

Newspaper Analysis Programme® Abortion LAW vs PCPNDT

NEWSPAPER PT CUM MAINS WORK-SHEET

Part - 6

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Abortion and Determination of sex of child issue in India and related laws-

The Medical Termination of Pregnancy Act, 1971

An Act to provide for the termination of certain pregnancies by registered Medical Practitioners and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Twenty-second Year of the Republic of India as follows:-

1. Short title, extent and commencement

- (1) This Act may be called the Medical Termination of Pregnancy Act, 1971.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.
- 2. **Definitions-In this Act**, unless the context otherwise requires
 - (a) Guardian means a person having the care of the person of a minor or a lunatic;
 - (b) Lunatic has the meaning assigned to it in section 3 of the Indian Lunatic Act, 1912 (4 of 1912);
 - (c) **Minor** means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875), is to be deemed not to have attained his majority;
 - (d) Registered medical practitioner means a medical practitioner who possesses any recognized medical qualification as defined in clause (h) of section 2 of the Indian

Medical Council Act, 1956, (102 of 1956), whose name has been entered in a State Medical Register and who has such experience or training in gynaecology and obstetrics as may be prescribed by rules made under this Act.

• 3. When pregnancies may be terminated by registered medical practitioners

(1) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), a registered medical practitioner shall not be guilty of any offence under that Code



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orunder any other law for the time being in force, if any pregnancy is terminated byhim in accordance with the provisions of this Act.

- (2) Subject to the provisions of sub-section(4),a pregnancy may be terminated by a registered medical practitioner,
 - (a) Where the length of the pregnancy does not exceed twelve weeks if such medical practitioner is, or
 - (b) Where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioner are, of opinion, formed in good faith, that -
 - (i) The continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health; or
 - (ii) There is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities to be seriously handicapped.

Explanation 1- Where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

Explanation 2- Where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be resumed to constitute a grave injury to the mental health of the pregnant woman.

- o (3) In determining whether the continuance of a pregnancy would involve such risk of injury to the health as is mentioned in subsection(2)account may be taken of the pregnant womens actual or reasonable foreseeable environment.
- (4) (a) No pregnancy of a woman, who has not attained the age of eighteen years, or, who, having attained the age of eighteen years, is a lunatic, shall be terminated except with the consent in writing of her guardian.







(b) Save as otherwise provided in clause (a), No pregnancy shall be terminated except with the consent of the pregnant woman.

4. Place where pregnancy may be terminated -

No termination of pregnancy shall be made in accordance with this Act at any place other than -

- o (a) A hospital established or maintained by Government, or
- (b) A place for the time being approved for the purpose of this Act by Government.

5. Sections 3 and 4 when not to apply -

- o (1)The provisions of section 4, and so much of the provisions of subsection(2)of section 3 as relate to the length of the pregnancy and the opinion of not less than two registered medical practitioners, shall not apply to the termination of a pregnancy by a registered medical practitioner in a case where he is of opinion, formed in good faith, that determination of such pregnancy is immediately necessary to save the life of the pregnant woman.
- (2) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), the termination of a pregnancy by a person who is not a registered medical practitioners hall be an offence punishable under that Code, and that Code shall, to this extent, stand modified.

Explanation-For the purposes of this section, so much of the provisions of clause (d) of section(2) as relate to the possession, by a registered medical practitioner, of experience or training in gynaecology and obstetrics shall not apply.

6. Power to make rules -

- (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely -
 - (a) The experience or training, or both, which is registered medical practitioner shall have if he intends to terminate any pregnancy under this Act and



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- (b) Such other matters as are required to be or may be, provided by rules made under this Act.
- (3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laidor the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rules hall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

7. Power to make regulations -

- (1) The State Government may, by regulations-
 - (a) Require any such opinion as is referred to in sub-section (2) of section 3 to be certified by a registered medical practitioner or practitioners concerned, in such form and at such time as may be specified in such regulations, and the preservation or disposal of such certificates;
 - (b) Require any registered medical practitioner, who terminates a pregnancy, to give intimation of such termination and such other information relating to the termination as may be specified in such regulations;
 - (c) Prohibit the disclosure, except to such purposes as may be specified in such regulations, of intimations given or information furnished in pursuance of such regulations.
- (2) The intimation given and the information furnished in pursuance of regulations made by virtue of clause (b) of sub-section (1) shall be given or furnished, as the case may be, to the Chief Medical Officer of the State.
- (3) Any person who willfully contravenes or willfully fails to comply with the requirements of any regulation made under sub-section (1) shall be







liable to be punished with fine, which may extend to one thousand rupees.

8. Protection of action taken in good faith -

No suit or legal proceedings shall lie against any registered medical practitioner for any damage caused or likely to be caused by anything, which is in good faith done or intended to be done under this Act.

The Medical Termination of Pregnancy (Amendment) Bill, 2021

The Rajya Sabha has approved the Medical Termination of Pregnancy (Amendment) Bill, 2021 to amend the Medical Termination of Pregnancy Act, 1971 on 16th March 2021. The Bill was approved in Lok Sabha on 17th March 2020.

Salient features of amendments:

- 1. Enhancing the **upper gestation limit from 20 to 24 weeks** for special categories of women which will be defined in the amendments to the MTP Rules and would include survivors of rape, victims of incest and other vulnerable women (like differently-abled women, minors) etc.
- 2. Opinion of only **one provider will be required up to 20 weeks** of gestation and of **two providers for termination of pregnancy of 20-24 weeks** of gestation.
- 3. Upper gestation limit **not to apply** in cases of substantial foetal **abnormalities diagnosed** by Medical Board. The composition, functions and other details of Medical Board to be prescribed subsequently in Rules under the Act.
- 4. Name and other particulars of a woman whose pregnancy has been terminated shall not be revealed except to a person authorised in any law for the time being in force.
- 5. The **ground of failure of contraceptive** has been extended to **women and her partner**.

The Medical Termination of Pregnancy (Amendment) Bill, 2021 is for expanding access of women to safe and legal abortion services on therapeutic, eugenic, humanitarian or social grounds. The amendments include substitution of certain sub-sections, insertion of certain new clauses under some sections in the existing Medical Termination of Pregnancy Act, 1971, with a view to increase upper gestation limit for termination of pregnancy under certain conditions and to strengthen access



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to comprehensive abortion care, under strict conditions, without compromising service and quality of safe abortion.

It is a step towards safety and well-being of the women and many women will be benefitted by this. Recently several petitions were received by the Courts seeking permission for aborting pregnancies at a gestational age beyond the present permissible limit on grounds of foetal abnormalities or pregnancies due to sexual violence faced by women. The amendments will increase the ambit and access of women to safe abortion services and will ensure dignity, autonomy, confidentiality and justice for women who need to terminate pregnancy.

The MTP Act 1971 and The MTP Act Amendments 2021

	MTP Act 1971	The MTP Amendment Act 2021
Indications (Contraceptive failure)	Only applies to married women	Unmarried women are also covered
Gestational Age Limit	20 weeks for all indications	24 weeks for rape survivors Beyond 24 weeks for substantial fetal abnormalities
Medical practitioner opinions required before termination	One RMP till 12 weeks Two RMPs till 20 weeks	One RMP till 20 weeks Two RMPs 20-24 weeks Medical Board approval after 24 weeks
Breach of the woman's confidentiality	Fine up to Rs 1000	Fine and/or Imprisonment of 1 year

PCPNDT Act



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Background for such a legislation in India-

- In India, the female to male ratio is 1.08 males for every female.
- This is a result of the limitations Indian society places on the birth of girls.
- In the country of India, female foeticide is the earliest stage possible in the discrimination of women and girls.
- This process began in early 1990 when ultrasound techniques gained widespread use in India.
- There was a tendency for families to continuously produce children until a male child was born.
- Foetal sex determination and sex-selective abortion by medical professionals has today grown into a Rs. 1,000 crore industry (US\$ 244 million).
- Social discrimination against women and a preference for sons have promoted female foeticide in various forms skewing the sex ratio of the country towards men.
- According to the decennial Indian census, the sex ratio in the 0–6 age group in India went from 104.0 males per 100 females in 1981 to 105.8 in 1991, to 107.8 in 2001, to 109.4 in 2011.
- The ratio is significantly higher in certain states such as Punjab and Haryana.
- Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, 1994 is an Act of the Parliament of India enacted to stop female foeticides and arrest the declining sex ratio in India.
- The act banned prenatal sex determination.
- Every genetic counselling centre, genetic laboratory or genetic clinic engaged in counselling or conducting pre-natal diagnostics techniques, like in vitro fertilisation (IVF) with the potential of sex selection (Preimplantation genetic diagnosis) before and after conception comes under the preview of the PCPNDT Act and are banned.

PCPNDT Act: Features and Amendments Objective:

The main purpose of enacting the act is to ban the use of sex selection techniques after conception and prevent the misuse of a prenatal diagnostic technique for sex-selective abortions.

Offences under this act include:









- 1. conducting or helping in the conduct of prenatal diagnostic technique in the unregistered units,
- 2. sex selection on a man or woman,
- 3. conducting a PND test for any purpose other than the one mentioned in the act.
- 4. sale, distribution, supply, renting etc. of any ultrasound machine or any other equipment capable of detecting sex of the foetus.

Main provisions in the act are:

- 1. The Act provides for the prohibition of sex selection, before or after conception.
- 2. It regulates the use of pre-natal diagnostic techniques, like ultrasound and amniocentesis by allowing them their use only to detect :
 - a. genetic abnormalities
 - b. metabolic disorders
 - c. chromosomal abnormalities
 - d. certain congenital malformations
 - e. haemoglobinopathies
 - f. sex-linked disorders.
- 3. No laboratory or centre or clinic will conduct any test including ultrasonography for the purpose of determining the sex of the foetus.
- 4. No person, including the one who is conducting the procedure as per the law, will communicate the sex of the foetus to the pregnant woman or her relatives by words, signs or any other method.
- 5. Any person who
 - a. puts an advertisement for pre-natal and pre-conception sex determination facilities in the form of a notice, circular, label, wrapper or any document, or
 - b. advertises through the interior or other media in electronic or print form
 - c. or engages in any visible representation made by means of hoarding, wall painting, signal, light, sound, smoke or gas, can be imprisoned for up to three years and fined Rs. 10,000.



6. **Compulsory registration:** The Act mandates compulsory registration of all diagnostic laboratories, all genetic counselling centres, genetic laboratories, genetic clinics and ultrasound clinics.

The few basic requirements of the Act are:

- 1. Registration under Section (18) of the PC-PNDT Act.
- 2. Written consent of the pregnant woman and the prohibition of communicating the sex of fetus under Section 5 of the Act.
- 3. Maintenance of records as provided under Section 29 of the Act.
- 4. Creating awareness among the public at large by placing the board of prohibition on sex determination.

For any violations of the provisions, the Act provides the following penalties and punishments:

1. For doctors/owner of clinics:

- i. Up to 3 years of imprisonment with fine up to Rs 10,000 for the first offence.
- ii. Up to 5 years of imprisonment with fine up to Rs 50,000 for a subsequent offence.
- iii. Suspension of registration with the Medical Council if charges are framed by the court and till the case is disposed of, removal of the name for 5 years from the medical register in the case of the first offence and permanent removal in case of a subsequent offence.

2. For husband/family member or any other person abetting sex selection:

- i. Up to 3 years of imprisonment with a fine up to Rs 50,000 for the first offence.
- ii. Up to 5 years of imprisonment with a fine up to Rs 1 lakh for a subsequent offence.

Amendment to the PCPNDT Act in 2003

Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (PNDT), was amended in 2003 to The **Pre-Conception and Pre-Natal**



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Diagnostic Techniques (Prohibition Of Sex Selection) Act (PCPNDT Act) to improve the regulation of the technology used in sex selection.

Implications of the amendment are:

- Amendment of the act mainly covered bringing the technique of preconception sex selection within the ambit of the act.
- Bringing ultrasound within its ambit.
- Empowering the central supervisory board, the constitution of the state-level supervisory board.
- Provision for more stringent punishments.
- Empowering appropriate authorities with the power of civil court for search, seizure and sealing the machines and equipment of the violators.
- Regulating the sale of the ultrasound machines only to registered bodies.

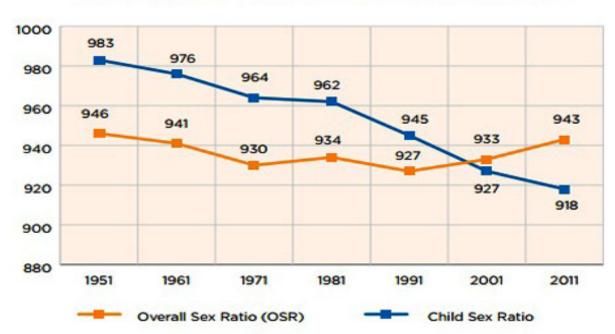
Has the PCPNDT Act fulfilled its objective?

- While the Act has been lauded for achieving modest success in restricting sexselective abortions, numbers portray a different story.
- According to India's 2011 Census, while the overall female-to-male ratio has improved marginally as compared to the Census of 2001, the child sex ratio has seen a steep decline.
- As per the 2011 Census, the child sex ratio (0-6 years) has actually witnessed a decline from 927 females per thousand males in 2001 to 919 females per thousand males in 2011.
- Evidently, just the formulation of this policy has failed to achieve its goals.
- Illegal sex determination still exists. As disclosed by the then Union Health Minister in a written reply submitted to Rajya Sabha on December 2013, only 143 persons have been punished in India for conducting sex determination tests since its formulation in 1994.
- Families are finding a way around the ban by going to Thailand where there are no laws against it. Doctors use preimplantation genetic diagnosis (PGD), a method that involves producing embryos through IVF and implanting only those of the desired gender into the womb. Results are nearly 100% accurate.
- The burdensome restrictions on ultrasound, which prevent Indian physicians from accessing a valuable imaging modality, have not translated into the social change intended by the PCPNDT Act.



- Despite its shortcomings, the PCPNDT Act is a well-intentioned piece of social legislation that strengthens the practice of medical ethics by providing a legal incentive for Indian physicians to uphold their obligations.
- But without institutional mechanisms, it's implementation in spirit has not been achieved.
- While the PCPNDT Act succeeds in acknowledging and drawing attention to a grave societal problem, its failure to significantly curb female feticide and its unintended consequence cannot be overlooked.

COMPARATIVE TRENDS IN OVERALL AND CHILD SEX RATIOS



TH Editorial Explainer- Indian laws on abortions

What are the conditions under which Indian women can safely terminate pregnancies?

• In order to reduce maternal mortality owing to unsafe abortions, the **Medical Termination of Pregnancy (MTP) Act was brought into force in 1971**. This law is an **exception to the Indian Penal Code (IPC)**









provisions of 312 and 313 and sets out the rules of how and when a medical abortion can be carried out.

- Under the Medical Termination of Pregnancy (Amendment) Act, 2021, abortion is permitted after medical opinion under stipulated circumstances. The 2021 Act increased the upper limit of the gestation period to which a woman can seek a medical abortion to 24 weeks from 20 weeks permitted in the 1971 Act. But this renewed upper limit can only be exercised in specific cases.
- Several women annually approach the apex court and High Courts, when medical boards reject their application to access MTP beyond the gestational upper limit, seeking permission to abort a pregnancy, mostly in cases where it is a result of sexual assault or when there is a foetal abnormality.
- The story so far: In a significant step backwards for women's rights in the U.S., the Supreme Court overturned the landmark Roe v. Wade judgement of 1973, which gave women in America the right to have an abortion before the foetus is viable outside the womb or before the 24-28 week mark. With the setting aside of the historic judgement on abortion in the U.S, here's a look at the laws that govern abortion in India.

How did abortion laws come about in India?

- In the **1960s**, in the wake of a high number of induced abortions taking place, the Union government ordered the **constitution of the Shantilal Shah Committee** to deliberate on the legalisation of abortion in the country.
- In order to reduce maternal mortality owing to unsafe abortions, the Medical Termination of Pregnancy (MTP) Act was brought into force in 1971. This law is an exception to the Indian Penal Code (IPC) provisions of 312 and 313 and sets out the rules of how and when a medical abortion can be carried out.
- Under **Section 312 of the IPC**, a person who "voluntarily causes a woman with child to miscarry" is liable for punishment, attracting a jail term of up to three years or fine or both, unless it was done in good faith where the purpose was to save the life of the pregnant woman.









• **Section 313 of the IPC** states that a person who causes the miscarriage without the consent of the pregnant woman, whether or not she is the in the advanced stages of her pregnancy, shall be punished with life imprisonment or a jail term that could extend to 10 years, as well as a fine.

How has the MTP Act evolved from 1971 to 2021?

- The latest amendment to the MTP Act was made in 2021. Before that new rules were introduced in 2003 to allow the use of then newly discovered abortion medicine misoprostol, to medically terminate a pregnancy up to seven weeks into it. Broader amendments to the original Act were introduced in 2020 and the amended Act came into force in September 2021.
- Under the Medical Termination of Pregnancy (Amendment) Act, 2021, abortion is permitted **after medical opinion** under stipulated circumstances.
- The 2021 Act increased the upper limit of the gestation period to which a woman can seek a **medical abortion to 24 weeks from 20 weeks permitted in the 1971 Act.** But this renewed upper limit can only be exercised in specific cases.
- Gestational age, calculated in weeks, is the medical term to describe how far along the pregnancy is and is measured from the first day of the woman's last menstruation or period.
- Another major amendment was that MTP could not be accessed on the opinion of a single registered medical practitioner up to 20 weeks of the gestational age. From 20 weeks up to 24 weeks, the opinion of two registered medical practitioners is required.
- In the previous version of the Act, the opinion of one registered doctor was required to access a medical abortion up to 12 weeks of pregnancy, while two doctors were required to endorse the abortion up to 20 weeks.

What is the MTP (Amendment) Act, 2021?

Under the **2021 Act**, medical termination of pregnancy is permitted if it is backed by medical opinion and is being sought for at least one of the following reasons —









- (1) If the continuation of pregnancy would involve a risk to the life of the pregnant woman
- (2) If its continuation would result in grave injury to the woman's physical or mental health
- (3) In the case of a substantial risk that if the child was born, it would suffer from serious physical or mental abnormality.

The pregnancy can be terminated upto 24 weeks of gestational age after the opinion of two registered medical practitioners under these conditions:

- (1) If the woman is either a survivor of sexual assault or rape or incest
- (2) If she is a minor
- (3) If her marital status has changed during the ongoing pregnancy (i.e. either widowhood or divorce)
- (4) If she has major physical disabilities or is mentally ill
- (5) On the grounds of foetal malformation incompatible with life or if the child is born, it would be seriously handicapped
- (6) If the woman is in humanitarian settings or disaster, or emergency situations as declared by the government.
 - Besides, if the pregnancy has to be terminated beyond the 24-week gestational age, it can only be done on the grounds of foetal abnormalities if a fourmember Medical Board, as set up in each State under the Act, gives permission to do so.
 - The law, notwithstanding any of the above conditions, also provides that where it is immediately necessary to save the life of the pregnant woman, abortion can be carried out at any time by a single registered medical practitioner.
 - Unmarried women can also access abortion under the above-mentioned conditions, because it does not mention the requirement of spousal consent. If the woman is a minor, however, the consent of a guardian is required.









Have there been judicial interventions in cases of abortions?

- Despite the fact that existing laws do not permit unconditional abortion in the country, in **the landmark 2017 Right to Privacy judgement in the Justice K.S. Puttaswamy v. Union of India** and others, the Supreme Court had held that the decision by a pregnant person on whether to continue a pregnancy or not is part of such a person's right to privacy as well and, therefore, the right to life and **personal liberty under Article 21 of the Constitution.**
- Several women annually approach the apex court and High Courts, when medical boards reject their application to access MTP beyond the gestational upper limit (now 24 weeks), seeking permission to abort a pregnancy, mostly in cases where it is a result of sexual assault or when there is a foetal abnormality.
- A report authored by **advocate Anubha Rastogi for the Pratiya Campaign said that in the 15 months leading up to August 2020**, High Courts across the country were hearing 243 petitions of women seeking permission to abort.
- In February this year, the Calcutta High Court allowed a 37-year-old woman, who was 34 weeks into her pregnancy, to get a medical abortion as the foetus was diagnosed with an incurable spinal condition. This judgment allowed abortion for the furthest gestational in the country so far.

What are the criticisms against the abortion law?

- According to a 2018 study in the Lancet, 15.6 million abortions were accessed every year in India as of 2015. The MTP Act requires abortion to be performed only by doctors with specialisation in gynaecology or obstetrics.
- However, the Ministry of Health and Family Welfare's 2019-20 report on Rural Health Statistics indicates that there is a 70% shortage of obstetrician-gynaecologists in rural India.



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- As the law does not permit abortion at will, critics say that it pushes women to access illicit abortions under unsafe conditions.
- Statistics put the annual number of unsafe and illegal abortions performed in India at 8,00,000, many of them resulting in maternal mortality.

US Case- Roe vs Wade TH Editorial- Regressive, inhumane

By removing constitutional right to abortion, U.S. Supreme Court is on wrong side of liberty

- When a democracy rolls back a constitutional right that has been in place for almost half a century, it must consider itself in deep peril.
- The U.S. stands at that fraught juncture now, after its Supreme Court, in a
 6-3 majority, overturned the 1973 ruling in Roe vs Wade, and took away the constitutional right to abortion.
- In one blow, on June 24, it withdrew from women anywhere in the country their right to reproductive and bodily autonomy.
- With Roe, as well as the **1992 decision in Planned Parenthood vs Casey** that upheld Roe, gone, the court returned **"the issue of abortion to the people's elected representatives"**.
- States can now decide whether to ban abortion, and at what stage in a pregnancy and under what circumstances. The fight over abortion has been the U.S.'s most passionately waged ideological battle.
- With a focus that denies any space for compassion or respect for liberty, conservatives have prioritised the task of having Roe overturned for decades.
- With the court now having attained a conservative supermajority, the decision had been imminent some Republican-ruled States have started banning abortion, with trigger laws in place in anticipation of such a judgment. Other Red States will follow.
- This Supreme Court decision, Dobbs vs Jackson Women's Health Organization, has in effect divided the U.S. territorially States where women have the right to abortion, and those where they do not.







- Where they do not, women with unplanned or unwanted pregnancies, including possibly in some jurisdictions those that endanger the mother's life or are a result of rape or incest, may have no option but to seek medical assistance in other States.
- This needs resources and support structures, and many women will be left with no option other than clandestine, unsafe abortions nearer home. Chillingly, there is fear that miscarriages could be subject to criminal investigations.
- On a positive side, major U.S. companies and some States (New York) have started offering financial support to employees and help for out-of-state abortion seekers who seek medical interventions in abortion-supporting States.
- This will, however, make already-bitter partisan polarisation worse. It must also alarm Americans that the logic of Dobbs — that abortion is not mentioned in the U.S. Constitution and is not covered by the landmark 14th Amendment of 1868 that safeguards liberty — has opened the process for other rights to be taken away.
- For now, President Joe Biden and his Democratic Party have vowed to put Roe on the ballot in November's mid-term elections.
- But the way the U.S. electoral system stacks up the numbers in the Senate against their efforts to break the filibuster, the effort to protect women will likely be carried out incrementally: legal challenges at multiple levels, support to women in Red States, and persuasive political campaigns at the grassroots.

All the best **JAI HIND**

Class explanation- mind map











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