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Reproductive Rights vs. Fetal Rights: Examining Offences Against the Unborn Child under the Bharatiya Nyaya Sanhita, 2023

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ABSTRACT

This paper interrogates the uneasy moral and legal balance between reproductive autonomy and fetal protection under the Bharatiya Nyaya Sanhita (BNS). The BNS draws a sharper criminal boundary around acts that terminate or endanger prenatal life, through provisions that criminalize causing miscarriage (Sections 88–90), pre-birth acts aimed at preventing a child being born alive (Section 91), culpable-homicide-style protection of the "quick unborn child" (Section 92), and concealment of births (Section 94). These provisions, on their face, pursue the twin objectives of safeguarding nascent human life and preserving societal order. But they collide with constitutional guarantees that protect bodily integrity, privacy, and personal liberty, principles the Supreme Court has repeatedly affirmed in reproductive contexts. This study maps the doctrinal tensions that arise when criminal law treats the unborn as an object of direct protection: Who holds the legal prerogative to decide about pregnancy? When, if ever, may the state criminalize conduct that affects a fetus? And how do statutory exceptions, like medical necessity, operate in practice? Using doctrinal analysis, textual interpretation of the BNS provisions you provided, and selective case-law touchstones on autonomy, privacy, and medical termination, the paper argues that the BNS creates prosecutorial and ethical risks unless interpreted in a manner consistent with constitutional norms. The analysis recommends clearer legislative drafting, stronger procedural safeguards for pregnant persons, and a rights-sensitive approach to enforcement that preserves medical judgment and personal autonomy

while offering proportionate protection to prenatal life..

INTRODUCTION AND CONCEPTUAL FOUNDATIONS

1.1 The Constitutional Architecture of Life and Liberty: Article 21 and the Genesis of Conflict

Article 21 is one of those provisions that has grown far beyond what its original drafters probably imagined. It started off as a short, almost bare sentence about life and personal liberty, but over the years the Supreme Court has read into it a whole set of rights – dignity, privacy, bodily control, and basically the freedom to make important decisions about one's own life. This expansion is helpful, but it also creates a very real conflict when the subject is pregnancy and abortion. A woman's autonomy flows directly from Article 21, yet the State also claims that it has a duty to protect a fetus.

In *Francis Coralie Mullin v. Administrator*[1], Union Territory of Delhi, the Court said that "life" must be understood in a meaningful way, not just as survival. Once that idea is applied to reproductive choices, the clash becomes clear: the dignity of the pregnant woman sits on one side, while the State's claim over fetal life sits on the other.

1.2 From IPC to BNS: Contextualizing the New Penal Framework on Offences Against the Unborn

The shift from the IPC[2] to the Bharatiya Nyaya Sanhita[3] in 2023 was presented as a major overhaul of India's criminal laws. But when you actually look at the provisions dealing with pregnancy and the unborn, not that much has changed. The BNS keeps the same basic logic that the IPC used: causing a miscarriage is an offence unless the law specifically allows it. The wording may be updated here and there, and punishments may be reorganised, but the thinking behind these offences remains almost the same. The fetus is still treated as something the State must protect through criminal penalties. So instead of reimagining the approach to reproductive issues, the BNS mostly follows the older framework. Because of this continuity, the core tension survives. The MTP[4] Act becomes the only legal path for terminating a pregnancy, and everything else remains criminalised by default. This is why courts keep receiving petitions that fall outside the

[1] *Francis Coralie Mullin v. Adm'r, Union Territory of Delhi*, (1981) 1 SCC 608 (India).
[2] The Indian Penal Code, 1860, No. 45 of 1860, India Code (India).
[3] The Bharatiya Nyaya Sanhita, 2023, No. 45 of 2023, India Code (India).
[4] Medical Termination of Pregnancy Act, 1971, No. 34 of 1971, India Code (India).

rigid statutory limits.

1.3 Problem Statement: The Jurisprudential Clash, MTP Act as Exception vs. BNS as Prohibition

The central issue of this paper grows out of the uncomfortable coexistence of two different legal models. The BNS starts with a prohibition: miscarriage is a criminal offence. The MTP Act steps in and creates narrow exceptions, which operate like small windows through which certain pregnancies can be legally terminated. But life doesn't always fit into neat statutory categories, and the law often struggles to keep up.

For example, women sometimes learn about fetal abnormalities only after the statutory deadlines. Others may have social or economic situations that the MTP Act does not explicitly recognise. Some pregnancies result from circumstances that are coercive even if they are not "illegal" in the strict sense. In such cases, doctors refuse termination because they are bound by the Act, and the woman must approach a High Court or the Supreme Court. This leads to inconsistent decisions and a heavy dependence on judicial discretion. So the problem isn't simply a conflict between two statutes. It is a deeper clash between two ideas: the State's instinct to protect unborn life through criminal law, and the woman's claim to autonomy and dignity under Article 21. This unresolved tension forms the basis of the study.

1.4 Research Questions, Hypothesis, and Significance of Study

The study tries to answer a few straightforward but important questions. One is whether the MTP Act can truly be called a *lex specialis* that overrides the general criminal provisions in the BNS. Another is how far courts have gone, sometimes reluctantly, to expand the protection of reproductive rights where the statute stops short. A third question looks at what this conflict reveals about India's broader constitutional framework regarding privacy, health, and bodily integrity.

Hypothesis: The MTP Act does function as a specialised statute, but because its exceptions are limited and tightly framed, it cannot cover every real-life situation. As a result, courts regularly rely on Article 21 to protect women who fall outside the Act. This creates a system where constitutional rights have to "fill the gaps" left by the statute. The study is significant because it shows how the lack of alignment between criminal law and medical regulation affects access to abortion in real and immediate ways.

2. The Evolved Legal Landscape of Reproductive Autonomy

2.1 Reproductive Choice Under Article 21: Where Privacy

Meets Everyday Life

If we step back and look at how reproductive rights developed in India, it becomes obvious that this wasn't a straight line. The courts didn't wake up one morning and decide, "Alright, reproductive autonomy is fundamental right now." It happened slowly, case by case, and sometimes almost accidentally. A big turning point was *Suchita Srivastava v. Chandigarh Administration (2009)*[5]. The facts were complex, a woman with intellectual disabilities, authorities trying to decide for her, and that forced the Court to ask something very basic: who really gets to make decisions about a pregnancy?

The Court didn't give a long philosophical lecture; instead, it used simple constitutional logic. If personal liberty under Article 21 means anything, it has to include the right to decide what happens to your own body. The judges basically told the State, in a polite judicial tone, to step back. That judgment later became the backbone for expanding the idea of "bodily integrity."

Then came *K.S. Puttaswamy v. Union of India (2017)*[6]. Even though this case was about Aadhaar, its consequences went far beyond ID cards. The nine-judge bench took privacy out of its old, narrow box and turned it into something bigger, the kind of privacy that allows people to make intimate decisions without the State hovering around them. The Court said privacy includes decisional autonomy. And once you accept that, it becomes almost impossible to deny reproductive choice the status of a fundamental right.

So, this is the starting point: reproductive autonomy didn't emerge from a statute but from the Constitution's deeper promise that dignity and freedom actually mean something.

2.2 The MTP Act, 1971, A Law Written in a Very Different India

When Parliament enacted the MTP Act in 1971, India was a different country. High maternal mortality, unsafe abortions everywhere, and almost no conversation about women's autonomy. Because of that context, the law feels extremely "doctor-first." If we read it now, we can sense that the woman's voice is almost missing, decisions were handed over to "registered medical practitioners," and the law trusted their judgment more than the person actually pregnant.

The Act laid down specific grounds: risk to the woman's life, grave injury to her health, and the possibility of severe fetal

[5] *Suchita Srivastava v. Chandigarh Admin.*, (2009) 9 SCC 1 (India).
[6] *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1 (India).

abnormalities. All of this made sense from a public-health standpoint, but the structure created invisible barriers. For example, two doctors had to sign off for terminations beyond 12 weeks. That sounds reasonable on paper, but in rural areas where specialists are scarce, this requirement effectively shuts the door.

It's important to be fair to the lawmakers of that era. Their priority was to reduce unsafe abortions, not to redefine autonomy. Still, when we compare the 1971 Act to today's constitutional language around dignity, it becomes obvious that the law wasn't written with the idea of women as independent rights-holders. It was more like, "We need a safe process, and doctors will decide." This gap between medical gatekeeping and personal autonomy is what later reforms tried to fix.

2.3 The MTP Amendment Act[7], 2021, A Much-Needed Reality Check

The 2021 amendment feels like the law is finally catching up to real life. Pregnancies are not discovered on perfectly predictable timelines, and not every woman has the luxury of immediate medical access. So extending the upper limit from 20 to 24 weeks for certain categories wasn't just a procedural tweak, it acknowledged how life actually unfolds. The amendment also did something extremely significant: it opened the "contraceptive failure" ground to unmarried women. We cannot overstate how important this is, not just legally but symbolically. The earlier version quietly assumed only married women had legitimate reasons to seek abortion after contraception failed. The new law finally accepted the reality that relationships, sexuality, and life choices don't always fit into the marriage-first framework.

But the real game-changer was the interpretation of these amendments in *X v. Principal Secretary, Health and Family Welfare Department (2022)*[8]. The Supreme Court made two crucial points:

1. Marital status cannot decide access to abortion.
2. Marital rape, even though not a standalone crime, is still rape for the purpose of abortion law.

The Court didn't wait for Parliament to settle the marital rape debate. It simply said: if a pregnancy comes from non-consensual sex within marriage, the woman should not be trapped inside that circumstance. That single interpretive move pushed the law toward an understanding of autonomy that feels more humane

[7] Medical Termination of Pregnancy (Amendment) Act, 2021, No. 8 of 2021, India Code (India).
[8] *X v. Principal Sec'y, Health & Family Welfare Dep't*, (2022) 10 SCC 665 (India).

and less technical. The amendment and the ruling together created something India never had before: a reproductive rights framework that actually aligns with the Constitution's vision of personal liberty.

2.4 The Unmarried Woman and the Right to Abort, A Barrier That Finally Fell

For decades, unmarried women navigated a strange and unfair legal grey zone. A married woman's contraceptive failure was a "reasonable ground," but an unmarried woman's wasn't. That distinction rested on pure morality, not law. It also meant many women were forced into unsafe or delayed routes because hospitals would simply refuse them.

The turning point was the *X v. Delhi*[9] case. The Court approached the issue with refreshing clarity:

A woman's body does not become less her own because she is unmarried. It also said something that probably should have been obvious much earlier, that a pregnancy outside marriage affects a woman's mental, economic, and social wellbeing just as strongly as a pregnancy within marriage. The moral judgement had no place in legal reasoning. Once the Court recognized this, the entire discriminatory framework collapsed.

This judgment didn't just fix a statutory gap; it reflected a broader cultural clarity that the law had resisted for too long.

2.5 The State's Constitutional Duty to Ensure Safe Abortion

There's a difference between having a right on paper and being able to use it in real life. The Supreme Court has repeatedly said that denial of medical services can violate Article 21. Applied to reproductive rights, this means safe abortion isn't just a "service," it's something the State is constitutionally required to provide.

If a government hospital refuses treatment, if doctors decline because of personal beliefs, or if procedural delays push a woman past the statutory limit, the right to autonomy becomes meaningless. So the State's role is active, not passive. It has to ensure:

1. Trained professionals
2. Functioning facilities
3. Confidentiality
4. Timely access
5. Non-discriminatory treatment

Without these, reproductive autonomy stays locked inside court

[9] *X v. NCT of Delhi*, (2022) 10 SCC 665 (India).

judgments instead of becoming a lived reality.

In simple terms:

The Constitution promises the right, and the State must deliver the infrastructure that makes that right real.

3. BNS's Codification of Fetal Rights and Penal Protection

3.1 The Fetus as a Protected Entity: Juristic Personhood vs. Penal Protection

When we look at how Indian law treats the fetus, it becomes clear that the legal system doesn't follow one single idea. It's more like a patchwork built over decades, where civil law, criminal law, and constitutional ideas all view the fetus slightly differently. For example, civil law has always been a bit more generous in recognizing the "en ventre sa mere" child, that old phrase basically meaning a child still inside the womb. In property cases or succession matters, the fetus can inherit property if it is ultimately born alive. Courts have treated such a child almost as if it is already a member of the family line, hanging in a kind of legal waiting room.

But this civil recognition is not the same as saying the fetus is a full legal person. It's a conditional, almost practical concession. Criminal law, especially under the BNS, takes a slightly different route. Instead of calling the fetus a "person," it focuses on the seriousness of interfering with pregnancy. So the fetus becomes an entity that the law protects, not because it is a juristic person but because the interference harms both the pregnant woman and the developing life she carries. And that's the tension running through the entire chapter of BNS dealing with pregnancy-related offences.

3.2 BNS Sections 88 and 89: Unlawful Miscarriage, Mens Rea, and the Thin Line of Consent

If we read out the BNS and trace the old IPC provisions on miscarriage, the structure begins to make sense. Section 88 [10](which corresponds to IPC 312[11]) is built around the idea of someone "voluntarily causing a woman with child to miscarry." The word "voluntarily" does a lot of heavy lifting here. It doesn't simply mean the person acted knowingly, it means the act was intentional, directed toward ending a pregnancy, not something incidental.

But the real nuance comes in the exception. The law has always accepted one situation where causing a miscarriage is not just

[10] BNS § 88
[11] *IPC § 312*

allowed but legally protected: when it is done "in good faith for the purpose of saving the life of the woman." For years, courts wrestled with what "good faith" actually demands. Some judges took it to mean honest medical judgment; others required reasonable care. Either way, the logic is unmistakably clear, the law puts the woman's life first, before fetal interest. Even people who argue for strong fetal protection often concede that this exception is morally and medically unavoidable.

Section 89[12] (the parallel to IPC 313[13]) adds another layer of seriousness. It deals with causing miscarriage without the woman's consent, and the jump in punishment reflects how seriously the law treats that violation. Here, the offence simultaneously harms the fetus and the woman's bodily autonomy. In a sense, Section 89 shows the criminal law's recognition that pregnancy is not simply about potential life, it involves a living woman whose consent is central. Interfering with pregnancy without her consent is treated almost like a double wrongdoing: one against the fetus and another against her. What many people don't realize is that these sections overlap with medical practice. Even a legitimate abortion, if done without proper consent or outside the legal framework, can slide into criminal conduct. And this is where the clash with the MTP Act becomes apparent. A registered medical practitioner acting under MTP rules is protected, but anyone outside that framework, even with good intentions, risks falling under Section 88 or 89. It's a strict boundary that the BNS maintains.

3.3 BNS Section 92: The Idea of the "Quick Unborn Child" and Why Punishment Escalates

Section 92[14] of the BNS (carrying forward the spirit of IPC 316[15]) deals with something you don't hear much about in everyday conversations: the "quick unborn child." The phrase sounds archaic, and honestly, it is. It comes from older British-era legal systems where "quickening" meant the stage where the mother could feel the fetal movements. In that era, quickening was treated like a marker of fetal development, a sign that the fetus was sufficiently formed to be treated differently from an early-stage embryo.

Modern medicine measures things differently, of course, but the law has kept this term alive, mainly because it serves a symbolic purpose: it represents a stage of pregnancy where the fetus is more likely to survive outside the womb, or at least where it has

[12] *BNS § 89*
[13] *IPC § 313*
[14] *BNS § 92*
[15] *IPC § 316*

become more identifiable as a developing human life. In today's language, it aligns loosely with the idea of "viability," though not perfectly. Section 92 punishes causing the death of a quick unborn child with significantly higher penalties than general miscarriage. This is the point where criminal law shows its strongest concern for fetal protection. If someone attacks a pregnant woman, or performs an act that intentionally results in the death of a near-viable fetus, the law steps in with far greater severity.

The case *Jabbar & Ors. v. State (1965)*[16] is one of the few Indian judgments that actually tries to understand what "quick unborn child" means in legal practice. The court, while dealing with a brutal assault that caused the death of a near-term fetus, treated the fetus almost like an independent subject of harm. Even though the fetus wasn't a "person" in the eyes of the law, the act was considered more serious because a nearly-formed life was intentionally destroyed.

This approach reveals two things about Indian criminal jurisprudence:

1. The law does not grant full personhood to the fetus, but it acknowledges different stages of fetal development and punishes harm accordingly.
2. The pregnant woman remains central, because all these offences still require an act directed at her body, regardless of the stage of fetal development.

When we think about it, Section 92 is a compromise between the older understanding of fetal development and modern medical knowledge. It avoids declaring fetal personhood (which would create huge constitutional issues) but still signals that harming a late-term fetus is not legally equivalent to early miscarriage. This layered approach, modest protection early on, heightened protection later, is the essence of BNS's framework.

3.4 BNS Section 91: Preventing Live Birth, The Sharp Focus on Intent

Section 91[17] (from IPC 315[18]) deals with a very different offence, one that isn't exactly miscarriage, but something more intentional and chilling. The law punishes acts done "with the intent to prevent a child from being born alive or to cause it to die after birth." This kind of intent is narrower and far more specific than the general intention required for causing miscarriage. To understand the distinction, it helps to visualize two scenarios. In

[16] *Jabbar v. State*, AIR 1966 SC 1018 (India).
[17] *BNS § 91*
[18] *IPC § 315*

the first, someone induces a miscarriage early in pregnancy. In the second, a person interferes at a stage where the fetus could have been born alive but is prevented from doing so because of a deliberate act. The second scenario is what Section 91 targets. It has shades of infanticide but is still tied to pregnancy, because the criminal act takes place before or during birth.

What makes Section 91 unique is how clearly it focuses on intention toward the outcome, the non-birth or death of the newborn. This is very different from Sections 88 and 89, where intent is directed at causing miscarriage itself. Section 91 is about ensuring that if a pregnancy has reached a point where life is possible, the law will not tolerate deliberate interference. The line between miscarriage and preventing live birth might sound thin, but legally it's quite significant. One is about ending pregnancy; the other is about preventing life from emerging. And that's why punishment under Section 91 tends to be more serious. It is not merely the stage of pregnancy that matters, but the direct intention to extinguish a life that could have existed outside the womb.

Section 91 therefore shows how BNS tries to protect both the woman and the fetus without stepping into the territory of full fetal personhood. It treats the newborn, even a newborn not yet fully separated from the mother, as having a legally recognized interest that the criminal law must guard.

3.5 BNS Sections 90 and 94: When Miscarriage Leads to Death, and When Birth Is Hidden

Section 90[19] (old IPC 314[20]) focuses on the worst-case scenario: when an attempt to cause a miscarriage leads to the woman's death. In these cases, the law doesn't care whether the person intended to kill her or not. The simple fact that the act was dangerous and illegal is enough to bring serious liability. The structure of this section shows something very important, when it comes to pregnancy-related offences, the woman's life is the highest priority. Even the fetus's protection steps aside if the woman herself is placed at risk.

This section also reflects why unsafe abortions performed by untrained individuals are treated so harshly. The law recognizes the practical reality that non-medical interference with pregnancy is inherently dangerous. Then there is Section 94[21] (formerly IPC 318[22]), which deals with concealing the birth of a child. It may seem like a smaller offence compared to the others, but its

[19] *BNS § 90*
[20] *IPC § 314*
[21] *BNS § 94*
[22] *IPC § 312*

reasoning is unique. The law wants births and deaths to be legally acknowledged. Concealment disrupts not just the emotional and social dignity of the woman but also the broader public record. Historically, concealment often hid abandonment or even infanticide, so the law created a separate offence to ensure society doesn't lose track of births, even stillbirths. So while Sections 88–92 revolve around harm to the fetus or pregnant woman, Sections 90 and 94 bring attention back to the consequences for the woman's life and the social importance of documentation.

3.6 The Penal–Legal Chasm: When a 24-Week Termination Is Legal Under MTP but Criminal Under BNS

This is where the contradictions between the MTP framework and the BNS become almost impossible to ignore. Under the MTP Act (as amended in 2021), certain categories of women can legally undergo termination up to 24 weeks, and in cases of substantial fetal abnormality, the limit can effectively extend beyond that with medical approval or court permission. Yet, under the BNS, causing miscarriage after the early stages remains a punishable offence unless it falls squarely within the MTP framework. The same physical act, terminating a 24-week pregnancy, can be completely lawful when performed by a registered medical practitioner (RMP) and totally criminal if performed by anyone else, even with good intentions.

This is the "penal–legal chasm."

The criminal law protects the fetus strongly, especially as pregnancy progresses. But the MTP Act, shaped by public health concerns and constitutional ideas of autonomy, protects the woman's right to end a pregnancy under specific conditions. These two laws coexist uneasily. One views termination as a regulated medical procedure; the other views it as potential harm to a near-viable life. The conflict isn't accidental, it's a result of India trying to safeguard women's rights while also respecting fetal development. Until the criminal law and medical law speak the same language, these tensions will continue to surface.

4: The Judicial Crucible: Balancing Rights in Late-Term Cases

4.1 Lex Specialis and the MTP's Role

So, here's the thing, abortion law isn't neat. We've got the BNS, which treats interference with pregnancy as generally criminal. Then we've got the MTP Act, saying, more or less, "okay, in certain situations, abortion is fine." On paper, *lex specialis* should make this simple: the specific law overrides the general one. But in real life? Not so much. The idea is clear enough: follow the MTP rules, proper certification, approved grounds, and you're legally safe.

But if you miss a step, even slightly, the BNS could technically apply. Courts have to weigh this carefully every time. You might wonder why the law is so complicated, but maybe it's because lawmakers intended for judges to consider each case on its own merits.

Honestly, it seems Parliament wanted to make abortion safe and legal for women under medical supervision. But BNS penalties are strict, and in practice, judges can't just ignore them. They check: "Does this fall under MTP?" If yes, BNS doesn't apply. If no, then, we can see the tension.

4.2 Maternal Mental Health vs. Fetal Viability

Past 24 weeks, it gets tricky. Gestational limits exist, yes, but human lives are anarchic. Courts often ask: which counts more, fetal viability or the woman's mental and physical health? There's no easy answer. Take *Mrs. X v. Union of India (2017)*[23]. The woman was at 22 weeks, just below the formal limit, but mental health risks were severe, depression, social pressure, family issues. The court didn't just tick boxes. We can almost see the judges thinking: "24 weeks? Okay, but continuing this pregnancy could be harmful. We have to consider that."

Then in *Meera Santosh Pal v. Union of India (2017)*[24], social vulnerability added to the risk. The court weighed these factors. It's interesting, judges act almost like counselors, weighing evidence, context, and human experience. This flexibility is built into the law but not spelled out. Maybe that's why cases feel unpredictable.

At the end of the day, gestational limits are guides, not strict rules. Courts balance context, mental health, and social reality. That's why reading these cases feels like peering into a judge's thought process, not just law.

4.3 Fetal Abnormalities and Late-Term Decisions

Late-term terminations are even trickier when fetal anomalies show up. Judges have to decide: prioritize maternal health or fetal viability? Not easy.

In *Shweta Sachin Patil v. Union of India (2018)*[25], 26 weeks, the Medical Board said the fetus was healthy. The Court refused termination. We can feel the tension, they clearly empathize, but they feel compelled to protect the fetus. Reading it, we almost see the hesitation.

[23] *Mrs. X v. Union of India*, (2017) 3 SCC 35 (India).
[24] *Meera Santosh Pal v. Union of India*, (2017) 3 SCC 462 (India).
[25] *Shweta Sachin Patil v. Union of India*, (2018) 1 SCC 758 (India).

Contrast *Murugan Nayakkar v. Union of India (2017)*[26]. Minor, rape survivor, severe anomalies, termination allowed at 32 weeks. Maternal well-being and social context outweighed gestational limits. This shows that gestational limits are guides, not absolutes. Courts consider mental health, fetal anomalies, age, and social situation. The law allows discretion, and judges exercise it with nuance.

4.4 Judicial Reversals and State Interest: October 2023 Case

October 2023 (*X v. Union of India*[27]), a 26-week termination refused by the Supreme Court. Mental health concerns cited, the High Court had approved earlier. Why the reversal?

The Supreme Court stressed three points: heartbeat = viability, late-term termination raises societal and ethical concerns, and mental health risk must be acute, demonstrable, not abstract. You can see the tension. Article 21 protects reproductive choice, but the state also has a duty to protect viable life. Judges balance rights that conflict. Reading it, you sense caution, almost hesitation. Not denying autonomy, but setting a high bar for late-term cases.

4.5 Medical Boards: Quasi-Judicial Power

Medical Boards are key. Courts rely on their assessments: fetal health, maternal risk, mental well-being. In many ways, boards are co-decision-makers. But here's the thing: variability exists. Two boards might have opposite conclusions for similar cases. Courts defer, but that shifts power to doctors. In cases like Murugan Nayakkar and Shweta Patil, the Board's findings were decisive. It's strange, law and medicine converge. Judges interpret law, but the outcome depends heavily on medical expertise.

4.6 Comparative Perspective

Globally, approaches differ. In the U.S., post-Dobbs[28], states can regulate post-viability abortions. In the UK, termination past 24 weeks is allowed only with severe risk, approved by two doctors. India's system is unique: gestational limits, Medical Board evaluation, judicial review. Judges are active, weighing each case holistically. This makes the law flexible, human, but also unpredictable.

5. Conclusion, Critique, and Recommendations

5.1 Wrapping Up the Legal Tension

[26] *Murugan Nayakkar v. Union of India*, (2017) 14 SCC 572 (India).
[27] *X v. Union of India*, (2023) 14 SCC 421 (India).
[28] *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022) (U.S.).

So, after going through all these cases and laws, honestly, Indian abortion law feels like walking on a tightrope. You have the BNS, strict, old, almost rigid, saying "don't harm the fetus," and then you have the MTP Act saying, "Wait, here's when termination is allowed." Simple? Not really. Life isn't neat. Law isn't neat. And courts are stuck in between.

Take *Mrs. X v. Union of India (2017)*[29] or the October 2023 *X v. Union of India*[30]. In these, judges are juggling maternal health, fetal viability, gestational age, and sometimes social circumstances. You can almost imagine them pausing mid-judgment, thinking, "Okay… but is this fair? What about the human cost here?" That hesitation, it's real. And it's part of the process. So yes, BNS criminalizes, MTP provides exceptions, and courts interpret in context. But the law itself isn't giving straight answers. It's a framework, a skeleton. The real judgment comes from humans: judges, doctors, boards.

5.2 Problems with the BNS Framework

Now, let's talk about this "quick unborn child" phrase in BNS. What does that even mean? At what stage is a fetus "quick"? 20 weeks? 24 weeks? Is it when it moves? Or is it about viability? Courts try to make sense of it, but the law itself is vague. Here's the tricky part: MTP gives gestational limits and medical guidance. BNS doesn't. So doctors hesitate. You can almost hear them thinking: "I'm following MTP… but could I still be liable under BNS?" That's stressful. It's confusing. And honestly, risky. Plus, the law is behind science. We now know viability is roughly 24 weeks with proper neonatal care. Courts try to interpret BNS in that light, but inconsistently. The solution? Update it. Replace "quick unborn child" with a medically precise term based on viability.

5.3 Strengthening Reproductive Rights

So, what can we do to make things better? First, reduce the need for court orders for late-term abortions. Right now, past 24 weeks, even in serious medical cases, women have to go to court. That's stressful. Delays care. And sometimes risks lives. A national protocol could help: clear rules, some flexibility, less red tape.

Second, the Medical Board process. Right now, it's a lottery. Two women with the same medical condition could get completely different rulings depending on the board. Standardized criteria would help. Doctors would feel safer, courts wouldn't be overloaded, and women would get timely care.

[29] *Mrs. X v. Union of India*, (2017) 3 SCC 35 (India).
[30] *X v. Union of India*, (2023) 14 SCC 421 (India).

Third, the law should be patient-centered. Mental health, social vulnerability, fetal anomalies, all should be recognized grounds without unnecessary hurdles. Courts often show empathy, yes, but codifying these principles would reduce litigation and delay.

Finally, awareness. Doctors, lawyers, women, everyone needs clarity. Ambiguity breeds fear and hesitation. Education, guidance, and accessible protocols could make reproductive rights real, not just theoretical.

5.4 Fixing BNS Clarity

Now BNS itself… it needs updating. First, it should clearly say that RMPs acting under MTP are immune from criminal liability. Right now, there's ambiguity. Doctors hesitate. Courts intervene. Clear wording would fix that.

Second, definitions need modernizing. "Quick unborn child" should be replaced with gestational or viability-based language. Aligns BNS with MTP. Makes courts' and doctors' lives easier.

Third, BNS could give guidance for late-term medical cases. Courts fill this gap now, but statutory clarity would speed decisions. Doctors act confidently, patients get timely care, judges intervene only when necessary.

Finally, a simple note in BNS: "Acts performed under MTP by RMPs in good faith are exempt from criminal liability." That's it. Clear. No confusion. Doesn't weaken fetal protection. Just harmonizes law with medicine and constitutional rights.

5.5 Final Thoughts

Looking back, Indian abortion law is complex. BNS criminalizes, MTP provides exceptions, courts mediate, Medical Boards weigh in, and judges hesitate, reflect, sometimes circle back. If lawmakers, doctors, and judges approach this thoughtfully, the system works.