

A pregnant woman's right to choose outweighs the rights of the foetus. Agree or Disagree?

The Debate Club — Debate #81

A balanced factsheet for participants

Context and Background

India's abortion law is the Medical Termination of Pregnancy Act 1971, amended by Act 8 of 2021, which received assent on 25 March 2021 [1]. It permits termination up to 20 weeks on one registered practitioner's opinion, and from 20 to 24 weeks on the opinion of two practitioners for women in the seven categories listed in Rule 3B: survivors of rape or incest, minors, women whose marital status changes during pregnancy, women with major disabilities, women with mental illness, substantial foetal abnormality, and humanitarian or disaster settings [1][2]. Beyond 24 weeks, only a state Medical Board comprising a gynaecologist, a paediatrician and a radiologist or sonologist may permit termination, and Section 3(2B) confines that route to substantial foetal abnormality [1].

The Act operates as an exception to Section 88 of the Bharatiya Nyaya Sanhita 2023, which penalises causing miscarriage, so the statute reads as a defence for the doctor rather than a right held by the woman [2][3]. The courts supplied the rights language. *Suchita Srivastava v. Chandigarh Administration* (2009) located reproductive choice within personal liberty under Article 21 [4], and *X v. Principal Secretary* (2022) extended Rule 3B to unmarried women and read marital rape into the meaning of rape for MTP purposes [5]. Yet in *X v. Union of India* (2023) the Court declined a 26-week termination after a split [6][7], and in April 2026 it held in *S v. Union of India* that constitutional relief survives where the statute offers none [9].

Arguments to AGREE — “the pregnant woman's choice should prevail over foetal claims”

1. Bodily autonomy is the strongest ground, and it does not require denying the foetus moral status.

Thomson's 1971 argument concedes for the sake of argument that the foetus has a right to life, then shows that a right to life does not include a right to the non-consensual use of another person's body [18]. The Indian analogue is constitutional rather than analogical: in *Suchita Srivastava* the Court held that reproductive choice falls within personal liberty under Article 21, and that consent cannot be diluted [4].

2. Prohibition relocates abortion rather than preventing it. The most recent national estimate, from *The Lancet Global Health*, put abortions in India at 15.6 million in 2015, of which 11.5 million (73 per cent) were medication abortions obtained outside health facilities and only 3.4 million (22 per cent) took place in facilities [12]. UNFPA reports that unsafe abortion is the third leading cause of maternal death in India, with close to eight women dying daily from related causes [13].

3. The Act's framing as a practitioner's defence leaves the woman without standing in her own decision.

Because the MTP Act grants exemption from criminal liability to the doctor rather than a claim to the woman, access depends on a clinician's willingness to certify [2][3]. The Center for Reproductive Rights notes that the

2021 amendment retained this structure while expanding the categories [2]. A woman refused certification has no statutory remedy, only a writ petition, which is expensive, public and slow.

4. Medical Board gatekeeping converts a right into a permission. The C-HELP study *The Bench and the Body*, published in August 2025, analysed 1,114 abortion cases decided by the Supreme Court and High Courts between 2019 and 2024 [10]. Courts deferred to Board opinions in 949 of them; permission was granted in 85 per cent of cases and denied in 11 per cent, with 81.5 per cent of denials resting on Board recommendations [11]. Minors who were rape survivors filed 52 per cent of the pleas [11].

5. India's apex court has begun to say that clinical opinion cannot displace the woman's decision. In *A (Mother of X) v. State of Maharashtra* (2024) the Court held that Medical Boards must assess the physical and mental health impact on the pregnant person, not merely verify foetal abnormality [8]. In *S v. Union of India*, decided 24 April 2026, Justices Nagarathna and Bhuyan permitted a third-trimester termination against an AIIMS Board recommendation, holding that Article 21 jurisdiction survives where the statute offers no route [9][11].

6. The post-Dobbs record in the United States is a natural experiment in what restriction costs. Since *Dobbs v. Jackson Women's Health Organization* (2022), 13 states have enacted total bans and seven have limits between six and twelve weeks [20]. In 2025 some 142,000 people travelled out of state and 91,000 obtained telehealth abortions into ban states [21]. A *JAMA* study in 2025 found 0.33 additional infant deaths per 1,000 live births in ban states, and a 10.87 per cent relative rise in deaths from congenital anomalies [22].

7. The direction of travel elsewhere runs the other way, and the restrictive cases are cautionary. The WHO Abortion Care Guideline of March 2022 recommends full decriminalisation and advises against grounds-based restrictions, gestational limits, waiting periods and third-party authorisation [14]. Argentina legalised to 14 weeks under Law 27.610 and Colombia's court decriminalised to 24 weeks in 2022 [26]. Poland, by contrast, still bans abortion in almost all circumstances, and prosecuted an activist for supplying pills [25].

Arguments to DISAGREE — “the foetus holds interests that can limit a woman’s choice”

1. Viability is now a moving clinical fact, and it sits close to India's statutory ceiling. A study of 22,953 infants at 636 US hospitals in the Vermont Oxford Network between 2020 and 2022, published in *Pediatrics* in 2024, found survival of 24.9 per cent at 22 weeks and 82.0 per cent at 25 weeks among infants in NICU care [17]. If an entity of that gestational age would be a patient in a neonatal unit, the claim that it has no weighable interests is harder to sustain.

2. The strongest objection does not depend on personhood, ensoulment or religion. Marquis argued in 1989 that killing is seriously wrong because it deprives the victim of a future of value, and that this property attaches to the foetus as much as to an adult [19]. The argument sidesteps the intractable dispute over consciousness and rationality, and it applies from early gestation. Answering it requires showing why a future of value counts for less at 12 weeks than at 12 years.

3. Indian law already treats the foetus as an entity with protected interests, and the Supreme Court has acted on that. Sections 88 to 92 of the Bharatiya Nyaya Sanhita 2023 penalise causing miscarriage, with higher punishment once the woman is quick with child [3]. In *X v. Union of India* (2023), after an AIIMS clinician raised

foetal viability, Justice Hima Kohli declined to allow termination and the three-judge bench then refused it, finding neither substantial foetal abnormality under Section 3(2B) nor danger to life under Section 5 [6][7].

4. The foetal pain evidence is genuinely contested, and the disagreement is between specialists, not between science and belief. Derbyshire and Bockmann argued in the *Journal of Medical Ethics* in 2020 that newer findings on subcortical and thalamic connectivity mean pain cannot be confidently excluded before 24 weeks [16]. The RCOG review reaches the opposite conclusion and places the threshold much later [15]. Debaters should note that Derbyshire sat on the RCOG panel, and that the disagreement concerns what pain requires, not what the anatomy shows.

5. Sex-selective abortion shows that choice is not self-validating in the Indian context. Jha and colleagues estimated in *The Lancet* in 2011 that selective abortions of female fetuses rose from about 1 million in the 1980s to 4.5 million in the 2000s, with the sex ratio for second births after a firstborn daughter falling from 906 to 836 per 1,000 males between 1990 and 2005 [28]. Civil Registration System data put the sex ratio at birth at 928 in 2023, still short of the natural rate [29].

6. The disability rights critique comes from within the movement, not from opponents of abortion. In its October 2017 concluding observations on the United Kingdom, the UN Committee on the Rights of Persons with Disabilities objected to termination at any stage on the basis of foetal impairment, and to the social perception that stigmatises disabled people as living lives of lesser value [27]. India's Section 3(2B) makes substantial foetal abnormality the one ground that survives past 24 weeks, which is precisely the asymmetry the Committee identified [1].

7. Almost every jurisdiction that has liberalised has still drawn a line, which concedes that foetal interests grow. Of the world's legal regimes, 77 countries permit abortion on request, and the most common gestational limit in that group is 12 weeks [30]. Ireland's 2018 Act permits abortion on request to 12 weeks with a three-day waiting period [24]. France's March 2024 amendment, passed 780 to 72, was placed in Article 34 and phrased as a freedom whose conditions the law determines [23]. Unrestricted choice is not the settled comparative position.

Key Questions for the Debate

- If the MTP Act were rewritten as a right held by the woman rather than a defence available to the doctor, what limits, if any, should survive?
- Does the Medical Board requirement beyond 24 weeks protect anyone, given that courts deferred to Board opinions in 949 of 1,114 cases?
- If foetal interests grow with gestation, what non-arbitrary marker should India use, and who should decide when the evidence on pain and viability is itself disputed?
- Can a regime permit termination for foetal abnormality past 24 weeks while denying it to a woman in acute distress, without saying something about the value of disabled lives?
- If the PCPNDT Act restricts what a woman may know about her foetus in order to prevent sex selection, is that a limit on choice that those arguing to agree should accept?
- Do Thomson's violinist and Marquis's future of value actually engage each other, or do they simply answer different questions?

References

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- [2] Center for Reproductive Rights, *Factsheet: The Medical Termination of Pregnancy (Amendment) Act, 2021*, September 2022. (Rule 3B categories; the Act as exemption from criminal liability rather than a right.)
- [3] Nyaaya, *Guide to Accessing Safe Abortions*, accessed 2026. (MTP Act as an exception to Section 88 of the Bharatiya Nyaya Sanhita 2023; Sections 88 to 92.)
- [4] *Suchita Srivastava & Anr v. Chandigarh Administration*, Supreme Court of India, 28 August 2009, (2009) 9 SCC 1. (Reproductive choice within Article 21; consent as an essential condition.)
- [5] *X v. Principal Secretary, Health and Family Welfare Department, Govt of NCT of Delhi*, Civil Appeal 5802/2022, Supreme Court of India, 29 September 2022. (Rule 3B extended to unmarried women; marital rape read into "rape" for MTP purposes.)
- [6] SCC Online, *Decoding Supreme Court three judge bench verdict in 26-week pregnancy case*, 17 October 2023. (*X v. Union of India*, 2023 SCC OnLine SC 1338.)
- [7] SCC Online, *Supreme Court delivers split verdict in 26-week medical termination of pregnancy case*, 11 October 2023. (Kohli and Nagarathna JJ; the AIIMS viability communication.)
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- [13] UNFPA India, *State of World Population Report 2022: Seeing the Unseen, India key insights*, 2022. (Unsafe abortion as third leading cause of maternal death; close to eight deaths a day.)
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- [18] Thomson JJ, *A Defense of Abortion*, Philosophy and Public Affairs, 1971;1(1):47-66. (The violinist thought experiment.)
- [19] Marquis D, *Why Abortion Is Immoral*, The Journal of Philosophy, 1989;86:183-202. (The future-like-ours argument.)
- [20] KFF, *10 Things to Know About Abortion Access Since the Dobbs Decision*, page updated 9 August 2025, state map current to 27 April 2026. (13 states with total bans; 7 with limits of 6 to 12 weeks.)
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- [23] Verfassungsblog, *Enshrining Abortion Rights in the French Constitution: A Global Statement with Little Domestic Substance?*, 2024. (Congress vote 780 to 72 with 50 abstentions; wording added to Article 34.)
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- [29] Factly, *CRS 2023 Reveals Fragile Progress in India's Sex Ratio at Birth*, 2025. (Civil Registration System: sex ratio at birth of 928 in 2023, up from 903 in 2007.)
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Compiled for The Debate Club (thedebateclub.info). Where studies are preprints, contested, or required corrections, this is flagged in-text so debaters can deploy or rebut accordingly.