

A Study on Reproductive Rights and Abortion Laws

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Abstract:

Within the context of modern legal, medical, ethical, and human rights debate, abortion continues to be one of the most delicate and contentious subjects under discussion. A difficult balance must be struck between women's reproductive autonomy, constitutional rights, medical ethics, concerns about public health, and the preservation of foetal life when it comes to the control of abortion legislation. This article takes a look at the legal framework that governs abortion in both India and the United States, with a specific focus on reproductive rights, constitutional protection, and current advances in the legal system. In addition, the paper discusses important obstacles that are associated with abortion regulations. These issues include societal stigma, poor healthcare facilities, legal uncertainty, political disputes, and uneven access to safe abortion services.

Keywords: Abortion Laws; Reproductive Rights; Medical Termination of Pregnancy Act; Constitutional Protection; Reproductive Autonomy;

INTRODUCTION

A spouse's permission is not necessary for abortions performed in India up to the 20th week of a pregnancy when the procedure is conducted. When asked why they had an abortion, most married women said they wanted to have a smaller family. One of the main issues that affects the use of contraception is incomplete understanding. Men are less likely to use condoms than women are, even though most women think they are the safest way to prevent pregnancy. It is clear that couples and their extended families in some research regions chose abortion to limit the size of their family and ensure that the children have the desired sex composition, even though most studies did not directly address the topic of sex-selective abortion. This is the case even though the majority of investigations did not directly address the topic. Even after abortion was declared legal in India, morbidity and mortality continue to be serious concerns for the majority of women who choose to have abortions. When it comes to designing successful programs, policymakers, administrators, and advocates for women's health

encounter problems owing to a number of variables. These issues include a scarcity of reliable information, major regional and rural-urban discrepancies, and a limited scientific basis.

The subject of abortion has always been and will continue to be one that garners a lot of legal attention. whether or not carrying out an abortion is mandated by law, and if it is, under what conditions is it required? In the second place, what is the legal interpretation of the human rights of an unborn child? The pro-choice and pro-life sides of mankind are becoming more apart from one another as a result of this occurrence. It is possible to consider India to be a pro-life country due to the fact that the MTP Act, 1971 restricted the conditions under which a pregnancy might be terminated. Sharma and Sangwai (2021) argue that pregnant women should not be granted legal status since doing so violates both their "reproductive autonomy" and the "right of life" of the unborn child.

In spite of the fact that differing perspectives on abortion existed throughout different civilisations, there was a common tendency. The ancient cultures that existed at the time had both legitimate and immoral grounds for this preference. In times past, there was no such thing as pregnancy testing, nor were there any devices that were necessary to carry out early abortions. As a result of this, during that period of time, an abortion was carried out by delivering the baby prematurely while it was still alive, and the process was then carried out by putting the child to death. In later times, a number of different methods were used in order to terminate pregnancies. These methods included exerting pressure to the abdomen region, making use of sharp items, providing herbs that were abortifacient, and other methods (Octavian, et al., 2018).

The passionate pro-choice stance, on the other hand, contends that the rights of a pregnant woman take precedence over the birthright of the conceptus until the moment of delivery, and that until that time, a genuine human being does not exist with full worth and rights. Because it puts a significant focus on a woman's freedom of choice and her right to make decisions about her body, which take priority over the rights of the foetus until it is born, this viewpoint is often referred to as the liberal theory of abortion (Kanstrup, et al., 2018). When it comes to abortion, this perspective is frequently referred to as the liberal theory of abortion.

MEANING OF ABORTION

A discussion of reproduction and related terminology is necessary before moving on to the many forms of abortion and the common understanding of what abortion is. There are two main ways to categorise people: by their gender. While additional genders have just lately gained social and legal recognition, this study only considers two of them. Both of these things have major effects on the reproductive process. Pregnancy and childbirth result from the interplay of the male and female reproductive systems. The two systems' interplay caused this to happen. The reproductive process typically starts with copulation and lasts for nine months, during which the mother bears the baby until delivery.

Under common law, abortions were legal until 1803, when Lord Ellenborough's Act made it clear that they could only be legal if the mother's life was in imminent danger. This effectively legalised abortion during the whole gestational period. The argument over whether or not a pregnant woman should have the choice to terminate her pregnancy has reached a dead end, with proponents of the idea that a baby has a human right to life and the law should protect it on that basis. Because of this, we find ourselves conflicted. The subject remains very visible to the general public, despite the fact that there are advocates for both viewpoints. Abortion advocates have stated their conviction that certain restrictions should be put in place to safeguard the health of the mother. Traditional medicine had not progressed very far at the time. Common belief is that these regulations were put in place to shield women from potentially dangerous surgical procedures that may lead to serious illness, permanent harm, or even death. Feminists argue that these first regulations sought to restrict women's rights (Darney et al., 2019).

ABORTION LAWS IN INDIA

An important piece of Indian law pertaining to abortion is the Medical Termination of Pregnancy Act, 1971. Prior to the enactment of this law, abortion was deemed a criminal violation under the Indian Penal Code, 1860, with the exception of cases when it was performed to save the life of the pregnant lady. The government of India passed the Medical Termination of Pregnancy Act in response to the rising number of maternal fatalities caused by unsafe abortions. The act's stated goal is to make abortion services legal, safe, and performed under controlled conditions (National Academies of Sciences, et al., 2018).

The Medical Termination of Pregnancy Act permits abortion in certain cases. Considered to be among these cases are those in which the mother's physical or mental health is jeopardised, those in which the pregnancy is the outcome of rape, those in which the method of birth control fails, and those in which serious birth defects are found. Abortions performed under the supervision of a medical expert were initially legal under the Act up to twenty weeks into the pregnancy. In light of new medical knowledge and shifting social norms, the government has introduced the Medical Termination of Pregnancy (Amendment) Act, 2021. Victims of incest, women under the age of 18, people with disabilities, and those who had survived rape were among the categories whose maximum gestational age was increased to 24 weeks under the change. As part of the update, the term "married woman" was replaced with "any woman," and the upgrade also strengthened protections against the exposure of sensitive information and expanded access for single women.

The safeguarding of reproductive rights has received substantial support from Indian courts. Case law from *Suchita Srivastava v. Chandigarh Administration* established that reproductive choice is a part of individual liberty under Article 21 of the Indian Constitution. In a related matter, the Indian Supreme Court stressed in *X v. Union of India* that women who are not married have the same rights to reproductive autonomy and access to safe abortion treatments as married women.

ABORTION LAWS IN THE UNITED STATES OF AMERICA

To argue that a single national statute has had less of an impact on the development of abortion law in the US would be an understatement. Abolition of abortion was recognised as a constitutionally protected right in the historic *Roe v. Wade* decision, which was framed within the context of the Fourteenth Amendment's right to privacy. The decision allowed women to terminate pregnancies in their early stages while also protecting them from excessive government interference.

Afterwards, the Supreme Court upheld the right to abortion in *Planned Parenthood v. Casey*, but it also allowed states to impose some limitations on abortion, so long as they didn't create a "undue burden" on women seeking them.

However, the laws around abortion in America changed significantly after the *Dobbs v. Jackson Women's Health Organization* judgement. The highest court in the land overturned

Roe v. Wade, ruling that abortion is not protected by the constitution. Each state now has the authority to regulate its own abortion policies. In addition, this has led to a disparity in abortion legislation among states, with some places maintaining complete legal protections for the procedure and others imposing severe limitations (Kanstrup, et al., 2018).

CHALLENGES RELATING TO ABORTION LAWS

Abortion laws continue to confront several problems all around the globe, despite the fact that legal improvements have occurred. A significant problem is the tension that exists between the freedom to reproduce and the moral or religious views of individuals. From an ethical standpoint, many religious organisations are opposed to abortion because they believe it results in the death of an unborn child. As a result, there is hostility to liberal abortion legislation on both the legislative and social levels.

Uneven access to medical services is still another significant obstacle that must be overcome. It is common for women who live in economically disadvantaged or rural locations to have limited access to skilled medical experts and abortion treatments that are without risk. As a result of restrictive legislation and delays in the procedure, women are often forced to seek abortions that are dangerous, putting their lives and health in jeopardy.

Another big impediment is the social stigma that still exists. When women seek abortions, they are often subjected to social prejudice, mental hardship, and pressure from their families in many nations. Women who are not married and women who have survived rape have additional challenges when it comes to gaining access to reproductive healthcare without the stigma of being judged or harassed.

Access to abortion is made even more difficult by the presence of procedural obstacles and legal uncertainty. For women in India who are carrying pregnancies that are over the statutory limitations, obtaining legal clearance is often necessary, which may result in delays and psychological hardship. There is a great deal of confusion around reproductive rights and access to healthcare in the United States as a result of the Dobbs judgement, which resulted in many states passing different legislation.

REPRODUCTIVE RIGHTS AND CONSTITUTIONAL PROTECTION

In modern constitutional law, the idea of reproductive rights is increasingly acknowledged as an essential part of human dignity, privacy, equality, and freedom. Women should have complete autonomy over reproductive decisions that may have far-reaching effects for their health and well-being, as has been stressed by courts in many countries.

Reproductive autonomy in India was strengthened by the Justice K.S. Puttaswamy v. Union of India case. The right to privacy's acknowledgement caused this to happen. Similarly, the provision of safe and legal abortion services is advocated for by international human rights groups such as the United Nations and the World Health Organization. They consider this an important issue related to human rights and public health (Octavian, et al., 2018).

MEDICAL TERMINATION OF PREGNANCY ACT, 1971 (AMENDMENT 2021)

The Medical Termination of Pregnancy Act was passed by the Indian government in 1971. The goal of this legislation was to provide clear guidelines for abortion services and to ensure that pregnant women may legally and safely terminate their pregnancies under certain circumstances. The majority of India's abortion-related legislation originated in the Indian Penal Code, which came into effect in 1860. The bulk of these rules were not modified when this law was approved. This law made it illegal to intentionally cause a miscarriage unless the pregnant woman's life was in imminent danger, in which case it might be justified. Many women have done unsafe and illegal abortions since there aren't enough medical facilities or clear legal guidelines. This has led to serious health issues and even fatalities among mothers. In 1964, the goal of establishing the Shantilal Shah Committee was to investigate the problem of abortion legislation and provide recommendations for changes. In order to resolve the concerns voiced, this was done. In 1971, after being passed into law, the Medical Termination of Pregnancy Act was first put into effect the following year. We were able to do this by carefully considering the committee's suggestions (Eschenbach, 2015). The major goal of the law was to decrease the incidence of maternal deaths caused by unsafe abortions by making sure that women could legally obtain safe abortion services that were provided under controlled medical circumstances. Under the Act, registered medical practitioners are able to terminate pregnancies when the mother's life or physical or mental health is in danger, or when there is a high probability that the child, should they be born, would have severe mental or physical defects. When a kid is born with a severe mental or physical disability also falls into

this group. Pregnancies caused by rape or the ineffectiveness of a method of contraception are also recognised as valid reasons for medical termination of pregnancy under the Act. Originally, the Act allowed for abortions up to twenty weeks into the pregnancy as long as certain medical requirements were met. But that was conditional on other things being in place. It was crucial to seek the advice of a single qualified physician for pregnancies up to 12 weeks along. Contrarily, abortions that occurred between twelve and twenty weeks of pregnancy often required the consent of two doctors. In order to ensure safety and medical supervision, the Act also stipulated that termination may only take place at licensed medical facilities or government hospitals. The end goal of the Act necessitated this action.

Over time, it has become more and more clear that abortion restrictions need to be revised. This has come to light as a result of a number of factors, including expanded understanding of reproductive rights, changes in societal norms, and developments in medical expertise. The Medical Termination of Pregnancy (Amendment) Act, 2021 aimed to modernise abortion laws by making them more accessible, inclusive, and progressive. In an effort to make abortion laws more accessible, this was done. According to Ross (2017), the objective of the 2021 Amendment was to increase women's healthcare rights and reproductive autonomy while also greatly increasing the spectrum of services that may be lawfully used for abortion-related operations in India. An rise in the maximum gestational age at which abortions may be performed was one of the most significant changes brought about by the 2021 Amendment, among many others. According to the new rule, a single qualified medical professional may now recommend an abortion up to twenty weeks into the pregnancy. A maximum of twenty-four weeks of gestation was allowed for certain groups of women. Women who were dealing with humanitarian or crisis circumstances, women who were children, women with diverse abilities, and women who had endured incest or rape all fall under these categories. That being stated, this extension could only be approved with the stamp of approval from two licensed medical professionals. The update brought attention to the fact that, because of their circumstances, low-income women face obstacles while trying to get medical help quickly.

In addition, the amendment contains measures that may be used in cases when major foetal anomalies are discovered after 24 weeks of pregnancy. The change encompassed these statutes. The state government may have established a Medical Board to hear cases like this and make recommendations on whether or not to approve termination. The Medical Board often includes experts in maternal health and foetal abnormalities who review cases before

making recommendations. Gynaecologists, paediatricians, radiologists, and other subject-matter experts make up this group of specialists. It is also the job of these experts to give recommendations. The Amendment also substantially improved things by ensuring that women seeking abortions may remain anonymous and secret during the procedure. Women seeking a medical abortion have their names and personal information protected under Section 5A of the revised Act, with the exception of those persons permitted by law. Women who want to have an abortion via medical procedures are covered by this law. The purpose of implementing this clause was to lessen the social stigma associated with abortion while also safeguarding the person's dignity, privacy, and secrecy (Bhujel, 2022). The 2021 Amendment also expanded the definition of "any woman or her partner" from "married woman or her husband" to include additional scenarios when a method of birth control failed. This shift mirrored a more modern and all-encompassing view of reproductive rights and interpersonal interactions. Furthermore, it led to an expansion of abortion services available to unmarried women. The judicial system acknowledged the constitutional concepts of equality, dignity, and privacy, and it brought abortion legislation into conformity with these principles.

Even though these forward-thinking changes are in place, there are still several obstacles to the MTP Act's implementation. Safe abortion services are still difficult to get in many regions of India due to a number of factors. Some of these challenges include not enough people knowing about them, not enough qualified doctors, societal stigma, not enough healthcare facilities in remote regions, and long wait times for medical and judicial approvals. It is not uncommon for the court system to get involved in cases involving pregnancies that beyond the limits set by statute. For victims of rape or those born with severe birth defects, this is a more pressing concern (Sharma, & Sangwai, 2021).

When the Medical Termination of Pregnancy Act of 1971 and the 2021 Amendment were approved in 1971, it was a major step toward recognising reproductive healthcare as a fundamental part of women's rights and public health. The increasing stance that Indian law adopts toward reproductive autonomy, respect, privacy, and safe motherhood is shown by the passing of this legislation. As a result of the new legislation, reproductive justice and the right to healthcare for women are more secure in India. This is because the law has addressed humanitarian and constitutional issues while also expanding access to safe abortion services.

CONCLUSION

Constitutional rights, medical ethics, societal values, and women's reproductive independence are all delicately balanced by the laws that regulate abortion. Several countries have, throughout time, sought to enact more lenient abortion legislation based in fundamental human rights in an attempt to protect women's health and dignity. Both the Medical Termination of Pregnancy Act and its 2021 Amendment have helped to increase access to safe and dependable abortion services in India and to expand reproductive rights generally. The Dobbs ruling, on the other hand, has had a profound impact on American abortion legislation, leading to variations from state to state.

While reproductive rights have been strengthened via legal improvements, there are still barriers that prevent the effective implementation of abortion laws. Some of these challenges include political unrest, legal hurdles, healthcare access concerns, and social stigma. Therefore, to provide reproductive justice and safe healthcare for all women, there must be consistent calls for public awareness, accessible healthcare facilities, well-balanced legal reforms, and the protection of women's dignity and autonomy.

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