



BEYOND TWENTY-FOUR WEEKS- CONSTITUTIONAL AUTONOMY AND JUDICIAL EXPANSION UNDER INDIA'S MTP FRAMEWORK

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Abstract

The Medical Termination of Pregnancy Act, 1971, as amended in 2021, establishes a statutory framework that permits termination of pregnancy up to twenty-four weeks under specified conditions, while restricting termination beyond that threshold to narrowly defined circumstances. Despite this legislative limit, constitutional courts in India have repeatedly authorized medical termination of pregnancy beyond twenty-four weeks in individual cases, invoking Article 21 and the principles of dignity, privacy, and reproductive autonomy. This judicial practice raises a structural constitutional question: whether such interventions represent legitimate protection of fundamental rights or an incremental dilution of parliamentary policy through case-by-case constitutional exemptions. This paper examines the evolution of India's abortion law from its origins as a criminal prohibition under the Indian Penal Code to its current status as a regulated statutory exception regime under the Medical Termination of Pregnancy Act. The study investigates why legislators modified the 2021 amendment which maintains the twenty-four-week limit. The research examines how reproductive autonomy rights exist within constitutional frameworks which rely on privacy law precedents and modern Supreme Court rulings that grant women abortion rights without considering their marital status. The research assesses judicial reasoning

through doctoral analysis of judicial rulings that allow abortion after 24 weeks which show how courts depend on medical boards to evaluate fetal defects and assess mental and physical danger to the mother. The research evaluates whether new judicial methods work as a rights-based autonomy system which replaces the medical-permission system. The research analyzes how constitutional principles about separation of powers and rule of law relate to the current debate. The research contends that judicial intervention becomes acceptable for extreme cases which need protection against rights violations but constitutional exceptions create doctrinal uncertainty and institutional imbalance, which require legislative clarification to resolve. The research ends by proposing that Indian reproductive rights laws need better legal coherence between the statutory framework and constitutional protections.

Keywords: Medical Termination of Pregnancy Act, Reproductive autonomy, Article 21 constitutional rights, Judicial intervention in abortion law, Doctrine of Separation of Powers

Introduction: The 24-Week Limit and the Constitutional Question

The regulation of abortion in India reflects a gradual shift from criminal prohibition toward conditional statutory permission. The Medical Termination of Pregnancy Act allows abortion until the twenty-fourth week of pregnancy under specific conditions and permits abortion only under exceptional situations which include major fetal defects. The twenty-four-week threshold represents a conscious legislative determination which evaluates medical risks and advances in prenatal diagnostic technology and the state interest of protecting potential life. The Indian constitutional courts have permitted women to terminate pregnancies after twenty-four weeks despite the existence of a statutory limit. The decisions follow



Article 21 of the Constitution¹ which safeguards life and personal freedom and judicial interpretations which extend protection to dignity and privacy and the right to make personal choices. Courts have used these principles to allow abortion in cases of severe fetal defects and rape-related pregnancies and when the woman faces danger to her physical or mental well-being and when doctors discover a medical condition after a significant period of time. The new judicial development creates a fundamental issue that affects constitutional structure. When courts allow termination beyond the express statutory limit, are they engaging in legitimate constitutional interpretation to prevent rights violations, or are they effectively modifying legislative policy through case-specific exemptions? The issue is not merely about abortion access; it concerns institutional competence and the allocation of authority between Parliament and the judiciary in resolving morally and medically complex questions.

This paper argues that the judicial authorization of termination beyond twenty-four weeks reflects an ongoing transformation of India's abortion framework from a doctor-centric exception model to a rights-based autonomy model. However, this transformation has largely occurred through constitutional adjudication rather than legislative redrafting. While judicial intervention may be normatively justified in exceptional cases to safeguard fundamental rights, sustained reliance on constitutional exceptions risks generating doctrinal uncertainty and blurring the boundaries of separation of powers. The tension between statutory limits and constitutional guarantees therefore demands closer doctrinal and structural scrutiny.

From Criminal Prohibition to Statutory Regulation

The legal regulation of abortion in India did not originate as a recognition of reproductive choice, but as a prohibition. The Indian Penal Code between its

Sections 312² and 316³ treated miscarriages as a criminal act which only became legal when performed with good intentions to protect a pregnant woman's life. The law established punishment as the standard response while medical termination served as an extremely limited defense option. Abortion existed as a criminal activity because legal protections for abortion rights did not exist at that time. The Medical Termination of Pregnancy Act created a major change in legal framework, although it maintained its original legal foundations. The Act did not decriminalize abortion in a broad sense. The law established specific exemptions which allowed medical professionals to conduct terminations based on established rules and gestational period boundaries. The law required medical doctors to determine whether pregnancy termination could proceed based on their assessment of a woman's health risks which included potential threats to her life and severe physical and mental health damage and large chances of significant fetal defects. The system functioned through a medical framework which dedicated authority to doctors. The woman required to give her consent, but medical certification served as the primary factor which determined her legal authority. The law allowed abortion until the twenty-week mark because medical professionals determined that period to be safe based on existing medical knowledge and safety standards. The twenty-week limit became ineffective because prenatal diagnostic methods progressed together with changing social conditions throughout the following decades. Some severe fetal defects become identifiable exclusively after the twentieth week, while sexual assault victims encounter both procedural and social blockages that prevent them from obtaining medical assistance. The Medical Termination of Pregnancy (Amendment) Act was created by Parliament as a response to that situation. The amendment established a new upper gestational limit of the twenty-four weeks mark which applies to certain groups of women who include rape survivors, underage girls, and other people who need special protection. The rule required Medical Board

¹ India Const. art. 21

² Indian Penal Code, 1860, § 312.

³ Indian Penal Code, 1860, § 316.



assessment for cases which showed major fetal defects that occurred after the twenty-four-week point. The amendment showed legislative support for medical progress and social requirements which needed to be addressed. The establishment of a fixed twenty-four-week threshold shows that Parliament intentionally decided on this specific policy direction. The law-maintained abortion restrictions through gestational age limits and required medical procedures which prevented free access to abortion services. The existing legal system operates through conditional permission which exists inside a framework of criminal laws. The MTP Act functions as an exception that protects people from criminal charges instead of serving as a separate law for reproductive rights. The present constitutional conflict requires this system of organization which serves as its essential structure. Courts that allow abortions after twenty-four weeks to proceed without following existing laws operate as courts that decide between two opposing forces: one which comes from legislative power and the other which originates from constitutional rights.

Constitutionalizing of Reproductive Autonomy

The Indian abortion system exists as a criminal law exemption which creates controlled access to abortion but constitutional rights have now transformed the framework into an individual rights system. The Constitution guarantees protection of life through Article 21 which provides the right to life and personal liberty. Over time, Article 21 has been understood to include not merely survival, but dignity, bodily integrity, and decisional autonomy. A significant doctrinal turning point occurred in *Justice K.S. Puttaswamy v. Union of India*⁴, where the Supreme Court recognized the right to privacy as a constitutionally protected right intrinsic to life and liberty. Privacy was defined broadly to include decisional autonomy in matters concerning the body and personal relationships. Although the case did not directly concern abortion, its reasoning provided a

constitutional foundation for reproductive choice. If privacy encompasses control over intimate personal decisions, then decisions relating to continuation or termination of pregnancy fall within that protected sphere. Subsequent decisions of the Supreme Court of India have explicitly linked reproductive autonomy to dignity and equality. The Court determined in *X v. Principal Secretary, Health and Family Welfare Department*⁵ that unmarried women must receive access to termination services during the first twenty-four weeks of pregnancy under the same conditions which apply to married women who experience contraceptive failures. The judgment established that people have reproductive choice rights which remain independent of their marital status and that laws should uphold these constitutional rights to equality and autonomy. From this point onward society began to view abortion as a fundamental aspect of personal freedom instead of a matter which medical and marital status determine. The judicial language present in these decisions shows that courts currently understand abortion as an essential element of personal autonomy and bodily rights. The Court has classified forced pregnancy continuation as a human rights violation which affects personal dignity and freedom especially in cases where sexual violence results in pregnancy or when severe fetal defects occur. The judiciary has expanded its legal analysis by interpreting constitutional principles while moving beyond the original statutory text. The process of constitutionalizing creates a conflict with the MTP framework which originally established its system. If Article 21 protects reproductive choice, then the constitutionality of gestational limits must face judicial examination instead of remaining under legislative authority. The Constitution fails to define the limits of reproductive rights and does not establish specific gestational period requirements. The judiciary therefore holds the power to interpret laws by applying constitutional concepts to statutory limitations. The result is a doctrinal transition.

⁴ *K.S. Puttaswamy (Privacy-9J.) v. Union of India*, (2017) 10 SCC 1

⁵ *X2 v. State (NCT of Delhi)*, (2023) 9 SCC 433



Abortion in India functions as more than a medical exception because it exists under criminal law regulations. It increasingly becomes recognized as a personal freedom right. Whether this transformation justifies judicial authorization beyond the twenty-four-week statutory limit is the central issue that emerges from this constitutional evolution.

Judicial Authorization Beyond Twenty-Four Weeks: Practice and Reasoning

The legal system of constitutional courts has established a pattern which allows termination of pregnancy until the end of the twenty-four-week period through their ability to respond to writ petitions which parties submit under Article 226⁶ and Article 32⁷. The cases involved show situations which lack clear legal authorization for termination but display evidence of severe physical and psychological and social damage during the pregnancy period. A common category involves substantial foetal abnormalities detected after the twenty-fourth week. The amended statute permits termination beyond twenty-four weeks only when a Medical Board provides certification of significant abnormalities. The system shows that hospital restrictions together with diagnosis delays and administrative problems create situations where petitioners must turn to courts for assistance. Judicial orders in such cases frequently rely on expert medical reports confirming non-viability or serious congenital defects. Courts then authorize termination, grounding their reasoning in the protection of dignity and avoidance of avoidable suffering. Another recurring category concerns pregnancies resulting from rape, including cases involving minors. Survivors face multiple challenges which include delays in reporting and social stigma and limited access to healthcare, which together lead to pregnancy advancement beyond the legal limit. The courts have allowed termination after considering mental distress which results from mandatory pregnancy continuation to multiple parties. The legal system considers

psychological damage as a constitutionally protected injury which falls under Article 21. The legal system presents multiple cases which involve both diagnostic mistakes and delays that occur throughout entire systems. The courts have established a precedent which considers medical professionals' failure to identify abnormalities during their designated time as a valid basis for judicial decisions justifying relief beyond twenty-four weeks. The reasoning reflects concern that rigid adherence to the statutory limit would unfairly penalize the pregnant woman for circumstances beyond her control. Courts in this situation use specialized medical boards as their primary assessment method to determine threats against a woman's life and health. The board makes recommendations but the court holds the authority to make the final decision. Judicial orders usually state that people have the right to choose their reproduction options which protects their personal freedom and that the refusal to allow abortions in severe situations breaks the constitution. The operational pattern demonstrates a development that results in a physical change. The courts established a constitutional pathway for people to seek relief because of their court-created rights which they gained through judicial decisions. The law maintains its upper limit through formal means but judicial decisions create exceptions which allow case-by-case assessments to modify its strict application. The next inquiry needs to be answered through structural analysis. The court has to decide if this judicial practice shows genuine constitutional understanding or if it uses statutory exceptions to modify the legislative framework.

Separation of Powers and Rule of Law Concerns

The judicial system permits abortion past twenty-four weeks as hospitals maintain their authority to make medical decisions. The constitutional system faces a fundamental challenge because courts allow termination procedures to continue after twenty-four weeks which creates a conflict between existing laws and judicial decisions. Parliament through the 2021

⁶ India Const. art. 226

⁷ India Const. art. 32



amendment increased the maximum termination period from twenty to twenty-four weeks for certain situations while maintaining existing procedures and restrictions on abortions. The law shows legislative interest in medical science and public health issues and it also addresses ethical questions about potential life. The establishment of a gestational limit represents a deliberate decision because it serves as a policy choice which needs to be made. The threshold emerges as a point of conflict when courts allow terminations to occur beyond established limits because people show their need for termination. The purpose of constitutional adjudication exists to assess whether laws protect fundamental rights. Most of the time, courts do not declare the statutory limit unconstitutional. The courts maintain the statutory system but provide specific legal outcomes for individual cases. The system creates two distinct pathways which establish a strict legislative system that applies to all citizens while allowing successful litigants to access constitutional exemptions. Rule of law systems prioritize two fundamental values which require consistent application across all situations. Judicial discretion establishes relief criteria which lead to different outcomes for similar cases because of variations in legal access and case timing and judicial methods across different regions. The process of justice based on petitions creates an advantage for those who can quickly reach higher courts. In these situations, law becomes a reactive force which lacks systematic organization. The matter of gestational limits presents medical and ethical questions which continue to be disputed between different viewpoints. Scientists currently define viability as a term which depends on existing technology and personal health conditions. The argument fails because the twenty-four-week limit does not define a complete medical and moral boundary. The courts will consider extreme situations which involve non-viable fetuses and severe maternal trauma as valid reasons to depart from the statutory limit. The constitutional dilemma,

therefore, is not whether autonomy matters. Article 21 establishes the requirement that autonomy must be considered. The institutional competence dilemma creates two possibilities for decision-making. The courts should establish new gestational limits through court decisions or they should wait for Parliament to update laws based on current scientific and social developments. The continuous pattern of courts easing statutory restrictions without either constitutional declaration or legislative revision creates dangers that threaten to undermine the principle of separated governmental powers. The practice of complete judicial deference might result in rights violations during complex legal situations. The structural relationship between these two elements establishes an ongoing connection that cannot be resolved. Bioethical issues cannot reach resolution because constitutional democracies require both legislative structures and fundamental rights to exist as authoritative standards.

Comparative Perspective and Normative Evaluation

The study utilizes comparative analysis to assess normative standards between the two subjects. The Indian legal system has developed into its own distinct system according to the findings of a brief comparative study. The decision in *Dobbs v. Jackson Women's Health Organization*⁸ resulted in the United States federal government revoking constitutional protections for abortion rights which had existed since *Roe v. Wade*⁹ while returning regulatory powers to state governments. The judicial system has decreased its responsibilities because courts no longer implement policies that extend abortion rights from their previous limits. The United Kingdom uses the Abortion Act 1967 as its main legal framework for abortion regulation because it establishes medical certification requirements for legal termination which allows for procedures up to twenty-four weeks. UK courts usually follow the established statutory

⁸ *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022)

⁹ *Roe v. Wade*, 410 U.S. 113 (1973)



framework instead of granting case-specific constitutional rights for individuals. The system operates through established laws and government-run administrative procedures. India occupies a middle position because it maintains both statutory abortion laws and judicial rights-based abortion access. The Medical Termination of Pregnancy Act establishes statutory gestational limits which are comparable to the UK system, yet constitutional courts have utilized rights-based arguments to increase access to their rights. The Indian constitutional tradition allows for broad interpretation of Article 21 through this judicial engagement. The Indian judiciary has chosen to provide case-by-case relief through incremental legal decisions instead of declaring the gestational limit unconstitutional. The approach contains both beneficial aspects and potential weaknesses according to its normative evaluation. The system permits judges to show compassion toward exceptional cases which would lead to unfair results through strict enforcement of laws. The system establishes reproductive freedom as a constitutional principle which exceeds basic legal recognition. Individualized legal decision-making creates a situation where legal doctrines become unclear. The legal authority which establishes permissible limits for termination procedures exists in a state of ambiguity because judicial authorities exercise discretion without definite statutory guidelines. The main assessment requires multiple possibilities which extend beyond simple two-way choices. Courts can justify permission for procedures after twenty-four weeks when those cases involve exceptional rights protection needs. The process of constitutional exceptions being used continuously shows how the laws of the country do not match with the fundamental principles of the constitution. A complete reproductive rights system should combine clear legislative rules with constitutional protections because this combination will minimize the need for judicial decisions while protecting essential personal freedoms.

Conclusion: Toward a Coherent Reproductive Rights Framework

The conclusion leads to developing a complete system for reproductive rights protection. The Medical Termination of Pregnancy Act creates a legal conflict through its regulations which restrict termination procedures to permissible cases that last up to twenty-four weeks. The Indian abortion system originated as a total ban which later gave way to defined exceptions through legal regulations. The process of judicial interpretation for Article 21 has progressed to establish reproductive choice as a fundamental aspect of human dignity and personal privacy and individual freedom. The shift between these two positions holds doctrinal value because it proves that women need control over their pregnancy decisions to maintain their constitutional rights. The process of continuing pregnancy establishes itself as a decision which belongs to the constitutional right of a person rather than a medical procedure which falls under statutory regulation. The practice of courts assigning permanent judicial authority to exceed established legal boundaries demonstrates how this legal standard has undergone actual transformation. The judiciary has intervened to address cases which involve critical foetal defects and cases of rape and medical diagnosis delays and cases which lead to major psychological or physical damage. The individuals involved have chosen to exercise their rights which they consider more important than the normal restrictions that the law establishes. The decisions made by the organization have a foundation which connects to constitutional principles and receives validation from scientific research. The process of denying permission for termination in extreme situations creates a situation which violates a person's right to dignity and control over their own physical body. The process of expansion through the current method creates issues which affect the fundamental framework of the organization. The legislative process established the twenty-four-week limit after lawmakers engaged in extensive discussions about the issue. The system develops into a mixed format because courts continuously make



exceptions to the established limit while the legislative framework remains unchanged. People who receive judicial relief can navigate the system because existing laws provide them with protection yet the legal system maintains its formal structure. The unpredictable nature of this dynamic creates difficulties which make it hard for people to get help when they need it because they cannot afford to go to higher courts. The constitutional question at hand relates to the protection of reproductive autonomy. It does. The question requires an examination of how institutions operate. The constitutional courts need to step in when legislative policies clash with essential human rights because this situation creates conditions which lead to unfairness. The current judicial exception system shows that laws should go through a new assessment process. A coherent framework would align statutory thresholds with constitutional principles, provide clearer procedural pathways, and reduce dependence on urgent writ petitions for relief. India's abortion jurisprudence stands at a transitional moment. It has moved beyond a purely medical exception model, yet has not fully restructured the statutory regime to reflect its constitutional commitments. The long-term stability of reproductive rights will depend not only on compassionate judicial orders, but on deliberate harmonization between Parliament and the Constitution.

