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We Need a Rights-Based Abortion Law: SC's Call to Reform the MTP Act for Rape Survivors

 **THE HINDU**

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POLITY**SOCIAL ISSUES****GS2****GS1**

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We Need a Rights-Based Abortion Law: SC's Call to Reform the MTP Act for Rape Survivors

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INTERVIEW ANGLE

"The MTP Act permits abortion up to 24 weeks for rape survivors — but the Supreme Court has allowed a 30-week termination and urged Parliament to remove the limit for rape survivors entirely. Is this the right direction?"

THE RECURRING PATTERN

Every few months, the Supreme Court of India hears an urgent petition from a woman — often a minor, often a rape survivor — seeking permission for a medical termination of pregnancy beyond the **statutory limit**. As background, in a ruling delivered earlier in 2026 (on April 30, 2026), the court allowed a **15-year-old rape survivor** to terminate a **30-week pregnancy**, expressing anguish that the state had even filed a petition opposing the termination.

The Hindu's May 8 editorial argues that this pattern — the Supreme Court as abortion gatekeeper — is the clearest symptom of a legislative failure that Parliament has not yet addressed.

THE MTP ACT: WHAT IT ALLOWS AND WHERE IT FAILS

The **Medical Termination of Pregnancy Act, 1971** (amended in **2021** to expand access) sets the following framework:

PERIOD	WHO CAN APPROVE	CONDITIONS
Up to 20 weeks	1 registered medical practitioner (RMP)	Standard grounds (contraceptive failure, physical/mental health)
20–24 weeks	2 RMPs concurring	Special categories: rape survivors, minors, foetal anomaly, disability
Beyond 24 weeks	State/UT Medical Board	Only: lethal foetal anomaly OR grave risk to mother’s life

The gap: There is **no provision** for rape survivors or minors to access termination beyond 24 weeks, no matter how valid the reason. The Medical Board process is slow and bureaucratically complex – some boards meet infrequently and can take weeks.

The consequence: By the time a teenage rape survivor discovers her pregnancy, gathers courage to seek help, navigates the Child Welfare Committee (CWC) and Medical Board, and receives a decision – she may already be beyond 24 weeks. She then has no legal recourse except the courts.

THE SUPREME COURT’S POSITION (BACKGROUND — RULING DELIVERED EARLIER IN 2026, ON APRIL 30, 2026)

In the case of the 15-year-old rape survivor:

- The court stated: **“When there is a pregnancy due to rape, there should not be a time limit”**
- It ruled the **State has no locus** to oppose a survivor’s choice when there is no medical contraindication
- It urged Parliament to amend the MTP Act to **remove gestational limits for rape survivors entirely**
- CJI Surya Kant noted: **“The law needs to be organic and in sync with evolving times”**

THE CONSTITUTIONAL DIMENSION

India has no **explicit constitutional right to abortion**. Reproductive autonomy has been inferred from:

- **Article 21** — Right to life and personal liberty (Francis Coralie Mullin, 1981; X v. Health Secretary, 2022)
- **Right to Privacy** — Justice K.S. Puttaswamy v. Union of India (2017) — 9-judge bench — which specifically recognised bodily autonomy and reproductive choice as components of privacy

- **Article 14** — Dignity and equal protection

But none of these inferences are codified in legislation. Without a rights-based statutory framework, every case where the MTP Act’s limits apply unjustly requires a woman to go to court — an option unavailable to most.

COMPARATIVE CONTEXT

COUNTRY	FRAMEWORK
Ireland	2018 constitutional amendment removed criminal ban; replaced with access-based legislation
Mexico	2021 Supreme Court decriminalised abortion; states progressively amending law
USA	Dobbs (2022) reversed Roe; now state-by-state — major regression globally
UK	Abortion Act 1967 (24-week limit but judicial discretion beyond for serious cases)
India	MTP Act (1971, amended 2021) — physician-centric, gestational-limit-based, no rights basis

UPSC RELEVANCE

MTP Act 1971 (amended 2021); Medical Board (State/UT); Child Welfare Committee (CWC); Article 21; Puttaswamy judgment 2017 (right to privacy); X v. Health Secretary 2022 (SC on reproductive rights); CJI Surya Kant; gestational limits (20, 24 weeks)

Reproductive rights; constitutional rights vs statutory framework; judicial vs legislative roles in rights creation; social justice; gender justice

Women’s issues; gender equality; bodily autonomy as a social value

“In a democracy governed by law, access to justice should not depend on access to the Supreme Court.”

Source: The Hindu, May 8, 2026

- **KEY ARGUMENTS AT A GLANCE**

India’s MTP Act remains a physician-centric, gestational-limit-based law that fails to recognise bodily autonomy as a constitutional right — the Supreme Court’s repeated case-by-case

interventions are a symptom of legislative inadequacy that Parliament must address.

✓ **SUPPORTING**

- The MTP Act (1971, amended 2021) permits abortion up to 24 weeks for rape survivors and up to 20 weeks for general cases, but offers no provision for termination beyond 24 weeks except by Medical Board authorisation — a process so cumbersome that women reach the Supreme Court as a last resort.
- A 15-year-old rape survivor’s 30-week abortion case (background — Supreme Court ruling delivered earlier in 2026 on April 30, 2026) illustrates the systemic failure: the delay arose from slow CWC procedures, Medical Board processes, and institutional hesitation — not medical complexity — all caused by the gap between law and life.
- India has no affirmative constitutional right to abortion — reproductive autonomy has been inferred by courts from the right to life (Article 21) and privacy (Justice Puttaswamy, 2017), but Parliament has not codified it, leaving vulnerable women dependent on judicial intervention.

⚠ **COUNTER**

Absolute removal of gestational limits for rape survivors without robust safeguards could create access to late-term terminations for cases where foetal viability is already high — requiring careful medical-legal balancing, not simply removing caps.

→ **WAY FORWARD**

Parliament should amend the MTP Act to: (1) remove gestational limits entirely for rape survivors and minors; (2) replace Medical Board authorisation with a single senior gynaecologist certification for 20–28 week cases; (3) codify reproductive autonomy as a right within the Act itself; (4) strengthen Child Welfare Committee timelines to prevent administrative delay.

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MAINS ANSWER FRAMEWORK
QUESTION

The Supreme Court's repeated interventions in abortion access cases reveal structural gaps in India's Medical Termination of Pregnancy Act. Critically examine the MTP Act framework and the case for a rights-based abortion law. (250 words)

INTRODUCTION

India's Medical Termination of Pregnancy Act (1971, amended 2021) was designed with physician discretion at its centre — limiting abortion access through gestational caps and institutional approvals rather than recognising the pregnant person's autonomous right to decide. The result is a framework that fails its most vulnerable users: survivors of rape, especially minors, who are systemically delayed by bureaucratic processes until they reach the Supreme Court.

BODY

The MTP Act permits abortion up to 20 weeks on general grounds (with concurrence of one registered medical practitioner) and up to 24 weeks for specific categories including rape survivors, minors, and those with foetal anomalies (two RMP concurrence). Beyond 24 weeks, a State or UT-level Medical Board must certify that the foetal anomaly is fatal or the pregnancy is a grave risk — there is no provision for rape survivors beyond 24 weeks.

This gap causes: (a) survivors reaching legal help late due to social stigma, family pressure, or discovery of pregnancy late; (b) Child Welfare Committees and Medical Boards processing requests slowly; © courts becoming de facto gatekeepers for medically safe but legally blocked terminations. The Supreme Court in April 2026 allowed a 15-year-old rape survivor to terminate a 30-week pregnancy — citing that “no girl can be forced to carry a pregnancy” and that the state has no locus to intervene against the survivor's choice.

The court urged Parliament to remove gestational limits for rape survivors, calling current law “out of sync with evolving times.” India's constitutional jurisprudence on privacy (Puttaswamy, 2017) and dignity (Francis Coralie Mullin, 1981) supports a rights-based approach, but legislative affirmation is needed. Ireland (2018) and Mexico (2021) demonstrate that rights-based abortion legislation is achievable within democratic frameworks.

CONCLUSION

The Supreme Court has been incrementally writing India's reproductive rights jurisprudence — case by case — because Parliament has not. A rights-based amendment to the MTP Act is overdue: it must recognise bodily autonomy explicitly, remove gestational limits for rape survivors, and streamline institutional approvals to prevent women from having to go to court to access healthcare.

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