and private healthcare settings. Government hospitals appear to handle a higher volume of cases, often under conditions of limited infrastructure and administrative pressure. This affects both the quality of interaction and the time available for each case. In contrast, private practitioners report a different set of constraints, particularly regarding medico-legal risk. The perceived lack of legal protection leads to a more cautious approach, with practitioners limiting their involvement to cases that fall clearly within statutory boundaries. In both contexts, institutional factors influence how the law is applied.

An important feature of the findings is the role of discretion in decision-making. While the MTP Act is framed as a conditional legal entitlement, its implementation depends heavily on the judgment of medical practitioners. Decisions regarding eligibility, referrals, and procedural compliance are often shaped by individual interpretation rather than uniform standards. This introduces variability into the system and affects the predictability of access.

Taken together, these patterns suggest that reproductive autonomy under the current framework does not operate as a direct legal right. Instead, it is mediated through institutional structures and professional judgment. The law provides a framework within which decisions are made, but it does not fully determine those decisions. As a result, access to abortion is shaped by a combination of legal provisions, infrastructural capacity, and practitioner discretion.

The findings, therefore, point to a structural issue rather than isolated lapses in compliance. The gap between law and practice is produced by the design of the regulatory framework itself, which relies on medical authorization without sufficiently addressing the conditions under which that authority is exercised. In this sense, the shift from criminal prohibition to conditional permission has not entirely resolved the question of access; it has relocated it within the domain of institutional decision-making.

## **Conclusion and Recommendations**

The findings of this study point to a persistent disconnect between the formal expansion of abortion rights under the Medical Termination of Pregnancy (Amendment) Act, 2021, and their realization in practice. While the statutory framework reflects a movement towards greater

inclusivity, its implementation continues to be shaped by institutional conditions, procedural ambiguity, and the discretionary role of medical practitioners. The result is not a denial of rights in a formal sense, but their uneven and contingent application.

This dynamic becomes particularly visible in areas such as counseling, referral practices, and post-abortion care. The absence of consistent engagement with these aspects suggests that the framework of the MTP Act remains oriented towards regulating the conditions under which termination may be permitted, rather than ensuring a coherent system of access. In practice, the exercise of reproductive autonomy depends on factors that lie beyond the individual seeking termination, including institutional capacity and the interpretive approach adopted by healthcare providers.

The continued reliance on medical authorization plays a central role in shaping this outcome. While such authorization is intended to ensure safety and compliance, it also introduces a layer of discretion that can affect access. Judicial developments have sought to interpret the MTP Act to emphasize autonomy and inclusivity,<sup>20</sup> but these interpretations operate within a framework that continues to vest decision-making authority in medical professionals. As long as this structure remains unchanged, the expansion of statutory rights is likely to produce uneven results.

Addressing this gap requires attention not only to legal provisions but to the conditions under which they are implemented. The following measures emerge from the findings of this study:

First, there is a need for clearer procedural guidelines to reduce ambiguity in applying the law. While the statutory framework outlines the circumstances under which termination is permissible, it provides limited clarity on operational aspects such as referral obligations and timelines for decision-making. Developing standardized protocols can help ensure greater consistency across institutions.

Second, institutional capacity must be strengthened, particularly within public healthcare systems. Resource constraints, high patient loads, and administrative pressures directly affect the quality of care and the extent to which statutory safeguards are observed. Investments in infrastructure and training are essential to translate legal provisions into effective services.

---

<sup>20</sup> X v. Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi, (2022) 10 SCC 1.

Third, the scope of medical discretion requires careful reconsideration. While professional judgment cannot be eliminated, clearer boundaries can reduce variability in decision-making. This may include developing oversight mechanisms or review processes when access is denied, ensuring that discretion does not operate unchecked.

Fourth, greater emphasis must be placed on post-abortion care as part of the service continuum. Current practices indicate that follow-up care is not consistently integrated into the process. Recognizing post-procedural support as an essential component of reproductive healthcare would strengthen the overall framework.

Finally, there is a need for continued empirical engagement with the implementation of abortion law. Legal reform, by itself, does not guarantee access. Understanding how the law functions in practice is necessary to identify structural gaps and to design interventions that address them.

In conclusion, the MTP Act, 2021, represents an important step in the evolution of abortion law in India. However, its effectiveness depends on how its provisions are interpreted and applied within institutional settings. The findings of this study suggest that reproductive autonomy, as currently structured, remains mediated through discretion rather than secured as a direct entitlement. Bridging this gap requires a shift in focus from formal legal reform to the practical conditions that shape access on the ground.

## References

*K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.

*Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1.

X v. Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi, (2022) 10 SCC 1.

Bharatiya Nyaya Sanhita, 2023.

The Medical Termination of Pregnancy Act, 1971.

The Medical Termination of Pregnancy (Amendment) Act, 2021.

Baxi, Upendra, *The Crisis of the Indian Legal System* (Oxford University Press, 1982).

Kapur, Ratna, *Gender, Alterity and Human Rights: Freedom in a Fishbowl* (Edward Elgar, 2018).

Kotiswaran, Prabha, *Dangerous Sex, Invisible Labor: Sex Work and the Law in India* (Princeton University Press, 2011).

Law Commission of India, Report No. 264, *The Medical Termination of Pregnancy (Amendment) Bill, 2014* (2017).

Ministry of Health and Family Welfare, Government of India, *Comprehensive Abortion Care Training and Service Delivery Guidelines* (2018).

Ministry of Health and Family Welfare, Government of India, *Handbook on Medical Methods of Abortion* (2016).

World Health Organization, *Safe Abortion: Technical and Policy Guidance for Health Systems* (2d ed., 2012).

Singh, Susheela et al., "The Incidence of Abortion and Unintended Pregnancy in India, 2015," *The Lancet Global Health*(2018).

Author, Pilot Study on the Implementation of the Medical Termination of Pregnancy Act, 2021 in Government and Private Hospitals, Delhi NCR (2024) (unpublished, on file with the author).