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EDITORIAL ANALYSIS

# MTP Act and Reproductive Rights: When Gestational Limits Override Article 21

 INDIAN EXPRESS

15 May 2026

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# MTP Act and Reproductive Rights: When Gestational Limits Override Article 21

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The Indian Express

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## INTERVIEW ANGLE

*"Should Parliament amend the MTP Act to remove gestational caps for rape survivors, or does the current Supreme Court case-by-case approach adequately protect women's bodily autonomy under Article 21?"*

## EDITORIAL SUMMARY:

The Indian Express argues that India's Medical Termination of Pregnancy (MTP) Act imposes gestational time limits that are increasingly being overridden by Supreme Court case-by-case orders to protect minors' and rape survivors' reproductive autonomy – revealing a structural tension between legislative rules and constitutional guarantees. The editorial calls for Parliament to amend the MTP Act to align gestational limits with the constitutional right to bodily autonomy under Article 21, particularly for rape survivors, rather than leaving justice dependent on court petitions.

## THE MTP ACT, 1971 – FRAMEWORK

The **Medical Termination of Pregnancy Act, 1971** (amended in 2021) governs abortion access in India:

| GESTATIONAL LIMIT      | CONDITIONS  |
|------------------------|---|
| Up to <b>20 weeks</b>  | Opinion of 1 registered medical practitioner  |
| <b>20-24 weeks</b>     | Opinion of 2 registered medical practitioners; only for specified categories (rape survivors, minors, differently abled women, foetal abnormality, contraceptive failure) |
| <b>Beyond 24 weeks</b> | Only with permission from a <b>State-level Medical Board</b> ; for substantial foetal abnormality   |

## The 2021 Amendment

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The **MTP (Amendment) Act, 2021** extended the upper limit from **20 to 24 weeks** for vulnerable categories (rape survivors, minors, mentally ill women) – a significant reform. However, it did not remove the limit entirely for rape survivors.

### THE CONSTITUTIONAL TENSION – ARTICLE 21 AND BODILY AUTONOMY

The **Supreme Court** has progressively expanded the interpretation of **Article 21 (Right to Life and Personal Liberty)** to include:

- **Right to privacy** (Puttaswamy v. Union of India, 2017 – 9-judge bench)
- **Reproductive autonomy** as an integral component of personal liberty (Suchita Srivastava v. Chandigarh Administration, 2009)
- **Right to make decisions about one's own body** (X v. Union of India, 2023 – SC allowed termination beyond 24 weeks for an unmarried woman)

## The Case-by-Case Problem

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When a rape survivor's pregnancy crosses 24 weeks:

- ❶ The Medical Board at State level must give permission – a process that can take **weeks to months**
- ❷ If the Board refuses, the survivor must petition the **High Court or Supreme Court directly**
- ❸ The SC has repeatedly granted orders allowing termination beyond 24 weeks in rape cases – but each case requires a fresh petition, a fresh medical board, and judicial time

This creates a **justice system where bodily autonomy is contingent on litigation access** – effectively excluding poor women, women in remote areas, and those without legal representation.

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## CASES THAT EXPOSED THE GAP

| CASE                           | YEAR | ISSUE                                 | OUTCOME  |
|--------------------------------|------|---------------------------------------|--|
| X v. Union of India            | 2023 | Unmarried woman; 24-week limit        | SC allowed termination; held right to reproductive autonomy equally applies to unmarried women |
| Minor rape survivor, Bombay HC | 2024 | 26-week foetus; rape survivor aged 14 | HC allowed; Medical Board dissented; SC overruled Board  |
| X (minor, Bihar)               | 2025 | 28-week foetus; trafficked minor      | SC allowed after expedited hearing; highlighted Medical Board delays                           |

The pattern: the SC consistently overrides Medical Boards to protect rape survivors – but why should a fundamental right require repeated Supreme Court orders to be enforced?

## THE EDITORIAL'S CORE ARGUMENT

### What the Law Should Say

The Indian Express argues that for **rape survivors** (including minors), the gestational limit should be:

- **Removed entirely** (as in the UK, Canada, France for narrow categories)
- Or **extended to viability** (~22-24 weeks) with a single medical practitioner's opinion rather than a multi-step Medical Board process

## International Comparison

| COUNTRY         | ABORTION LIMIT   | SPECIAL PROVISIONS                         |
|-----------------|--|--|
| India           | 24 weeks (special categories); beyond = Board                | Case-by-case for rape                      |
| UK              | 24 weeks; beyond only for serious conditions                 | No special rape exemption; court can order |
| USA (pre-Dobbs) | Viability (~22-24 weeks); post-Dobbs: State-wise             | Variable                                   |
| France          | 14 weeks (extended from 12 in 2022); no upper limit for rape | Explicit rape exemption                    |
| Canada          | No legal limit   | Access depends on provider willingness     |

India's position – a 24-week limit even for rape survivors, with a Medical Board as gatekeeper – is among the more restrictive in comparable democracies for this specific category.

## WOMEN'S HEALTH AS CONSTITUTIONAL RIGHT – BROADER CONTEXT

The editorial situates the abortion debate within the broader framework of **women's constitutional rights**:

- **Article 14:** Equal protection before law – does a rape survivor face a different legal burden than a woman seeking abortion for foetal abnormality?
- **Article 15(3):** State may make special provisions for women and children – used to justify inclusive policies; can also be used to remove barriers
- **Article 21:** Bodily autonomy and reproductive choice are now recognised as fundamental rights (post-Puttaswamy)
- **Article 39(e):** DPSP: State shall ensure that the health and strength of workers, men and women, and the tender age of children are not abused

## UPSC MAINS ANALYSIS

### GS Paper 2 – Polity, Governance, Social Justice

#### Key arguments:

- The MTP Act's gestational limits create a constitutionally inconsistent situation where Article 21 rights depend on Medical Board approval and, ultimately, on the ability to petition courts

- The Supreme Court's progressive interpretation of reproductive autonomy (Suchita Srivastava, X v. UoI) has outpaced the legislative framework – Parliament must update the law
- The case-by-case judicial approach is inadequate for a systemic problem: it advantages litigants with access to courts and disadvantages the most vulnerable rape survivors

### GS Paper 4 – Ethics

- Bodily autonomy vs state's protective role over foetal life
- Institutional ethics: when Medical Boards and courts have different outcomes, what does that say about expert authority vs judicial oversight?

### Counterarguments:

- Medical Boards serve a legitimate purpose – preventing late-term abortions in non-urgent cases
- A complete removal of gestational limits could create other issues (sex-selective abortion risks at very late stages)
- The SC's consistent overriding of Medical Boards shows the system works – court access is the safeguard

**Keywords:** MTP Act 1971, MTP Amendment Act 2021, Article 21, bodily autonomy, reproductive autonomy, Medical Board, gestational limit, Suchita Srivastava case, X v. Union of India (2023), Puttaswamy judgment.

*The Indian Express's argument is that a progressive Supreme Court and a conservative statute are pulling in opposite directions on one of the most fundamental questions of women's constitutional rights. The solution is legislative – Parliament must bring the MTP Act into alignment with the constitutional jurisprudence the court has developed. Leaving bodily autonomy dependent on court petitions means justice is available only to those who know the system and can access it. For the girl trafficked in Bihar or the rape survivor in a remote village, the Medical Board and the high court are equally inaccessible.*

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