

# Comparison of Reproductive Rights between India and West

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## **[GS Paper 3 - Science and technology, Health and related issues]**

**Context** - Contrary to the grandstanding since the overturning of the landmark Roe V. Wade judgment, the truth is that India is not ahead of the West in terms of reproductive rights.

### **About MTP Act**

- Abortion in India has been a legal right under various circumstances for the last 50 years with the introduction of Medical Termination of Pregnancy (MTP) Act in 1971.
- The Act was amended in 2003 to enable women's accessibility to safe and legal abortion services.
- Abortion is covered 100% by the government's public national health insurance funds, Ayushman Bharat and Employees' State Insurance with the package rate for surgical abortion.
- The idea of terminating your pregnancy cannot originate by choice and is purely circumstantial. There are four situations under which a legal abortion is performed:
  1. If continuation of the pregnancy poses any risks to the life of the mother or mental health

2. If the foetus has any severe abnormalities
3. If pregnancy occurred as a result of failure of contraception (but this is only applicable to married women)
4. If pregnancy is a result of sexual assault or rape

- These are the key changes that the Medical Termination of Pregnancy (Amendment) Act, 2021, has brought in:

1. The gestation limit for abortions has been raised from the earlier ceiling of 20 weeks to 24 weeks, but only for special categories of pregnant women such as rape or incest survivors. But this termination would need the approval of two registered doctors.
2. All pregnancies up to 20 weeks require one doctor's approval. The earlier law, the MTP Act 1971, required one doctor's approval for pregnancies upto 12 weeks and two doctors' for pregnancies between 12 and 20 weeks.
3. Women can now terminate unwanted pregnancies caused by contraceptive failure, regardless of their marital status. Earlier the law specified that only a "married woman and her husband" could do this.
4. There is also no upper gestation limit for abortion in case of foetal disability if so decided by a medical board of specialist doctors, which state governments and union territories' administrations would set up.

## **Issues with legal provisions**

- Lack of rights based approach: The Medical Termination of Pregnancy (Amendment) Act 2021 is far from ideal and has been criticized for not taking a rights-based approach.
- According to the Act, a pregnancy can be terminated on the following conditions: Grave danger to the physical/mental health of the pregnant woman; foetal abnormalities; rape/coercion; and contraceptive failure.
- A woman's right to choose to end the pregnancy even in the first few weeks is still not recognised in India.
- Systemic barriers: It doesn't give the pregnant person complete autonomy in ending the pregnancy, instead making them go through various systemic barriers.
- The final decision falls not on the pregnant person, but on registered medical practitioners (RMP).
- The constitution of a medical board, a requirement by the Act, is considered a barrier by the World Health Organization.

- Excludes transgenders and non-binary persons: Additionally, it uses the word “woman”, thereby leaving out pregnant transgender and non-binary persons who are biologically capable of bearing children.
- It forces them to identify themselves in the gender-binary ignoring their gender identity.

### **Social factors and lack of medical facilities**

- It is important to look through an intersectional lens, and factor in class and caste privilege.
- Abortion facilities in private medical centres are expensive, available only for those who have the resources.
- Lack of access: Not all public health centres, especially in rural India, provide abortion facilities.
- Most unmarried women end up resorting to unsafe abortions in illegal clinics or at home.
- According to the latest National Family Health Survey 2019-2021, 27 percent of the abortions were carried out by the woman herself at home.
- According to United Nations’ Population Fund’s (UNFPA) State of the World Population Report 2022, around 8 women die each day in India due to unsafe abortions.
- It also found that between 2007-2011, 67 percent of the abortions were classified as unsafe. Unsafe abortion was one of the top three causes of maternal deaths.

### **Issues in the Surrogacy (Regulation) Act 2021**

- While well-intentioned, leaves much to be desired. The plethora of regulations one must undergo is antithetical to a dignified standard of living.
- Exclusionary in nature: Experts have pointed out that the Act is exclusionary in nature, disregards privacy, and also exploits women’s reproductive labour. Only a heterosexual married couple (with certain preconditions) can be the intending parents.
- It strips the reproductive autonomy of LGBTQ+ persons and single, divorced, and widowed intending parents. It can be seen as a violation to the fundamental right to

equality.

- Experts also believe that regulations, rather than a complete ban on commercial surrogacy, should have been the way forward.
- Violates right to privacy: The Act requires the intending couple to declare their infertility and reveals the identity of the surrogate, both of which violate the right to privacy.
- The landmark Puttaswamy judgment discusses bodily privacy – the right over one’s body and “the freedom of being able to prevent others from violating one’s body.”
- The current reproductive rights regulatory framework falls short in guaranteeing bodily privacy.

## **Conclusion**

The situation in India is far from perfect and we should take this moment to reflect and learn from progressive practices around the world. We should strive for inclusivity, complete bodily autonomy, and reproductive equity.