

## Medical Termination of Pregnancy Act (Article 21)

Recent Spark: IN US, Supreme court overturned Roe V Wade judgment which gave the women a right to abortion.

**Legislative Abortions in India:** In the 1960s, in the wake of a high number of induced abortions taking place, the Union government ordered the constitution of the **Shantilal Shah Committee** to deliberate on the legalisation of abortion in the country. In order to reduce maternal mortality owing to unsafe abortions, the Medical Termination of Pregnancy (MTP) Act was brought into force in 1971.

### Existing Criminal Law:

- Under Section 312 of the IPC, a person who “**voluntarily causes a woman with child to miscarry**” is liable for punishment, attracting a jail term of **up to three years or fine or both**, unless it was done in good faith where the purpose was to save the life of the pregnant woman. This section effectively makes unconditional abortion illegal in India.
- Section 313 of the IPC states that a person **who causes the miscarriage without the consent of the pregnant woman**, whether or not she is in the advanced stages of her pregnancy, shall be punished with life imprisonment or a jail term that could extend to 10 years, as well as a fine.
- This law is an exception to the Indian Penal Code (IPC) provisions of 312 and 313 and sets out the rules of how and when a medical abortion can be carried out.

### Provisions of original act:

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Up to 12 Weeks of Pregnancy- only 1 medical practitioner can do that

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12-20 Weeks- two medical practitioners were allowed

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Beyond 20 Weeks no abortions was allowed

### Challenges:

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Many foetal abnormalities are detected after 20 weeks.

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It allowed only consent of women and her husband thus keeping pregnancy outside the wedlock unregulated, also it did not include unwanted pregnancies like victims of rape

### Amendment in 2021

- Up to 20 Weeks it could be done with only 1 medical practitioner.
- The pregnancy can be terminated upto 24 weeks of gestational age after the opinion of two registered medical practitioners under these conditions.
  - If the woman is either a survivor of sexual assault or rape or incest
  - If she is a minor

- If her marital status has changed during the ongoing pregnancy (i.e. either widowhood or divorce)
- If she has major physical disabilities or is mentally ill
- On the grounds of foetal malformation incompatible with life or if the child is born, it would be seriously handicapped.
- Besides, if the pregnancy has to be terminated beyond the 24-week gestational age, it can only be done on the grounds of foetal abnormalities if a four-member Medical Board, as set up in each State under the Act, gives permission to do so.
- Women and husband have been replaced by women and partner.
- Section 5A of the Act contains provisions for the protection of the privacy of a woman undergoing an abortion. The registered medical practitioner cannot “reveal the name and other particulars of a woman whose pregnancy has been terminated”, except to a person authorised by the law.

### Right to Privacy:

**K.S. Puttaswamy case (2017):-** Supreme Court declared that the right to life and personal liberty guaranteed in Article 21 also implicitly includes a right to privacy. But the court held that privacy is not an absolute fundamental right.

Restrictions (as stated in the Judgement): The right may be restricted only by state action that passes each of the three tests:

- First, such state action must have a legislative mandate.
- Second, it must be pursuing a legitimate state purpose, and
- Third, it must be proportionate i.e., such state action- both in its nature and extent, must be necessary in a democratic society and the action ought to be the least intrusive of the available alternatives to accomplish the ends.

### Arguments in Favour:

- Privacy is an important facet of a dignified life and the judgment of apex court ensure the dignity of the individual as mentioned in our Preamble as well as implied from article 21.
- Privacy helps to avoid unwanted and intrusive interference in an individual's personal affairs.
- Without privacy, there would be nothing to stop a Big Brother-like entity from taking control of every aspect of life.
- Rights to liberty and freedom of expression cannot survive if the right to privacy is compromised.
- **In sync with inter**
- **national Human Rights:** Art.12 of Universal Declaration on Human Rights and Art.17 of the International Covenant on Civil and Political Rights provide for the right of privacy.

### Arguments against:

- It can hinder the implementation and performance of welfare schemes - like Aadhar and Direct Benefit Transfer which needs citizen's personal data.
- Right to Privacy may also restrict police and intelligence agencies to collect private information about accused, dead persons etc.

#### Concerns:

- No law has been passed and the term "privacy" has also remained undefined.
- Huge multinationals are taking data about millions of Indians abroad.
- Privacy consciousness is rather low in India compared to western countries.
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#### Data Protection Law in India:

The effort to bring a General Data Protection Law started early in 2018 and a bill in 2019 was introduced in the parliament drawing inspiration from EU GDPR. However, last year government withdrew the pending bill as it wanted to bring a **"comprehensive legal framework" to regulate the online space, including bringing separate laws on data privacy, the overall Internet ecosystem, cybersecurity, telecom regulations, and harnessing non-personal data to boost innovation in the country.**

**Contention:** Mega Tech Companies questioned a proposed provision in the Bill called **data localisation**, under which it would have been mandatory for companies to store a copy of certain sensitive personal data within India, and the export of undefined "critical" personal data from the country would be prohibited.

But soon after the withdrawal the government brought in a revised personal data protection bill, now called the Digital Personal Data Protection Bill, 2022.

#### Key Features of the bill:

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**Data Principal** refers to the individual whose data is being collected.

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In the case of children (<18 years), their parents/lawful guardians will be considered their "Data Principals".

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**Data Fiduciary** is the entity (individual, company, firm, state etc), which decides the "purpose and means of the processing of an individual's personal data".

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**Personal Data** is **"any data by which an individual can be identified"**.

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Processing means "the entire cycle of operations that can be carried out in respect of personal data".

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**Significant Data Fiduciaries** are those who deal with a high volume of personal data. The **Central government** will define who is designated under this category based on a number of factors.

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Such entities will have to appoint a **'Data protection officer'** and an independent **Data Auditor**.

**The bill is based on seven principles:**



**Lawful use  
of data**



Only for purpose  
it was collected



**Data  
Minimization**



**Data Accuracy-**  
Only collect data  
which is  
required



Data should not be  
stored  
permanently



No unauthorized  
processing of  
data



Seventh principle states that  
“the person who decides the  
purpose and means of the  
processing of personal data  
should be accountable for such  
processing”.

### **Rights of Individuals:**

- **Access to Information:** The bill ensures that individuals should be able to “access basic information” in languages specified in the eighth schedule of the Indian Constitution.
- **Right to Consent:** Individuals need to give consent before their data is processed and “every individual should know what items of personal data a Data Fiduciary wants to collect and the purpose of such collection and further processing”.
  - Individuals also have the right to withdraw consent from a Data Fiduciary.
- **Right to Erase:** Data principals will have the right to demand the erasure and correction of data collected by the data fiduciary.
- **Right to Nominate:** Data principals will also have the right to nominate an individual who will exercise these rights in the event of their death or incapacity.

**Data Protection Board:** The Bill also proposes to set up a **Data Protection Board to ensure compliance with the Bill.**

In case of an unsatisfactory response from the Data Fiduciary, **the consumers can file a complaint to the Data Protection Board.**

**Cross-border Data Transfer:** The bill **allows for cross-border storage and transfer of data to “certain notified countries and territories” provided they have a suitable data security landscape**, and the Government can access data of Indians from there.

**Penalties:**

**For Data Fiduciary:** The bill proposes to impose significant penalties on businesses that undergo data breaches or fail to notify users when breaches happen. The penalties will be imposed ranging from Rs. 50 crores to Rs. 500 crores.

**For Data Principal:** If a user submits false documents while signing up for an online service, or files frivolous grievance complaints, the user could be fined up to Rs 10,000.

## Right to Healthy and clean environment:

**Constitutional Amendment:**

the Constitutional (forty-second Amendment) Act, 1976 incorporated two significant articles viz. Article 48-A and 51A (g) thereby making the Indian Constitution the first in the world conferring constitutional status to the environment protection.

- Article 48-A: The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.
- Article 51A(g): It is a duty of every citizen to protect and preserve the environment.
  - Clean, healthy, and sustainable environment a universal right: UN Human Rights Council
  - The right to a clean environment is rooted in the 1972 Stockholm Declaration, popularly called as the Magna Carta of human environment.
  - Recently, the United Nations Human Rights Council (UNHRC) unanimously voted for recognizing a clean, healthy, and sustainable environment as a Universal Human Right.

Advent of PIL has played a significant role in Environmental Jurisprudence in India Post 1980, there were various judgement affirming the right to clean environment under Article 21

**Municipal Council, Ratlam vs Shri Vardhichand & Ors, 1980**

It was one of the first cases which contributed to the expansion of horizons of environmental protection. In this case a petition was filed by the residents of a municipality in Ratlam alleging that the municipality is not constructing proper drains resulting in stench and stink caused by the excretion by nearby slum-dwellers. It was stated by Supreme Court that Right to life includes Right to a wholesome environment and the residents have the right to exercise it against State. It acknowledged the effects on poor of deteriorating environment and compelled the municipality to build proper sanitation and drainage.

- Article 21 guarantees fundamental right to life.
- Right to environment, free of danger of disease and infection is inherent in it. Right to healthy environment is important attribute of right to live with human dignity.
- The right to live in a healthy environment as part of Article 21 of the Constitution was first recognized in the case of **Rural Litigation and**

**Entitlement Kendra vs. State, AIR 1988 SC 2187 (Popularly known as Dehradun Quarrying Case).**

- It is the first case of this kind in India, involving issues relating to environment and ecological balance in which Supreme Court directed to stop the excavation (illegal mining) under the Environment (Protection) Act, 1986.
- In **M.C. Mehta vs. Union of India, AIR 1987 SC 1086** the Supreme Court treated the right to live in pollution free environment as a part of fundamental right to life under Article 21 of the Constitution.

**Additional Reading(Right to Health):** <https://www.thehindu.com/opinion/op-ed/the-next-step-is-a-constitutional-right-to-health/article36953088.ece>

## Right Against Exploitation (Article 23 and 24)

Article 23 : Prohibit human trafficking for Begar(free Labour) and other forms of forced labour.

- Against Individuals as well as against state
- Also forbids immoral traffic in women and children, including prostitution

Article 24: Prohibits employment of Child labor(Below 14 years).

- In 1996 SC directed establishment of child labour welfare fund in which fines collected from violator of child labour will be deposited.
- In 2006 Govt. banned employment of children as domestic servant, or worker in Dhaba, hotels etc.
- Child and Adolescent labour Act 2016:

### Child Labour in India

As per the data of 2011 Census, India had 10.13 million child labourers, between the age of 5-14.

higher prevalence of child labour than others, examples being Uttar Pradesh, Bihar, Rajasthan, Maharashtra, and Madhya Pradesh - which together constitute nearly 55% of the total population of working children in India.

In India the law addressing child labour is known as the Child Labour Amendment (Prohibition and Regulation) Act, 2016. This law regulates the employment of children and does not allow children below the age of 14 to work except as a child artist (Except circus or street performance) and in a family business- but only after school hours and during vacations.

It is lawful to children between 14 and 18, as long as the places are not dangerous (explained below). The term used in the law for children between 14 and 18 is 'adolescents'.

Any person who employs a child below 14 or a child between 14 and 18 in a hazardous occupation or process can be punished with jail time of between six months and two years and/or fine between Rs. 20,000 and Rs. 50,000.

### Right to Freedom of Religion:

Subject to: "Public Order, Morality, Health and other Fundamental Rights: Every Person.

- Right of Conscience
- Right to profess
- Right to practice
- Right to propagate

### Religion of His or Her choice

Right to propagate doesn't include that of converting someone. (Forcible conversion is not allowed)– It depends on the choice of other person.

**Powers of Government:** Can regulate economic, financial, political, and secular affairs of religion.

Provide for social welfare, reform or throwing open Hindu religious institutions of a public character to all classes and section of Hindus.

### Indian Young Lawyers Association V. State of Kerala (2018) (Sabrimala)

Right to practice Religion is equally available to both Men and Women and persons of all age groups professing same religion.

**Carrying of Kirpans:** allowed for Sikhs but it can be regulated.

### Article 26: Collective Right

- Every Religious denomination
- Right to establish and maintain institution for religious and charitable purpose.
- Right to manage its affairs.
- Right to own and acquire movable/immovable property.

### Article 27: Exemption from Taxation

- No person shall be compelled to pay taxes for promotion or maintenance of any particular religion.
- Government should not spend public money collected by the way of tax for the promotion of any one religion.
- Fee can be charged at religious places: that is to provide certain services or security.

### Protection from attending mandatory religious instructions:

NO religious instructions shall be provided in any educational institutions wholly or partially maintained out of state funds:

Institutions Wholly Maintained out of state funds:	(Completely prohibited)
Administered by state but established under any trust	(can be permitted)
Institution recognized by state.	(voluntary)
Institutions receiving aid from state.	(voluntary)



## Cultural and Educational Rights

### Article 29:

- Any section of Citizens, having distinct language, script, or culture shall have the right to conserve the same.
- No citizen shall be denied admission in any education institution only on the basis of religion, race, caste or language.
- Protects linguistic as well as religious minorities.
- Provided to other section of citizens (use of word section of citizen in article).
- Right to conserve language: Political speeches or promises based on language does not amount to corrupt practices during election.

### Article 30

Whether religious or linguistic.

Only to minorities.

Right to establish an educational institution.

In giving aid, state shall not discriminate against any institution managed by minorities.

This right includes managing, choosing governing body, appointment of teaching or non-teaching staff, fee structure.

Government can check if any maladministration.

right to education:

1) right to education was introduced in constitution as specific fundamental right under article 21a under 86 constituently amendment in 2002 even before this amendment the constitution contains provisions regarding free and compulsory education under article 45 but this was non justiciable hance this amendment made this provision justiciable by putting it as fundamental right. now education is fundamental right and also there is duty on state under article 45 to make arrangements for early education till 6 years of age.

this amendment also introduces fundamental duty of every citizen of India. to provide education of their children between 6 to 14 years of age.

This right was fully enforced with the implementation of right to education act with effect from 1 April 2010.

silent features RTE act: 1) free and compulsory education there will be no direct fees including school fee or indirect cost including uniform textbook mid-day meal born by child and parent whole cost of schooling has to borne by state.

this act provides by constitution of school management comity comprising local authority parent and teachers this smces shall formulate school development plant. and monitor the utilization of grants made to school.

3) no detention rule: no child shall be held back or required to pass a board examination until they complete the elementary education.

at primary level PTR should be 30:1 and secondary level 35:1 education.

25% reservation for economically disadvantaged communities in admission to class 1 in primary education.

bridging the school infrastructure gap wherever need to improve done with in 3 years and also teacher attend additional degree within five years.

in case violation, compliant with national commission of child rights and states governments were given the mandate to establish state commission for protection of children rights with 6 months implementation of this acts.

2. Of lately Article 14 has become one of the most active provisions of the constitution attracting large number litigations. Analyse this statement in light of recent judgements of the supreme court.

3. Article 13 makes the judiciary, and especially the Apex Court, as a guardian, protector and the interpreter of the Fundamental Rights. It confers a power as well as imposes an obligation on the Courts to declare a law void if it is inconsistent with a Fundamental Right. Discuss.

4. "Article 14 of the Constitution of India forbids class legislation not reasonable classification." Examine and also discuss how far equality of status and opportunity are achieved by this Constitutional provision.

ans 2:

one of implecation of article 14 which provide equal treatment of equally place society. here it important to note that there are pre-existing division in our society between different classes hance in order to bring true sence of equally among them. some kind of reasional classification and giving them treatment according to those was important in this regards article 14 provides that only those persons over place equally in the society shall be given equal treatment because giving everyone the same treatment would it self voilation of notion of equally. because two persons and class not at same status of society

however the article 14 says that those classification must be reasionable and forbids. class specific legislation and also applying different teatments amongs the same class as doing this will discriminatory in the nature.

the aim of article 14 is to ensure that every individual is treated equally before law but achiement of this gole is subject to serveral limitations such as social economic political factor. dispite various constitution discimention based on caste religion gender still prevelent this inequallities are deep rooted and perpetuted for centuries hance in order to element and establish the concept two different priciple has been bounded under article 15 and 16 that is non discimention affermative action under which state is oblied to level playing field to opressed classes. both this concept constitute equllity of opportunity and menificate the drotin of resional classification under article 14 .

on one side article 15 forbids discrimination on the basis of race religion caste, sex place of birth while empowering the state to make special provision for women and children and betterment of SEBC. article 16 while providing equality of opportunities also content idea of affirmative action extending up to reservation.

