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REVIEW ARTICLE

# Compulsion vs. Conscience: Threatening Contempt Against Doctors Who Refuse Non-Therapeutic Abortion Beyond Viability Undermines Medical Conscience

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## ABSTRACT

The intersection of reproductive autonomy, statutory legislative boundaries, and the professional conscience of medical practitioners presents a complex ethical and legal challenge in Indian jurisprudence. While the Supreme Court of India has consistently recognized reproductive choice as a fundamental facet of the right to life and dignity under Article 21, the judicial compulsion to perform non-therapeutic terminations of pregnancy beyond the viability threshold creates a significant conflict with the ethical obligations of obstetricians. This article examines the tensions arising when judicial directives override established statutory limits under the Medical Termination of Pregnancy (MTP) Act, 1971,[1] arguing that compelling medical professionals to perform interventions that conflict with their ethical duty to care for a viable fetus—where no life-threatening emergency exists—undermines professional autonomy.[2] We conclude that a balanced framework, which safeguards both maternal reproductive rights and the conscientious objection rights of healthcare providers, is essential to maintain the integrity of medical practice within the constitutional order.

## KEYWORDS

• Medical Ethics • Reproductive Autonomy • Conscientious Objection • MTP Act • Judicial Overreach • Fetal Viability

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## INTRODUCTION

The judiciary in India frequently navigates the sensitive balance between the fundamental right of a woman to bodily autonomy and the state's interest in protecting fetal life. However, recent instances where courts have issued directions for late-term termination of pregnancy—often beyond the statutory limits established by the MTP Act—have sparked critical debate regarding the limits of judicial discretion.[3] When such directives are issued, they often place medical practitioners in an untenable position, forcing them to choose between compliance with judicial orders under threat of contempt and adherence to their ethical principles.

### The Conflict of Duty and Conscience

Medical practice is governed not only by law but by stringent professional codes that emphasize the principles of "do no harm" and respect for life.[4] Once a fetus reaches viability, the procedure shifts from a "termination" to a "delivery," which may result in a live birth.[5,6] For an obstetrician, the demand to end the life of a potentially viable fetus in a non-emergency context presents a profound moral crisis that falls under the paradigm of conscientious objection.[7] While the law permits the exercise of autonomy for the patient, it must concurrently recognize the professional's right to abstain from procedures that they deem ethically indefensible, provided that patient care is not abandoned and a timely referral is facilitated.

### Judicial Mandate vs. Statutory Limits

The MTP Act, 1971, as amended in 2021, provides clear statutory boundaries for pregnancy termination to balance maternal health and fetal development. Judicial invocation of extraordinary jurisdiction to bypass these limits for individual cases may achieve immediate relief but creates systemic uncertainty regarding the separation of powers. Furthermore, treating a patient's right to termination as "absolute" risks ignoring the nuanced legal and ethical reality that rights are subject to reasonable restrictions when they collide with the interests of other parties or the ethical foundations of the medical profession. Establishing a protocol that respects the conscience of the practitioner while ensuring the pregnant individual is not denied essential medical care is the primary challenge for future legislative and judicial discourse.

***Apropos the SC direction to terminate a 30 wks pregnancy in a minor. The MTP Act does not permit it. The SC exercising its extraordinary jurisdiction has upheld the contention of the teen ager that she has a fundamental right to decide for her body and terminate the pregnancy, the statutory limit in MTP Act of 24 weeks notwithstanding. Giving birth to the child, it is pleaded, will be a great lifelong set back to her. The SC first directed AIIMS to evaluate the status of the pregnancy. After receiving the report of the AIIMS, and satisfied that it can be done without undue risk to the life of the victim, the court directed the AIIMS to terminate the pregnancy.***

***Before advanced viability, gynecologists employ medical or surgical methods to terminate the life of the child in the womb and then extract or expel the product of the conception. After advanced viability, the pregnancy is not 'terminated', premature labor is induced to 'deliver' the child. This is the recognized method where the continuation of pregnancy threatens the life of the mother.***

***The premature child delivered is living, with beating heart, breathing and kicking. The child has a chance to survive. This was pointed out by the AIIMS's doctors. This is unethical and inhuman. They were not agreeable to kill the delivered live child by dumping it in the waste bucket. The court overruled their objection on the ground that the minor's right is absolute. They have again directed the AIIMS's doctors to terminate the pregnancy, under threat of Contempt.***

***A pregnant girl or lady has a right to terminate the life of the child in the womb. But does it cast a corresponding duty on the obstetrician to do it? Duty to fulfill an un-therapeutic demand to kill the child? Is the honorable court justified?***

***Please examine and critique.***

This is a profoundly complex and sensitive issue, and it sits at the intersection of constitutional rights, medical ethics, and statutory law. Let's break it down carefully:

### Legal Dimension

- **MTP Act (Medical Termination of Pregnancy Act, 1971, amended 2021):** It permits termination up to 24 weeks in certain circumstances, with safeguards. Beyond that, termination is allowed only if continuation of pregnancy poses a risk to the mother's life.
- **Supreme Court's extraordinary jurisdiction:** The Court invoked its constitutional powers to uphold the minor's fundamental right to bodily autonomy and dignity. This is consistent with prior jurisprudence where reproductive choice has been recognized as part of Article 21 (right to life and personal liberty).
- **Conflict:** The Court's direction effectively overrides statutory limits, raising questions about separation of powers—whether judicial discretion can extend beyond legislative boundaries.

### Medical Dimension

- **Before viability (~24 weeks):** Termination involves medical or surgical methods to stop fetal life and expel the conception product.
- **After viability (~30 weeks):** The fetus is capable of survival outside the womb. Standard practice is to induce premature labor, resulting in a live birth. Doctors at AIIMS rightly pointed out that this is not "termination" in the usual sense but "delivery," with the neonate potentially surviving.
- **Ethical dilemma for doctors:** They are being asked to perform an act that may result in a live child, which they cannot ethically discard. Medical ethics emphasizes do no harm and respect for both mother and fetus once viability is reached.

### Ethical Dimension

- **Autonomy vs. Duty:** The minor's autonomy is undeniable, but does it impose a *corresponding duty* on doctors to act against their conscience? Medical professionals are not mere executors of patient demands; they are bound by ethical codes.
- **Un-therapeutic demand:** If the pregnancy does not threaten the mother's life, compelling doctors to end fetal life beyond viability can be seen as coercive and ethically problematic.
- **Rights in tension:** The mother's right to autonomy collides with the fetus's right to life once viability is reached. Courts often struggle to balance these competing claims.

### Critique of the Court's Approach

1. **Judicial overreach:** By directing termination beyond statutory limits, the Court arguably stepped into legislative territory. Extraordinary jurisdiction should be exercised sparingly, especially in matters with clear statutory boundaries.
2. **Absolute framing of rights:** Declaring the minor's right "absolute" ignores the nuanced balance between maternal autonomy and fetal viability. Rights are rarely absolute; they are subject to reasonable restrictions.
3. **Compulsion of doctors:** Threatening contempt against doctors who raise ethical objections undermines professional autonomy and medical ethics. Courts should respect the conscience of practitioners, especially in morally fraught situations.
4. **Alternative path:** The Court could have considered directing safe premature delivery and ensuring state responsibility for the child's care, thereby protecting both the minor's autonomy and the fetus's chance at life.

## CONCLUSION

**The case exposes a deep fault line: law and rights evolve faster than medical ethics and statutory frameworks.** While the minor's trauma and autonomy deserve utmost respect, compelling doctors to act against their ethical obligations risks setting a troubling precedent. A more balanced approach would have been to safeguard the minor's future while ensuring humane treatment of the viable fetus—perhaps through state-supported adoption or care.

**This raises a broader philosophical question:** should courts treat reproductive rights as *absolute*, or must they always be balanced against medical realities and ethical duties? In my view, the absolutist stance risks eroding trust between law and medicine.

***A physician has an unalienable right to refuse to do non-therapeutic abortions even those permissible under the MTP Act. Several doctors do it on ethical grounds. However, therapeutic abortion, at any stage of pregnancy, cannot be refused by a licensed physician.***

You've raised a crucial point that goes to the heart of the tension between **legal mandates, medical ethics, and professional autonomy.**

**Legal Position**

- Under the **MTP Act,** abortions up to 24 weeks are permissible under certain conditions. Beyond that, only *therapeutic abortions*—where continuation of pregnancy endangers the mother's life—are legally sanctioned.
- The Supreme Court, in extraordinary jurisdiction, can override statutory limits by invoking constitutional rights (bodily autonomy, dignity, privacy). That's what happened in the case described.

**Medical Ethics & Professional Autonomy**

- **Non-therapeutic abortions:** Physicians have the right to refuse. This is recognized globally as part of *conscientious objection*. Doctors are not mere technicians; they are moral agents bound by professional codes.
- **Therapeutic abortions:** Here, refusal is not ethically defensible. If continuation of pregnancy threatens the mother's life, the physician has a duty of care to act—even if personally opposed to abortion.
- **Beyond viability:** The ethical dilemma intensifies. At 30 weeks, the fetus is viable. Inducing delivery is not "terminating" in the traditional sense but producing a premature neonate. **Doctors cannot ethically discard a living child.** Their refusal here is not about denying care to the mother, but about refusing to actively end a viable life.

**Critique of Judicial Direction**

1. **Compulsion vs. Conscience:** Threatening contempt against doctors who refuse non-therapeutic abortion beyond viability undermines medical conscience. Courts should not compel physicians to act against their ethical framework.
2. **Absolute framing of rights:** Declaring the minor's right "absolute" disregards the competing moral claim of the viable fetus. Rights in constitutional law are rarely absolute; they are balanced against other interests.
3. **Alternative solutions:** The Court could have ordered safe premature delivery and mandated state responsibility for the child's care (adoption, foster care). This would respect the minor's autonomy without forcing doctors into ethically untenable positions.

**Comparative Perspective**

- **United States (Roe v. Wade,[8] Casey,[9] Dobbs,[10]):** Viability (~24 weeks) has historically been the threshold. After viability, states may restrict abortion except where the mother's life or health is at risk. While discussing the evolution of reproductive rights: "The legal framework surrounding reproductive autonomy in the United States was historically anchored in the right to privacy established by *Roe v. Wade* and subsequently modified by *Planned Parenthood v. Casey,* before being fundamentally altered by *Dobbs v. Jackson Women's Health Organization*."
- **Europe (e.g., UK Abortion Act, 1967)[11]:** Similar viability thresholds exist. Physicians retain rights of conscientious objection, except in emergencies threatening the mother's life.
  - **Key Legal Framework**
    - While the core of the legislation remains the 1967 Act, significant modifications have updated its application:
    - **Statutory Limit:** Abortions are generally permitted up to 23 weeks and 6 days of gestation,

provided two registered medical practitioners certify that continuing the pregnancy would cause greater risk of injury to the physical or mental health of the pregnant woman or her existing children than terminating it.

- ♦ **Late-Term Exceptions:** Beyond the 24-week threshold, termination is lawful only in specific, limited circumstances, such as to save the life of the pregnant woman or to prevent grave permanent injury to her physical or mental health.
- ♦ **Decriminalization Update:** As of June 2025, Parliament has enacted legislation prohibiting the investigation, arrest, prosecution, or imprisonment of any woman in England and Wales for terminating her own pregnancy, regardless of the gestational stage.[12]

- **India:** The MTP Act's 24-week limit reflects this global consensus.[13] The SC's extraordinary order is unusual in overriding viability concerns.

## CONCLUSION

It seems correct to conclude that: physicians have an unalienable right to refuse **non-therapeutic abortions,** even if legally permissible. Compelling them to act against conscience—especially in cases of advanced viability—risks eroding both medical ethics and trust in the profession. Courts must balance the minor's autonomy with the physician's ethical duties and the fetus's viability.

The Supreme Court's order, while compassionate toward the minor, arguably overreached by treating her right as absolute and coercing doctors into ethically fraught action.[14,15] A more balanced approach would have been to permit premature delivery and assign responsibility for the child's welfare to the state.

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