



Do Laws Carry History? A Study of Abortion in the Indian Subcontinent

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Abstract: This paper examines whether contemporary abortion law and discourse in India carry traces of earlier frameworks governing reproduction in the Indian subcontinent. Drawing on religious, legal, and medical texts from the Vedic period onwards, alongside colonial legislation, parliamentary debates surrounding the Medical Termination of Pregnancy (MTP) Act and its 2021 amendment, and insights from reproductive health practice, the paper traces changing approaches to abortion across time. It argues that while authority over abortion shifted from religious and normative traditions to colonial criminal law and later to medical regulation, enduring concerns around lineage, legitimacy, morality, and social order continue to shape abortion discourse. The paper finds that legal reform has expanded access and adopted more inclusive language, yet abortion remains framed as a conditional and regulated exception rather than an autonomous right. Contemporary abortion law thus reflects not a clean break from the past but a layered inheritance of historical ideas and institutions.

INTRODUCTION

From the vantage of early Indian history, the implications of abortion are not entirely confined to the world of ethics or morality. Its interlinkages with the politics of reproduction, especially in the ancient and medieval contexts were comprehensible, amongst other things, in the need for lineage perpetuation and securing inheritance of property. This paper asks whether there is a link between these historical frameworks and India's contemporary abortion law and practice.

India's legal tradition is both historic and complex. Normative frameworks emerged as early as the 5th century BCE through texts like the *Dharmashastra* corpus and the *smṛtis* of *Yājñavalkya* and *Kātyāyana*, later elaborated in influential medieval commentaries. Within these traditions, abortion occupied a complex and often contradictory place. Vedic, Buddhist, and *Dharmashastra* sources frequently condemned abortion, yet medical texts acknowledged its prevalence and described conditions - particularly the protection of the pregnant woman's life, under which it was necessary.

Historical evidence in the Indian subcontinent shows abortions occurred for social, familial, and political reasons; they were quietly allowed in some contexts, encouraged in a few, and harshly punished in others. Rather than a linear prohibition, the subcontinent shows overlapping moral, medical, and everyday practices, raising the question of how these histories might inform modern abortion praxis.

In this paper, we examine the extent of influence historical trajectories have on the present Indian abortion law. By tracing and reading ancient and modern Indian texts, scholarly works, Indian parliament debates that led up to the Medical Termination of Pregnancy (MTP) Act in the nation, and drawing on two decades of field experience in the

reproductive health sector, we map both the continuities and departures in the discourse surrounding abortion norms, law, and practice.

A BRIEF HISTORY OF ABORTION IN THE INDIAN SUBCONTINENT

Abortion has been an issue of concern with ancient norm setters, medical practitioners, and theologians looking at the issue closely. The earliest religious texts of the Indian subcontinent reflect this kind of worry. Producing a child was understood as a risky state for women in the temporal phase, as revealed in the *Rigveda* (1500-1000BCE). Numerous charms and spells are suggested to prevent miscarriages. In the seventh *mandala* (chapter), the hymn VII.36.9 invokes deities like Vishnu to act as guardians and protect the 'future infant'. Similarly, another hymn, X.162, found in the late *mandala*, refers to a perceived supernatural threat to the foetus's maturity. We are informed about different stages of pregnancy and the possibility of an 'ill-named affliction' that might 'smite at the embryo'. The threat has to be removed through prayers and mantras. In yet another verse, X.184, gods and goddesses are invoked for a safe pregnancy and a full-term delivery. In fact, there is no reference to a wilful abortion.

The practice must have prevailed, though. This becomes more evident from the reading of a later Vedic text, the *Atharvaveda*. The reference is generally to an abortionist who should be castigated by society. For instance, in the section on Expiation of sins and defilement (VIII. 6.112.3), Puṣaṇa is asked to 'wipe off the misdeeds upon him that practised abortion'. He is chastised as *bhrūṇahan*, which is almost like a slur. Not only was the practice acknowledged as current in its time, but it was also clubbed in the category of a sin. An oblique reference to the act of abortion comes in the *Śatapatha Bhrāhmaṇa* (III.1.2.21) where a plea is made against consumption of beef (in Hinduism) lest it results in rebirth as an abortionist, among other things. The Upanishads also exhibit their familiarity with the practice of abortion and make a covert plea against it. In the *Kauṣītaki Upaniṣad*, Indra says: "When a man perceives me, nothing that he does - whether it is stealing, or performing an abortion, or killing his own father or mother - will ever make him lose a single hair of his body". (3.1)

The post-Vedic texts become more vociferous in their criticism of the act of abortion. The *Dharmasutras* were the normative texts compiled between the 4th and 1st centuries BCE. They reflect the ideas of the elite, rulers and priests who set the norms for the society at large. We can assume that their ideas would have eventually circulated amongst the masses and become foundational for later *smṛiti* or legal texts. Abortion and abortionists figure prominently in these texts. In the *Vasistha Dharmasutra* (20.23), the meaning of *bhrūṇahan* (literally translated to one who kills a foetus) is explained as a 'murderer of a Brahmin'. By killing a Brahmin or a foetus whose gender cannot be determined, one becomes a *bhrūṇahan*. Thereafter, the text refers to the penance to be performed. This kind of disparaging outlook can be located in the *Āpastamba Dharmasūtra*, where a brahmin is asked to stay away from an abortionist and refrain from consuming food offered by him, as the food offered by him would rub off the 'sin (of the abortionist) on the man who eats his food' (I.19.15). What is suggested is that committing an abortion could lead to the loss of a man's caste (1.21.8). There could be no greater loss for a man than losing his social position. The text further restates that one who had committed an abortion should be made to wear a

dog's skin or that of a donkey and carry a human skull as his drinking cup. Clearly, the measure was a part of inflicting public shame on him.

As referred above, abortion was considered almost like a crime. The *Vasiṣṭha Dharma Sūtra* states (2.42), 'Usury and abortion were once weighed on a balance. The abortionist rose to the top, while the usurer trembled'. Negative attitude towards abortion can also be gauged by a reference in *Baudhāyana Dharmasūtra*, where we are informed that if a father does not marry his daughter early after she reaches the age of puberty, then he incurs a guilt equal to that of performing an abortion (4.1.12.). Also, if a man did not have sexual intercourse with his wife for three years, he incurred a guilt equal to that of performing an abortion (4.1.17). Interestingly, women and their autonomy do not figure at all. The transactions of guilt or fines are amongst men, even as the subject is the woman. She had no right to decide whether she would like to keep the unborn child. In the *Gautama Dharma Sūtra*, we are told that 'a woman would fall from her caste by carrying abortion and by cohabiting a low caste man' (21.9). Similarly, in *Vasiṣṭha Dharma Sūtra* (28.7), we are informed that, 'There are three things in the world, people who know law declare, that cause women to fall from their caste: killing the husband, murdering a Brahmin, and getting an abortion'. What became evident in this repeated proscription meant that women did carry out abortion wilfully, even though it was rigorously condemned.

Amongst the *Smṛiti* texts, too, we find proscriptions against abortion, especially against women conducting it. *Manusmṛiti*, a text of early centuries of the Common Era, instructs one not to offer libations (during a ritual) to women who have joined a heretical sect, killed their husband, drink liquor or cause an abortion (V.90) and prescribes a penance too (XI.88). Here, the reference may be to causing abortion to self or assisting others. *Yājñavalkya smṛiti* also calls causing abortion a colossal sin (*mahāpāpa*) for which a woman should be eschewed. Similarly, *Viṣṇu Purāṇa* (2.6), a text of the seventh century CE, describes many types of hell, amongst which the *rodha* (hell) was reserved for the abortionist.

What could cause so much aversion to the act of abortion? Progeny was certainly valued in early historic societies, marked by high infant mortality. So, attempts to end that would be critiqued. But beyond this acknowledgement, there may also have been a fundamental theological belief that life itself was essential for attaining a higher or more refined state of consciousness.

In the Indic thought, it is related to the concept of ahimsa or non-violence. Buddhist philosophy revolves around the ideas of *Ahimsa*, *Karma*, and reincarnation. The soul needs to traverse through many birth journeys, and therefore, the body should not be extinguished early. Damian (2010) cites the *Vinaya Pitaka* as stating that "[h]uman being means: from the mind's first arising, from (the time of) consciousness becoming first manifest in a mother's womb until the time of death, here meanwhile he is called a human being" (*Vinaya Pitaka*, as cited in Damian, 2010, p. 130). Hence, for followers of Buddhism, based on their ethical and soteriological notions, there is no distinction between an unborn foetus and a human being. Similarly, the Jain tradition also advocates ahimsa as one of its main vows and ending a life of any type is unacceptable in its theology.

However, the ancient medical (Ayurvedic) treatises reflect a different view on abortion, but that was largely from the perspective of the health of the mother. Their driving rationale was ensuring reproduction, and so the discussion on pregnancy and a

woman's health and survival was crucial. *Charakasamhita*, a medical treatise from the early centuries of the Common Era, describes the types of foods a pregnant woman should consume to maintain her health, specifies a month-wise regimen, and, if a woman hopes to have a son, offers advice on how to achieve it. In the midst of this type of thought process, one wonders where abortion fits in. Would it receive any positive reviews? It did, at least on some occasions. Even though abortion or *bhrunahatya* was considered a sin, by and large, there are references in the medical treatise to permitting abortion if the mother's health was in danger. We find a primary reference in the *Sushruta Samhita*, an ancient text on surgery. In the section on Therapeutics, *Chikitsasthana*, we come across verses (34-52) that address difficult labour and foetal disorders. The physician is advised on the procedure of conducting the abortion; the instruments to be used, the care accorded to hygiene, and the procedure of removing the foetus piece by piece. This is mandated in case the foetus died on its own and the mother's life was at risk. This was the occasion when all, the family, the law and religion came together to save the woman. We need to remember that in that day and age, a woman had to be saved. If she survived, she could become a source for another birth and hopefully the birth of a son. So, we can understand that some texts did prioritise medical conditions over ethical issues. However, what we need to remember is that even these medical treatises did not look into the issue of a woman's choice to terminate the pregnancy. Only issues related to the potential mother's medical condition are considered.

In the medieval times (6th-18th century CE), the preoccupation with women's reproductive health continued, and we get references, direct and indirect, from the chronicles, travel records and at times from the personal journals of the emperors. The infant mortality rate was relatively high, as noted by Prof. Shireen Moosvi (2014, pp. 101-109) as were the instances of miscarriage. Within the Mughal harem, this would have generated anxiety amongst the inmates. Incidental reference to craving for a child can be noted in Emperor Babur's journal, the *Babarnama*, where he noted how, on the death of her child, his wife Maham sought the unborn child of another queen. Direct references to abortion are rare. One such comes from Tavernier's travelogue that mentions that a royal woman induced abortion to others in order to ensure that her rivals did not have children to contest succession (Tavernier, 1926, p. 393). Methods to terminate pregnancy were known and may have required the ingestion of some types of herbs, what are deemed as unsafe abortion methods in the present. It is doubtful, however, that the issue around abortion would have been openly discussed. Texts do mention a milieu of anxiety, stress, anger, loneliness, and low self-esteem in women. As Paliwal suggests, today we are alert to the significance of these themes, as they are a part of modern psychological research (Paliwal, 2025, pp. 11-24). But they were also relevant in the medieval period and indicate the absence of a discursive arena for women to discuss issues related to their health and desires, for or against reproductive pressures.

Modern Indian history is often marked by the period of British colonization in the Indian subcontinent (18th to 20th century). Abortion, previously unregulated in India now came under the ambit of the British Legal and moral frameworks. It was carried out across social strata, often administered by midwives (called *dais*), by use of herbs and mechanical interventions. In fact, 'going go Kashi' a common euphemism used amongst Hindu windows to mask abortions under the guise of pilgrimage - indicating the dual nature of practice in abortion - normalized, a social necessity in certain conditions, and yet not to be spoken about openly (Sharafi, 2021, p. 377).

With the British rule, abortion contexts and practices of England, that were heavily restricted under a Christian moral paradigm, began reflecting in India as well. The Indian Penal code (1860, effective 1862) now criminalized performance of an abortion - unless it was to save the life of the woman in question (Chitnis & Wright, 2007, p. 1341). However, enforcement of this law was inconsistent, as cases typically reached courts only when the woman died.

It is imperative to note that this is also the time when women's health came into more focus, especially by women themselves. We come across references to Clara Swain and others, who were associated with missionary activities and established professional medical practices in the late nineteenth and early twentieth centuries. We also take note of Lady Duffereine, Lady Minto, and Lady Chelmsford in arranging funds for both medical and nursing training. The establishment of hospitals and training initiatives operated by women improved access to maternal and reproductive healthcare for Indian women (Ray, 2015).

From the late nineteenth century, some of the earliest Indian women doctors, among them Kadambini Ganguly, and Haimabati Sen, served in various hospitals established and supported by the Countess of Dufferin Fund (Association) across India (Ray, 2015). Further, some Indian women continued to popularise ancient medical knowledge.

Gupta (2005) discusses one such woman, Yashoda Devi, who had become an ayurvedic healer and established a *Striaushadhalaya* (Female Dispensary) in the 1920s to address essentially the issues of procreation, but in the process also drew attention to the problems of male sexuality. It is in writings like these¹ that we begin deciphering a woman's growing consciousness of autonomy over her anatomy, at least from the perspective of sexual and reproductive health.

Efforts towards decriminalization of abortion emerged with legislator B.V Jadhav proposing a bill in 1933 to allow abortion for physical, social or economic reasons, aiming to prevent deaths from illicit abortion attempts. The bill, however, did not pass.

The partition of the Indian subcontinent into India and Pakistan left families broken and displaced, with people murdered, raped and looted. Impregnating or raping a woman of the 'other' religion, in this context, Islam, Hinduism or Sikhism, was considered akin to gaining supremacy over that community. Shortly post-independence, governments of both the newly formed nations took it upon themselves to 'rescue', 'recover' and 'restore' people (implicitly, women and children) who had been forcefully abducted, back to their 'original' families. In this process, children conceived or born of the union of women and men from the 'other' community sought a major hurdle. As noted by author Urvashi Bhutalia in one of her works, the process of getting rid of children in the womb was known as '*safaya*' (literally translated to 'cleaning'). In Jalandhar this was known as 'medical treatment' was taken up by the state, and specific hospitals were targeted, making a fortune on such cleaning operations. Clearly, gender, community, and state power were intertwined, but for our purpose, it is crucial to recognize the state's own instrumental use of abortion when confronted with the social complexities of Partition.

¹ Such as *Dampati Arogyata Jeevanshashtra arthat Ratishashtra Santatishashtra* (The Science of Healthy Conjugal Life or the Science of Sexual Intercourse and Procreation, 1927) and *Dampatya Prem aur Ratikriya ka Gupt Rahasya* (Conjugal Love and Secrets of Sexual Intercourse, 1933)

In the years that followed, the Indian government increasingly identified unsafe abortion as a pressing public health issue contributing to high maternal mortality. The Bhore Committee Report of 1952 underscored the need to liberalize abortion laws, linking access to safe abortion with improvements in maternal health and socio-economic well-being (Joseph, 2024). However, policy reform progressed slowly due to enduring socio-cultural resistance, moral conservatism, and limited medical infrastructure.

In India, the abortion debate did not pit women's rights against foetal protections but rather presented abortion as social policy and population control alongside maternal mortality concerns. While discussions on reform gained momentum through the 1950s and 1960s, it was not until the Shantilal Shah Committee (1964) that concrete steps were taken toward legal reform, eventually leading to the passage of the Medical Termination of Pregnancy (MTP) Act of 1971.

Medical Termination of Pregnancy (MTP) Act, 1971

- Established the legal framework for abortion by registered medical practitioners (RMPs)
- Applied across India except Jammu & Kashmir (at enactment)
- Granted immunity to RMPs from IPC liability if procedures followed the Act
- Permitted termination up to 12 weeks with one RMP and 12-20 weeks with two RMPs
- Allowed termination on grounds of risk to life, grave injury to physical or mental health, or foetal abnormalities
- Presumed mental injury in cases of rape and contraceptive failure in married women
- Allowed consideration of the woman's actual or reasonably foreseeable environment
- Required guardian consent for minors or mentally ill women, and the woman's own consent in other cases

DEBATES THAT LED UP TO THE ACT

The MTP Act was widely regarded as strikingly liberal for its time. But to leave it at that would be to miss the texture beneath the surface. A closer look at the debates that preceded its passage reveals far more than a narrow disagreement over abortion. They open a window into how people of that moment understood reproduction itself - its risks, its responsibilities, and its place in public life.

What emerges from these exchanges is not a single, tidy argument, but a clash of worldviews. Abortion became the focal point, yes, but the real contest ran deeper: over moral authority, over the structure of the family, and over how far the State ought to (or not) reach into intimate decisions. The exchanges were marked by sharp ideological fault lines, often implicit, sometimes openly declared. These tensions come through most vividly in the speeches themselves.

To quote Minister M.M. Joseph, *“Sir, abortion is virtually murder. In our Vedas the abortion is described as more cruel than Brahman hatya.... In our country where even cow slaughter is considered to be a crime, where the great Sidharatha; who advised against the*

killing of even a fly, was born we introduce a measure to kill lakhs of innocent children.” (Lok Sabha Debates, August 2, 1971) This peak into the past was not isolated, instead was echoed by many members.

Minister (Dr.) Lakshmi Narayan Pandey expressed, “...हमारे देश के चरित्र, सांस्कृतिक मान्यताओं एवं आचार के विरुद्ध है।.....हमारे देश की पारिवारिक मान्यतायें, हमारी भावनायें तथा सांस्कृतिक आधार इसके अनुकूल हैं... This directly translates into how the bill runs contrary to the ‘character’ of our country, its cultural values, and its moral code and our family traditions that simply do not align with it. And thus, it would be far better if the government directed its attention elsewhere, especially towards building a ‘moral character’ the country lacked. (Lok Sabha Debates, August 2, 1971) Parliamentary debates, then, were not merely policy- or evidence-driven; they were deeply anchored in moral claims and historical imagination.

Minister Pushaben Janardanrai Mehta, in her speech, framed abortion not as a necessity but as a process that could destroy a woman’s life. “एक बालक से दो, दो से तीन, तीन से चार या पाँच हो जायेंगे तो वह विपत्ति कोई बड़ी नहीं होगी.. एबॉर्शन से स्त्री के शरीर और मन पर कितना बोझ आता है, उनको कितना दुख पैदा होता है और कभी कभी उनकी ज़िंदगी भी बर्बाद हो जाती है”. This implies that if one child becomes two, two become three, and three become four or five, it is not considered any great misfortune, however abortion places a heavy burden on a woman’s body and mind, causes her considerable suffering, and at times can even ruin her life. (Rajya Sabha Debates, May 26, 1971) So, while having more and more children is brushed aside as manageable, the real weight of that, on women and on already stretched families, is barely acknowledged.

Even in arguments supporting the Bill, concern for women is often articulated indirectly, through their role within the family. Minister (Dr) Mangladevi Talwar stated, “A happy family is no more a happy one because when the mother is sick, the children cannot be taken care of, and the household suffers and the whole family suffers from the ill health of the mother.” (Rajya Sabha Debates, May 26, 1971) Evidently then, the concern isn’t really the woman on her own terms - it’s what happens to the family if she isn’t well.

Further, if we read between the lines, objections and oppositions to this Bill seemed to have deeper concerns with regulating sexual behaviour than abortion itself. As put by Minister Maan Singh Varma in Rajya Sabha, “यह बिल अधार्मिक, असांस्कृतिक, असामाजिक अनैतिक और अमानुषिक है । हमारी मान्यता रही है, हमारी संस्कृति की यह दे है की भ्रूण हत्या सबसे बड़ा महापाप कहलाया जाता है । हमारे यहाँ इस बात के नियम रहे हैं, जटिल नियम रहे हैं, कठिन नियम रहे हैं” As per him, the Bill was irreligious, against our culture, antisocial, immoral, and inhumane. He noted that it had long been our belief - indeed a legacy of our culture, that the destruction of a foetus was regarded as the gravest of sins. We had norms governing this, strict ones - complex and demanding in nature. (Rajya Sabha Debates, May 26, 1971)

Moreover, he added, referring to sex and sexual relations as translated, that “from the very beginning, both boys and girls in our society were given such an upbringing that they would stay away from ‘these’ matters. But through the Bill, we would in fact encourage them, inviting immorality, promiscuity, and misconduct.” He went on to suggest that while family planning is needed, it should be achieved through self-control - “Any control in the absence of self-control is nothing”. (Rajya Sabha Debates, May 26, 1971). The

anxiety here isn't really about the procedure so much as what it represents - a move away from control over sexuality.

At the same time, there were also sustained engagements in the debates around the Bill's limitations, scope and its practical implications. These were clearly articulated in terms that we would today recognise as rights-based arguments.

Minister Savitri Shyam emphasized the need to fully decriminalize abortion, arguing that without such a step, the Bill would not achieve its intended purpose. In their view, the Bill merely carved out limited exceptions to punishment rather than removing criminal liability altogether (Lok Sabha Debates, August 2, 1971).

Further, Minister Naval Kishore Singh raised the question around the need to use the term 'grave' with 'injury'. Who decides that? Is an injury not sufficient, and isn't it open to interpretation? He flagged doubts around the role of medical practitioners in assessing mental harm, arguing that such determinations are inherently subjective and best left to the mother herself (Lok Sabha Debates, August 2, 1971).

Finally, Minister (Dr.) Lakshmi Narayan Pandey questioned the inclusivity (or not) of unmarried women under this bill (Lok Sabha Debates, August 2, 1971).

While there was discussion on why the responsibility of family planning should be on the woman alone, the major focus of the debates seemed to be on faulty morals and the need for strict punishment for rape, instead of an abortion law coming into place.

For us, the shift from religious authority to colonial criminalization and finally to medical regulation does not mark a linear progression toward autonomy. Instead, it reflects a reconfiguration of authority; where decision-making continues to reside outside the woman, now vested in medical expertise rather than scripture or state punishment.

DO LAWS CARRY HISTORY?

Reading through these debates - alongside years of working with women to ensure they can actually access safe abortion services; it becomes difficult to see law as neutral or ahistorical. Laws, and more importantly how they are understood and practiced, carry with them traces of the past - and these aren't static.

One observed a consistent focus on the 'mother', and not the 'woman'. Across ancient narratives, normative frameworks, colonial law such as the IPC, and even debates that led to the MTP Act, the subject is almost always the 'prospective', 'poor', 'expectant' 'mother' and on 'potential motherhood'. The woman, as an individual with autonomy outside reproduction, is largely absent. The persistence of categories such as 'mother', 'married/unmarried', 'victim' and 'widow' suggest that history survives not only in legal provisions but in the very vocabulary through which law recognizes subjects. In this sense, law does not merely carry history, it speaks it.

Alongside this, morals and morality have heavy undertones in both debates and ancient texts. As Minister Maan Singh Varma put it (in Hindi), "*other nations applaud our country for having morally pure, chaste and self-sacrificing women.*" (Rajya Sabha Debates, May 26, 1971) By stating this, the woman dehumanized, by being put on a moral pedestal.

The Minister further stated, as roughly translated, *“in a culture where a woman is regarded as equivalent to a mother, you are introducing something that will poison it in this way... and do not try to turn it into something like America, where, in your view, 75% of girls have already gone astray before marriage.”* (Rajya Sabha Debates, May 26, 1971)

This reflects a strong disapproval of premarital sex, especially for women. The statement sets up a contrast: on one hand, an idealised image of Indian culture where women are seen as pure, maternal, and morally upright; on the other, a portrayal of Western societies (here, ‘America’) as places where those norms have broken down.

Such narratives are not confined to debates from fifty years ago. A reading of the 2021 debates on the Medical Termination of Pregnancy (Amendment) Bill reveals a clear carryover of older texts and ideas, continuing to shape how pregnancy, abortion, and related experiences are framed and understood. As Minister Seema Dwivedi expressed - (Rajya Sabha debate, May 26, 2021 - [roughly translated from Hindi] Abhimanyu (a character from the legend *Mahabharata*) learned the art of breaking the battle formation while still in his mother’s womb, and Prahlad received his education from within the womb. Minister Dwivedi went on to say that when a child is in the womb, it is influenced by the father’s character and the mother’s conduct. Clearly, mythological narratives were directly drawn from, in these debates.

Interestingly, references to the past did not operate in one direction alone. While examples such as the one above, and references to Vishwamitra distancing himself from Menka and denying Shakuntala as his daughter (also characters from the epic *Mahabharata*) were invoked to reinforce certain moral positions, some Ministers also pointed out that the Bill itself felt regressive, as though it belonged to the ‘world of *Manu*’ - an explicit reference to the *Manusmriti* and its restrictive norms for women - rather than the present.

Reproduction and anything around it continue to be understood almost entirely in terms of childbearing; there is little room to see it otherwise. Making abortion legal was considered akin to giving an ‘invitation’ to harassment and similar behaviour. The dominant discourse, both then and now, has remained, to a great extent centred on family planning, population control, and maternal mortality. Sex, in this framework, is legitimate only when tied to marriage and reproduction; anything outside it is treated with suspicion. Unwanted pregnancies, therefore, are often explained either through rape or as the result of a woman’s ‘bad character’. To translate and quote Minister Maan Singh Varma *“such pregnancies arise from ‘immoral’ individuals or ‘characterless’ women.... such individuals ought to be socially ostracised.”* (Rajya Sabha Debates, May 26, 1971)

It seems then that law does not merely carry history forward - it reorganizes it. Older anxieties around sexuality, lineage, and morality persist, now refracted through the language of public health and medical expertise. And yet, certain ideas persist. As exclaimed by a Minister in the Rajya Sabha debate on December 3, 1969, that *“the intended act (Bill) is something unprecedented in our country - that a bill is being introduced to allow an unmarried woman to seek an abortion. Such a thing has never been part of our history, and it goes against the very foundations of our culture and social values, something our society cannot accept.”*

This is not to say that things haven’t changed.

Medical Termination of Pregnancy (Amendment) Act, 2021

- Abortions up to 20 weeks now require the opinion of one registered medical practitioner
- Abortions between 20 and 24 weeks are allowed for specified categories of women with the opinion of two registered medical practitioners
- Specified categories include survivors of rape, minors, and other vulnerable groups.
- The law replaced ‘married women’ with ‘women’ in cases of contraceptive failure, making it more inclusive

The Medical Termination of Pregnancy (Amendment) Act, 2021 expanded access to safe and legal abortion services on therapeutic, eugenic, humanitarian, and social grounds. Even the debates around the amendment showed a shift toward more woman-centred language and thinking. Some ministers insisted the Bill was needs-based rather than rights-based, which still forced women, especially in rural areas, to run from one office to another just to get legitimate permission for an abortion. There was also a push to make abortion a decision taken solely by the woman, to strengthen her reproductive autonomy, and to ensure government institutions provided support, including leave, after the procedure. If laws carry history, how do we explain these breaks?

History appears in legal discourse selectively and unevenly. Certain strands - moral injunctions, ideals of chastity, the sanctity of life, are repeatedly invoked, while others, such as historical acknowledgment of abortion practices or medical pragmatism, remain marginal.

In the 16th March 2021 Rajya Sabha debate, reproduction as a site for lineage perpetuation was highlighted, *“It has been our country’s tradition to consider our daughter or daughter-in-law’s pregnancy as auspicious, since it through his that our legacy would continue.”*

Sexual relations continue to be a site for moral panic. Minister Sushil Kumar Gupta commented on the increasing age of marriage and the decreasing age of sex when speaking about abortion - and the need for government to focus on this, *“earlier, child marriages used to take place, but now the age of marriage is increasing, while the age at which people engage in sex is decreasing. What solution can be found for this, and how the government and society can arrive at a positive response to address this issue is something we must seriously consider. This problem is much less prevalent in villages, but it is increasing in cities.”* (16th March 2021, Rajya Sabha debate)

Laws and their implementation then do not only carry history, but also are closely shaped by politics and ideologies, and that has been evident in history, as much as it is in reading the parliament house debates.

Abortion law in India is not absolute. It operates as a conditional right - one that remains provider-centric and deeply medicalized, even in its language. Despite persistent barriers to access, particularly in rural areas, requirements such as consultation with medical boards continue to structure decision-making. This raises a broader question: does this calibrated recognition of women’s rights, extended, yet not fully autonomous, reflect

the historical positioning of abortion and women's bodies within the subcontinent? Similarly, does the weight accorded to the foetus beyond certain gestational limits, and the absence of abortion as a right on demand, echo earlier moral and social frameworks?

Towards the end of this discourse, we are led to ask whether Indian society is moving in the direction of reproductive justice. Perhaps it is, but it is not quite there yet. The MTP Act has undoubtedly expanded its scope, extended gestational limits, and adopted more inclusive terminology. Yet, it still falls short of being a woman-centric law, both in theory and in practice. Lawmakers and healthcare providers remain embedded within the broader social milieu, and this is reflected in how legislation is debated and enacted, as well as in how medical practitioners engage with women seeking care.

The Indian abortion framework today reflects not a clean break from the past, but a layered inheritance. While access has expanded and language has shifted, the structure of the law remains conditional, mediated, and deeply embedded in institutional authority. The continued reliance on medical certification, gestational thresholds, and categorical distinctions suggests that abortion is still not recognized as an autonomous right, but as a regulated exception.

CONCLUSION

The history of abortion in the Indian subcontinent shows how law, in both theory and its practice can carry with it older ideas, nuances and perceptions about reproduction, morality, family, and control - even as they change in form and language over time.

There have, of course, been visible shifts. The expansion of access, the inclusion of unmarried women, and a gradual move away from population control toward a more woman-centric approach mark important developments. But these changes sit alongside continuities that are harder to ignore. The woman still appears, more often than not, as a 'mother'; sexuality outside reproduction continues to sit uneasily within legal and social discourse; and moral arguments - sometimes drawn directly from myths - continue to shape how abortion is debated and understood.

In that sense, the law does not simply move forward. It carries fragments of what came before, even when it tries to depart from it. Parliamentary debates, much like ancient texts, reveal how deeply questions of abortion remain tied to ideas of culture, character, and social order. At the same time, it would be inaccurate to say nothing has changed. Law has also been a space where these very ideas are contested. The shifts we see today, reflect ongoing attempts to reframe abortion in terms of health, access, and, increasingly, autonomy.

And yet, for many women, the law is not the first thing that comes to mind. Before legality, there is urgency. There is silence. There is the need to keep things hidden, and the fear, often unspoken, of having done something wrong. These are not created by law alone, but they are not entirely separate from it either. Thus, the discourse around abortion in India is not one of a clean break from the past, but of overlap - of older beliefs sitting alongside newer claims.

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