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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

SENTIENCE AND SANCTITY: EXAMINING THE LEGAL AND ETHICAL BOUNDARIES OF ABORTION IN LIGHT OF EMBRYONIC SENSATION

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CHALLENGES OF THE 'MEDICAL TERMINATION OF PREGNANCY ACT'

Implementing the 'Medical Termination of Pregnancy (MTP) Act' in India faces obstacles, especially when dealing with pregnancies that exceed the 24-week limit. Abortions are legally allowed up to 24 weeks under the MTP Act. However, obtaining judicial authorization is required for terminations after this period, which can be complicated due to several difficulties. The implementation of a judicial bypass mechanism for exceptional instances needs a consistent and standardized structure. Issuing judicial bypasses individually has led to a lack of established legal precedents. Uncertainty gives judges broad freedom, leading to varied interpretations and decisions. The lack of a standardized process for evaluating the legality of the MTP Act after 24 weeks adds to the uncertainty about when a woman or girl can have the procedure without involving the judiciary.

Furthermore, the lack of established legal precedents has led to conflicting judgements, adding complexity to an already intricate legal environment. The absence of a clear framework to determine the legality of MTPs after 24 weeks, along with the need for approval from both the judiciary and medical board, highlights the difficulties encountered by women seeking legal terminations. Furthermore, the hesitation of healthcare practitioners to approve legal abortions worsens the situation, prompting doubts about the MTP Act's efficacy in protecting women's reproductive rights. The Supreme Court's role in granting compensation to petitioners who were refused abortion introduces an additional level of intricacy. The government's irresponsibility in causing the forced continuation of pregnancies is seen as severe injury, yet this approach creates legal inconsistencies and undermines public policy. The lack of a consistent legal structure has led to contentious rulings, where the focus on the health of the foetus can at times take precedence over the emotional well-

being of the women in question.¹

In a 2017 case, the Supreme Court's refusal to grant a petitioner's request for an abortion after 27 weeks sparked worries about favouring foetal rights over the woman's mental well-being. In contrast, in another instance from the same year, the Court sanctioned a terminating of pregnancy at 25 weeks, illustrating the inconsistencies and uncertainty in judicial rulings. In 2017, a pregnant lady living with HIV in Patna, Bihar, who was raped, was denied an abortion. The denial, due to inappropriate demands for spousal and parental approval, infringed upon the woman's rights and highlighted the structural obstacles in implementing the MTP Act. The High Court denied permission, causing more mental suffering for the petitioner, even though it acknowledged the lower court's flawed reasoning.²

In addition to legal complexities, societal attitudes, and awareness present problems. Stigma, little knowledge of legal rights, and cultural norms create a hostile atmosphere for women making reproductive decisions. Overall, the issues related to the MTP Act in India go beyond legal intricacies to include inconsistencies in court rulings, insufficient collaboration from healthcare providers, societal shame, and a missing comprehensive structure to handle the various situations women encounter when seeking an abortion. It is crucial to address these problems to ensure the successful implementation of reproductive rights as outlined in the MTP Act.³

ABORTION AND FUNDAMENTAL RIGHTS: INTERSECTION AND IMPORTANCE

Abortion is a deeply personal and controversial subject that connects with the core rights protected by the Indian Constitution, prompting significant inquiries about bodily self-governance, privacy, and the right to life. This chapter delves into the complex relationship between abortion and fundamental rights, highlighting the crucial importance of legal structures in protecting women's independence and welfare.

¹ Anand, Trishi, et al. "Abortion laws in India: a critical analysis." *International Journal of Mechanical Engineering* 7.6 (2022).=

² Chandrasekaran, Sruthi, et al. "The case for the use of telehealth for abortion in India." *Sexual and Reproductive Health Matters* 29.2 (2022): 1920566.

³ Vázquez-Quesada, Lucía, et al. "Abortion self-care: a forward-looking solution to inequitable access." *International Perspectives on Sexual and Reproductive Health* 46.Supplement 1 (2020): 91-95.

➤ **Constitutional Foundations:**

The Indian Constitution, ratified in 1950, ensures its citizens a collection of fundamental rights that serve as the foundation of a democratic society. Article 21 is the core of these rights, affirming the right to life and personal liberty. The judiciary has consistently acknowledged that this right includes a woman's ability to make decisions regarding her body, including those relating to reproductive autonomy. The Indian Supreme Court has confirmed that the freedom to reproductive choices is an essential part of personal liberty and human dignity protected by Article 21, in instances like the landmark judgment of '*Suchita Srivastava case*'. The verdicts highlight the constitutional significance of acknowledging a woman's right to choose whether to continue a pregnancy or opt for an abortion. Courts have acknowledged privacy as a fundamental aspect of personal freedom, even though it is not specifically listed in the Constitution. The right to privacy encompasses decisions concerning family life and reproductive choices. Privacy in the context of abortion serves as a barrier safeguarding individuals from unjustified state intrusion in very personal and sensitive issues. The Supreme Court highlighted that the decision to conceive or terminate a pregnancy is a personal private matter in its ruling on the MTP Act. This acknowledgment highlights the connection between abortion rights and the fundamental right to privacy, underscoring the autonomy individuals have over their reproductive choices.⁴

➤ **Constitutional Examination of the MTP Act:**

The constitutionality of the MTP Act has been repeatedly questioned due to continuous challenges that highlight several constitutional issues. The Supreme Court is now reviewing a case titled '*Swati Agarwal & Ors. v. Union of India*', which involves a PIL that questions the legitimacy of 'Section 3(2), 3(4), and 5 of the MTP Act', alleging infringement of 'Article 14 and 21 of the Indian Constitution'. Article 21 is specifically referenced as the foundation for contesting 'Section 3(2), 3(4)(a), and Section 5'.

The petitioners claimed that 'Section 3(2)' violates the personal liberty and privacy of the mother due to its perceived lack of reasonableness and proportionality. They argued that it is not feasible to detect potential risks to the mental and physical health of the woman or anomalies in the foetus within the 24-week pregnant period, especially in areas with limited health resources.

⁴ Id.

'Section 3(4)(a)' was challenged because it gives the guardian full authority over the woman's reproductive decisions, which could infringe on the woman's autonomy. Section 5 is deemed unreasonable and disproportional under Article 21 for prohibiting the termination of pregnancy only due to surpassing the 24-week gestation limit. The petitioners claimed that the clarification in 'Section 3(2)(b)' creates discrimination by focusing only on married women, resulting in unequal treatment of unmarried or single women. It was further argued that due to improvements in science and technology, terminating pregnancies due to foetal anomalies can be safely done at later stages, which questions the need for the 24-week restriction.⁵

➤ **Abortion and Indian Courts: Legal Development**

Indian courts have dealt with the junction of the MTP Act, the right to privacy, and fundamental rights such as dignity, autonomy, and bodily integrity. As mentioned above the landmark case of *Suchita Shrivastava* highlighted that a woman's right to make reproductive choices is considered part of personal liberty as defined in 'Article 21 of the Constitution'. The court affirmed the MTP Act as "reasonable restrictions" on women's reproductive rights, acknowledging the state's compelling interest in safeguarding potential life.⁶

The paradigm drastically changed with the '*Justice K. Puttaswamy v. Union of India and others*' judgement, a major privacy ruling by the Indian Supreme Court. Puttaswamy clearly recognized that the right to make reproductive decisions, such as abortion, is a fundamental aspect of women's right to privacy. The decision offered a detailed legal examination of constitutional principles including physical integrity, liberty, and dignity, establishing a theoretical basis for exploring the connection between privacy and reproductive autonomy. Puttaswamy acknowledged the relative nature of the right to privacy and set criteria for any government restrictions on this right. The requirements require showing that there is a statute that serves a valid state objective, is necessary and proportionate, and includes procedural protections. Puttaswamy's influence on abortion law is not fully understood because there have been few instances that have examined the issue using the privacy and bodily autonomy framework.

⁵ Ramkumar, Aishwarya. "The Masculine Indian State: On Abortion in India." *Issue 3 Int'l JL Mgmt. & Human.* 4 (2021): 5558.

⁶ Banerjee, Arundhati. "Legalization of Abortion: How Is Abortion Treated by Law." *Supremo Amicus* 18 (2020): 173.

The Courts have not uniformly applied the concepts established in the Puttaswamy case to abortion cases in the aftermath of the ruling. Suchita Shrivastava is frequently the major reference for courts when making decisions based on the state's compelling interests, rather than directly mentioning Puttaswamy. Some cases have used reasons related to privacy, autonomy, and dignity to allow abortions, indicating a possible change in how constitutional principles are applied. The existing collection of instances is inadequate to make conclusive judgements on the enduring effects and new patterns shaped by Puttaswamy on abortion legislation in India.⁷ The legal environment is changing, requiring more examination of how constitutional rights, privacy, and the right to reproductive autonomy influence discussions on abortion in the Indian legal system.⁸

The relationship between abortion and fundamental rights is a complicated and changing area, reflecting the intricacies of personal autonomy, privacy, and societal beliefs. India must establish a strong legislative framework that adheres to constitutional values and effectively tackles the various hurdles encountered by women seeking abortion. Understanding the significance of this intersection is not only a legal need but also a societal dedication to promoting an environment where reproductive rights are honoured, safeguarded, and embraced as a fundamental aspect of personal freedom and equality.⁹

Moral status is the attribution of equal obligations and privileges to persons based on their membership in a protected group. Substance change refers to an occurrence that leads to the creation or termination of individuals who may belong to groups with equivalent moral standing. This research identifies two substance alterations that impact the moral standing of human embryos. The initial transformation of matter commences with fertilisation and culminates in the development of the blastocyst, a biological entity possessing moral significance like to that attributed to human organs. The second process of material transformation commences during implantation and concludes throughout the later stages of embryological development, resulting in the creation of a human body that possesses moral status as a human being. The bioethical ramifications of each alteration in

⁷ Allotey, Pascale, TK Sundari Ravindran, and Vithiya Sathivelu. "Trends in abortion policies in low-and middle-income countries." *Annual review of public health* 42 (2021): 505-518.

⁸ Id.

⁹ Tongue, Zoe Louise. "Litigating Reproductive Rights: Public Interest Litigation on Maternal Healthcare and Abortion Access in India." *Trinity CL Rev.* 24 (2021): 55.

substance are examined. The Two Substance Change theory is juxtaposed with continuity theories, which do not acknowledge any alteration in substance during embryological development, and with fertilization-only substance change theories.¹⁰

The utilisation of the embryo in studies pertaining to congenital abnormalities, reproductive challenges, and the potential therapeutic benefits of embryonic stem cells has sparked intense deliberation over the ethical, moral, and legal standing of the embryo. This study examines the parliamentary discourse surrounding the enactment of legislation in the United Kingdom in 2000 that regulates the utilisation of embryos in scientific research. The members of Parliament had a fundamental disagreement about the permissibility of embryo research. This disagreement stemmed from significant differences in their beliefs about when life begins. Some believed that life begins at the moment of fertilisation of the egg, while others believed it begins after 14 days, when cell differentiation begins and the embryo can no longer split to form twins. Advocates of the latter perspective contended that although the conceptus may have a distinct genetic composition, it only had the capacity for life prior to 14 days. They believed that the progression of human life is a steady and uninterrupted process. They deemed it erroneous to provide the embryo complete human rights. Opponents of the viewpoint argued that life was present and real from the very beginning of conception, and therefore should be considered sacred and protected. They argued that the concept of the pre-embryo is simply a way to conceal the true nature of the embryo as a human being.¹¹

There are two primary inquiries concerning the ethical aspects of stem cell research: Do embryos possess any moral standing? Put simply, do embryos possess inherent qualities or interactions with moral agents that warrant moral respect and impose obligations upon moral actors? If embryos possess moral standing, what specific level of respect should be accorded to them and what specific obligations do moral agents have towards them? Here is a concise overview of my answers to these questions: Embryos possess a limited yet undeniable moral standing and should not be brought into existence or terminated for trivial reasons. Individuals who possess a genuine sense of reverence towards embryos and act accordingly should be the ones to utilise or dispose of them. Furthermore,

¹⁰ Moral Status of the Human Embryo | The Journal of Medicine and Philosophy: A Forum for Bioethics and Philosophy of Medicine | Oxford Academic, <https://academic.oup.com/jmp/article-abstract/43/2/132/4931241?redirectedFrom=fulltext> (last visited Feb 1, 2024).

¹¹ The moral status of human embryo-like structures: potentiality matters? - PMC, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7403716/> (last visited Feb 1, 2024).

the informed consent of the individuals whose reproductive cells contributed to the creation of the embryos (referred to as “gamete sources” for lack of a more suitable term) is essential for any usage or destruction of the embryos.¹²

MORAL STATUS OF HUMAN EMBRYOS

The primary ethical inquiry revolves around the moral standing of the early embryo. Is it a human being? Does it exist? Or is it something intermediate? At what stage of development is personhood established? The Supreme Court of the United States ruled in 1973, in the case of *Roe v. Wade*, that social protection is not required until the foetus is capable of surviving outside the womb, which often occurs in the latter stages of pregnancy. In the *Davis v. Davis* case, the lower court utilised custody statutes to address the cryopreserved concept, suggesting the attribution of personhood during this initial phase. Nevertheless, the appeal court overturned this perspective. The court's decision determined that “pre-embryos” do not possess the legal status of individuals or property, but they are deserving of “special respect” due to their potential to develop into a person.¹³

Although early embryos are less developed than foetuses, they possess distinct genetic characteristics and are live human organisms with the capacity to mature into complete individuals. The primary challenge in establishing the legal standing of early embryos lies in finding a balance between upholding the value of human life and personhood, while also considering the conflicting interests of bodily autonomy and the freedom to make reproductive decisions. An egg or a sperm alone cannot develop into a human being, however an embryo undoubtedly does, and thus, potentially justifies distinctive deliberation.

A gamete that is bought contains only 50% of the genetic material of the future kid, while an embryo carries the whole set of genes. Furthermore, the creation of embryos gives rise to inquiries concerning the dilemmas surrounding the determination of “the onset of life” and the commencement of an individual. The pro-life stance asserts that a distinct, genetically individual, alive human being comes into existence at the precise instant of conception or fertilisation. Hence, it is imperative that the fertilised egg and early embryo are not subjected to destruction or abortion, as they are entitled to the

¹² G Bahadur, *The Moral Status of the Embryo: The Human Embryo in the UK Human Fertilisation and Embryology (Research Purposes) Regulation 2001 Debate*, 7 REPRODUCTIVE BIOMEDICINE ONLINE 12 (2003).

¹³ Synthetic Human Embryos: A Breakthrough or A Dilemma, <https://www.drishtiias.com/daily-updates/daily-news-editorials/synthetic-human-embryos-a-breakthrough-or-a-dilemma> (last visited Feb 1, 2024).

same rights and respect as individuals. The opposing perspective acknowledges that the early embryo possesses distinct genetic characteristics, is alive, and is of human origin, with the capacity to develop into a person. However, it argues against considering these attributes and potential as sufficient grounds for granting the prenatal, living human entity its own set of rights or responsibilities. The presence of genetic distinctiveness alone does not provide any evidence if the cells in question do not possess additional traits and therefore do not have any interests.¹⁴

John Harris argues that there is no moral merit in either destroying embryos or allowing them to perish, especially when they may be utilised for the greater benefit of society. Furthermore, he contends that it is even more morally deficient to let human cadavers go unused, when we have the potential to save numerous lives through practices such as transplantation orders. According to John A. Robertson, although the pre-implantation embryo is undeniably human and alive, it does not necessarily qualify as a “human life” or “human being” in the essential sense of an individual with rights or interests.

There are three distinct definitions attributed to the human embryo —

- (1) The embryo is considered a human individual with an inherent and inviolable entitlement to life;
- (2) The embryo is regarded as a collection of cells possessing the same moral standing as other cells, thus treated as an object or possession;
- (3) The embryo is not recognised as a person with legal rights, but is afforded protection due to its potential to become a person or its unique nature.

The American Society of Reproductive Medicine has asserted that while the embryo should be treated with a level of respect higher than that given to human tissue, it should not be granted the same level of regard as actual individuals. The embryo warrants greater reverence than human tissue because to its capacity to develop into a sentient being and its symbolic significance for numerous individuals. However, it is important to refrain from regarding it as a person, as it has not yet acquired the characteristics of personhood, is not yet recognised as an independent entity in terms of development, and may never fully achieve its biological capabilities.

¹⁴ Piyali Mitra, *Human Embryonic Moral Status in the Embryo Research Debate from the Indian Religious School of Thoughts*, 12 BANGLADESH JOURNAL OF BIOETHICS 11 (2021).

ETHICAL BOUNDARIES OF ABORTION IN LIGHT OF

EMBRYONIC SENTIENCE

The utilitarian principle, as defined by moral theories that assign moral worth to sentient beings, posits that an action is deemed acceptable if it increases the overall utility, happiness, or pleasure it generates for the greatest number of individuals. Conversely, if an action results in the unhappiness or suffering of others, it is considered negative. The ability to feel pleasure or pain is a characteristic of sentient creatures, whereas being insentate refers to the absence of this capability. Sentience refers to the capacity for subjective experiences to have significance, as opposed to an insentate being that is indifferent to its environment. The following are the fundamental principles that may be used to justify one of two stances: either all conscious beings should make an effort to prevent suffering (minimalist sentientism) or the state of being conscious should be seen as a fundamental entitlement to existence (maximist sentientism).

THE ETHICS OF ABORTION

Since the beginning of the field of bioethics in the late 1960s, the ethical implications of abortion have been a contested subject. It is especially prevalent in the United States of America, along with a number of other Western countries, that the discussions about the ethical elements of abortion, which include the choice to terminate a pregnancy, are extremely political and laden with compelling rhetoric. A dispute between religious and/or conservative views and feminist and/or liberal attitudes has often been portrayed as a fight between pro-choice and pro-life activists.¹⁵ The deadlock between these two groups is essentially absolute and has been framed as a struggle between the two groups. In order to solve this problem, a number of various legislative interventions controlling abortion have been put into place in a variety of nations.

It is the position of the pro-life movement that the embryo-foetus has personality, maybe even from the moment of its conception.¹⁶ It is important to note that persons are often seen as entities who are capable of self-awareness, language capacities, memory, and the ability to plot their actions; hence, this viewpoint is not persuasive. Despite the fact that it is generally accepted that newborns do not develop into full individuals until about four to five years of age, and that some children may never

¹⁵ F. Svenaeus, *The relevance of Heidegger's philosophy of technology for biomedical ethics*, 34(1) THEORETICAL MEDICINE AND BIOETHICS 1, 16 (2016).

¹⁶ CV Bellieni, *Pain assessment in human fetus and infants*, 14(3) The AAPS Journal 453, 461 (2012).

acquire personhood owing to faults, it is still not convincing to assign personality only to a cluster of cells, even if these cells include human DNA. One of the most powerful arguments is that the embryo-foetus should be protected since it has the capacity to grow into a person. One would have a tough time arguing against the notion that every embryo is a human being from a biological standpoint. Nevertheless, the manner in which one defines identity and potentiality in this particular circumstance is the determining factor in determining whether or not they may also be regarded prospective persons. Assuming that the embryo is permitted to develop in its natural environment, which is the uterus of a woman, the potentiality argument proposes that the genetic make-up of the embryo is responsible for directing its growth from the very first stages. The pro-life argument contends that abortion is immoral because it results in the termination of the existence of a person who has the capacity to become a person. The pro-choice stance asserts that a pregnant woman should possess the authority to decide whether or not to terminate the pregnancy, given that the growing embryo is an intrinsic component of her physical being.

ABORTION FOR MEDICAL REASONS

Thus far, I have examined the implications of adopting a phenomenological approach to pregnancy on our stance about the legality of abortion. Circumstances when a pregnant woman's health is at jeopardy may warrant a more lenient or even mandatory approach towards allowing abortions beyond the gestational weeks previously mentioned. If the pregnancy poses a danger to the woman's life, this takes precedence over the viewpoint of the developing foetus, which is not yet a person but rather a potential being. (A similar argument may also be used to situations of rape, when the well-being and respect of the pregnant woman are at risk, rather than just her life.) The only remaining justifications for abortion, apart from a woman's personal desire to not have a child, are cases when medical exams and testing have discovered significant problems in the embryo or foetus. Given the perceived cruelty and futility of providing diagnostic tests without the possibility of abortion in the event of a positive result, the crucial ethical dilemma arises: which diagnostics should be offered or required in maternal healthcare. This raises the question of whether and how to choose the traits of future offspring.¹⁷

The newborn infant, via its sheer presence, compels us to pay attention and provide aid in safeguarding its life and enabling its flourishing. The arrival of a newborn brings about a moral need

¹⁷ MT Brown, *The potential of the human embryo*, 32 JOURNAL OF MEDICINE AND PHILOSOPHY 585, 618 (2007).

to assume responsibility for their fragile and reliant existence, akin to the assertion found in Levinasian ethics on the presence of the other.¹⁸ This statement focuses on the aspect of time by emphasizing the need of taking back responsibility for the future and the well-being of future generations. The central theme of Jonas's book is the imperative to regain dominion over technologies that pose a threat to the future of human existence by endangering the essential ecological habitats required for life on Earth, such as weapons of mass destruction, the exploitation of natural resources, and industrial pollution. Nevertheless, Jonas's illustration of the newborn infant, who asserts a demand for responsibility, is intriguing even when considering the period before birth. It is worth noting that Jonas did not express a consistent stance on the ethical implications of abortion, unlike his clear opposition to cloning and genetic enhancement.¹⁹

The duty of securing a future for the child may be met via adoption in situations when a pregnant woman fears that she will not be able to provide proper care for her infant due to financial or other reasons. Adoption may be an option for this parent. From a phenomenological point of view, this indicates that the point of contention against the right to abortion in situations involving late abortions would still be relevant. What if, on the other hand, the prediction does not belong to the mother's well-being but rather to the infant's capacity for flourishing and thriving? It seems reckless and immoral to knowingly choose to have a child with severe physical defects that cause excruciating pain and/or a drastically reduced life expectancy, as in the cases of anencephaly, Edward's syndrome, muscular dystrophy, cystic fibrosis, or Tay-Sachs disease. This is especially true if the pregnancy could have been terminated when the foetus was not yet able to survive outside the womb, or better yet, before it began to move. In order to prevent future persons from enduring anguish that might have been avoided, diagnostic tests for genetic disorders have been particularly devised.

It is important to note, however, that the quality of life of a person who is suffering from a serious disease might vary depending on the severity of the sickness as well as the particular circumstances that they are working with. It is possible that such a life would be substantially more unpleasant and lonely owing to the suffering caused by the sickness; however, this is not always the case. It is probable that however. According to Svenaeus²⁰, pain may be seen as a highly sensitive condition of

¹⁸ E. Levinas, *Totality and infinity*, DORDRECHT: KLUWER (1991).

¹⁹ Jonas H. Technik, *Medizin Und Ethik*, FRANKFURT AM MAIN: SUHRKAMP VERLAG (1987).

²⁰ F. Svenaeus, *The phenomenology of suffering in medicine and bioethics*, 35(6) THEORETICAL MEDICINE AND BIOETHICS 407, 420 (2014).

being that generates a feeling of disconnection between a person and their life goals and capacities. This is a phenomenological perspective on the phenomenon of suffering. This mood, or mixture of moods, comprises a variety of degrees of discomfort that are interrelated but may be separated depending on three primary aspects: the individual's bodily presences, their relationships with other people and the environment, and the core values that they hold in their life narrative. The presence or absence of a person's mood is considered to represent their being in the world, which accounts for their bodily embodiment as well as their existence in time. Pain, and more specifically the pain that is brought on by sickness, is a kind of physical feeling. However, the impacts of pain transcend beyond the realm of physical suffering to include other parts of our life and the way we see ourselves.

CONSENT OF FATHER: LEGAL FRAMEWORK

In the field of reproductive rights and abortion in India, the legal framework has developed to acknowledge and emphasize a woman's autonomy in making decisions regarding her body. The father's consent for abortion is a complex and disputed topic within the legal system. This chapter delves into the legal complexities around paternal consent for abortion in India.

PATERNAL CONSENT: A CHANGING VIEWPOINT

In India, the fundamental premise guiding abortion is a woman's autonomy in making choices about her reproductive well-being. The MTP Act, established in 1971 and later revised, highlights the importance of a woman's permission in abortion-related issues. As per the Act, a woman has the legal right to request an abortion, and her agreement is the crucial component in deciding if the surgery can be done. 'Section 3(4)(b) of the MTP Act' specifies that the sole consent required is that of the woman undergoing the termination of pregnancy. It is essential to note that this pertains to women who have reached the age of majority. The MTP Act does not mention the requirement of the father's permission. The act aimed to protect women's reproductive autonomy by not necessitating the father's approval for a legally approved abortion. This method represented a shift away from conventional legal structures that frequently required the approval of a spouse.

Indian courts have had a substantial impact on influencing the discussion around the necessity of the father's consent for abortion. Court rulings have consistently upheld a woman's right to choose, stating that mandating the father's approval could weaken a woman's control over her own body. The Supreme Court, in the 2017 case of '*Anil Kumar Malhotra v. Ajay Pasricha*', unequivocally stated

that a woman is not obligated to obtain her husband's consent for an abortion. The Supreme Court upheld the decision of the Punjab and Haryana High Court in this matter, confirming that a husband cannot compel his wife to proceed with the pregnancy. These legal interpretations are consistent with the overarching fundamental ideals of equality, personal freedom, and the entitlement to privacy.

Although legal precedents support a woman's autonomy, obstacles remain in specific situations. Some healthcare providers may still request the father's consent because to societal conventions or misconceptions about the legal system. This can provide obstacles for women seeking abortion, particularly in situations where the father is not present, recalcitrant, or unreachable. The shifting landscape of reproductive rights and public perceptions require a constant review of the legislative framework for paternal permission for abortion. Supporters of women's rights argue that the emphasis should be on empowering women to make independent decisions, in accordance with the constitutional values of equality and personal freedom.

It is essential to improve legal education and awareness to correct misunderstandings and ensure that healthcare practitioners, legal experts, and the public have a thorough understanding of the current legal system. The MTP Act specifies that a woman's agreement is the main factor determining the legality of an abortion, and the father's involvement is not required by law.

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