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WOMEN'S REPRODUCTIVE AUTONOMY AS A HUMAN RIGHT: A CRITICAL ANALYSIS OF ABORTION LAWS IN INDIA

[1] Prerna kumari

ABSTRACT

The Emphasis must not be on the right to privacy and reproductive control

~ Ruth Bader Ginsburg

Reproductive rights serve as a broad term for many issues, such as abortion, contraceptive use, child spacing, sexual preferences, reproductive health services, sex education, and information on reproductive matters. The subject has been debated by legal experts for a long time, not only because it touches upon health matters but also because it involves ethical and moral issues. Therefore, the purpose of the paper is to review the right of women to reproductive freedom in India by analyzing the interaction between the rights guaranteed in the country's Constitution and the constraints imposed by the existing legislation.

The author thoroughly examines India's responsibilities under international treaties like CEDAW, ICCPR, and ICESCR and looks at how these commitments are reflected in the country's legal framework. Applying doctrinal analysis, important court cases, and socio-economic investigation, the research shows several structural barriers that prevent women from getting access to safe abortion. Research suggests that India should move from its existing model based on permissions laid down in criminal law towards a new model that gives importance to rights, where reproductive choice and the bodily integrity of women will be regarded as human rights.

[1] Prerna kumari, 5th year BA.LLB. (Hons.) student, Christ (Deemed to be University), Delhi NCR

Keywords: Reproductive Rights, Bodily Autonomy, Medical Termination of Pregnancy Act (MTP Act), Constitutional jurisprudence, Gender equality.

INTRODUCTION

The concept of reproductive rights administration is widely accepted and has practical effects across various forms of law.[2] "Reproductive rights include access to healthcare and autonomous decisions about contraception, pregnancy and abortion without being coerced, discriminated against or subjected to undue state interference; and are integral to the women's right to personal liberty and right to privacy, as the evolving jurisprudence under Article 21[3] has acknowledged.

Reproductive rights in India are governed by two major laws. The MTP Act of 1971 was amended in 2021 to allow safe abortion through expansion of the gestational limit of 24 weeks for certain categories of women and, after that, in cases of serious fetal anomaly. The PCPNDT Act[4] was enacted in 1994 and then amended in 2003 to stop the practice of sex selection through methods of sex determination that lead to female foeticide. Overall, these laws reflect India's commitment to policies on reproductive autonomy and gender justice.[5] Despite the constitutional guarantees and changes in policy, millions of women in India continue to face significant barriers to making reproductive decisions, especially women from marginalized castes, religious minorities, and rural and economically disenfranchised communities.

The relevance of the research will be determined by the extent to which it demonstrates a shift towards a rights-based framework in the field of women's bodily autonomy and reproductive rights, shifting the emphasis from demographic issues to dignity and autonomy. Through the analysis of constitutional perspectives and new trends, the research will strive to identify strengths, deficiencies, and avenues for further reform.[6]

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[2] Anshul & Mandeep Kaur, *Reproductive Autonomy and the Right to Medical Abortion: An Analysis*, 7 Indian J. L. & Legal Rsch. (2025).
[3] Suchitra Srivastava v. Chandigarh Admin., (2009) 9 S.C.C. 1 (India); see also Makam Ganesh Kumar, *Article 21 & Abortion*, Jindal Global Univ. Publ'ns Repository (2020).
[4] Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, No. 57 of 1994, India Code (1994).
[5] Nisha Ranjan, *A Critical Analysis of Reproductive Rights of Women in India: Legal Framework, Societal Challenges, and the Way Forward*, 13 Int'l J. Creative Rsch. Thoughts b658 (2025).
[6] Atina Krajewska, *Connecting Reproductive Rights, Democracy, and the Rule of Law: Lessons from Poland in Times of COVID-19*, 22 German L.J. 1072 (2021).

RESEARCH OBJECTIVE

This study aims to:

i. Discuss reproductive autonomy and its global and Indian development;
ii. Discuss the extent of congruency between Indian laws and the global laws on reproductive rights;
iii. Discuss the socio-cultural and economic factors that inhibit the demand for reproductive health care;
iv. Identify the role of key actors, such as the state, non-governmental organizations and civil society, in promoting reproductive autonomy;
v. Make concrete recommendations to fill gaps in policies and practices that promote women's reproductive rights.

RESEARCH QUESTION

1. How is women's reproductive autonomy as a fundamental right as per Articles 14, 15 and 21 of the Indian Constitution acknowledged by the laws on abortion in India (IPC, MTP Act and the 2021 Amendment to the MTP Act)?
2. Do India's international obligations in the field of human rights under CEDAW, ICCPR, and ICESCR undermine or enhance the domestic law on abortion?
3. What are the legal, institutional, and socio-cultural constraints to effective implementation of the MTP Act with respect to marginalized women (minors, rural, tribal, and low-income groups)?
4. What policy and legislative changes are necessary to move away from a permission-based ‘criminal law’ approach to abortion to a rights-based ‘health law’ approach in India?

STATEMENT OF PROBLEMS

Although reproductive rights are acknowledged as a basic right of every human being, Indian laws on abortion create significant barriers to women's reproductive freedom. It is causing a violation of many of the fundamental human rights, such as the right to life, health, privacy, and non-discrimination.

RESEARCH METHODOLOGY

In this research project, doctrine and qualitative interpretation are utilized, since the framework of this research requires thorough examination of research methodology concerning criminal law and reproductive rights in India. Primary legal materials sought out during the research include Indian Penal Code drafts, MTP Act drafts, as well as some parts of the Constitution of India (Articles 14, 15, 21). On the other hand, secondary sources include significant verdicts provided by the Supreme Court of India and High Court verdicts.

CONCEPTUAL FRAMEWORK: REPRODUCTIVE AUTONOMY AS A HUMAN RIGHT

The concept of reproductive rights refers to a subcategory of human rights acknowledged by the UN International Conference on Human Rights in 1968. Hence, reproductive rights are deemed to be the UN's notion, and India complies with its obligations resulting from being a member of the UN.[7]

UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR), 1948

Safe and legal abortion services are human rights. It is the practice of denying women, girls, and other pregnant women access to abortion that has been interpreted as a form of discrimination under international human rights law, which threatens a wide array of human rights. The distinction of the UN's work is in its mission of promoting high standards of living, full employment, creating prosperous relations between nations, and international cooperation with regard to both the problems of the present day and cultural and educational issues, along with the respect for human rights worldwide.[8]

In 1948,[9] the United Nations established the Universal Declaration of Human Rights (UDHR) to safeguard various human rights listed in Articles 1 through 30[10], and "Article 5 provides important guidance on the extent of the right to abortion under international human law." The declaration affirms that no one should be subjected to torture or degrading treatment, and it

[7] Amrittha Adikkesavelu, *The Right of a Woman to Exercise Her Reproductive Choice Is a Dimension of Personal Liberty Under Article 21, Vis-à-vis Its Human Right*, Legal Service India (last visited Oct. 25, 2025).
[8] U.N. Charter art. 55.
[9] G.A. Res. 217 (III) A, U.N. Doc. A/810, at 71 (Dec. 10, 1948).
[10] See Vasily Tatsiy, *The Universal Declaration of Human Rights: The Worldwide Humanism Manifesto*, 99 Critical Q. for Legis. & L. 14, 14–19 (2016); Margaret E. McGuinness, *Peace v. Justice: The Universal Declaration of Human Rights and the Modern Origins of the Debate*, 35 Diplomatic Hist. 749, 749–68 (2011).

initiated a worldwide movement to safeguard some fundamental human rights as stated in Article 5.[11]

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR) 1966.

"Article 12[12] says that everyone has the right to the best possible standard of physical and mental health, which includes sexual and reproductive health. General Comment No.22 from 2016 clearly states that being able to make decisions about your own reproductive choices, having good material health, getting access to contraception, and receiving abortion services are all part of the right to health." By calling on countries to remove the barriers that prevent women from making choices regarding their own bodies, including financial issues, negative human attitudes towards women, lack of knowledge, and unfair legislation, ICESCR has done a good job in forcing nations to improve women's situation and intensify their work towards achieving gender equality. The fact that India signed the ICESCR in 1979 means that the country is committed to working on implementing the provisions put forth in this instrument and making gender equality a reality in time.[13]

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

CEDAW is an international organization dedicated to preventing and eradicating discrimination against women.[14] In 1979, CEDAW passed a convention in which it expresses its stance on reproductive health. The CEDAW convention clearly states that nations that have been members of the CEDAW convention must take all necessary measures to eliminate discrimination against women, as well as protect their right to health and safety in their workplaces. Article 1 of the DEVAW statement defines violence against women as any act of violence based on gender leading to physical, sexual, or psychological harm.[15] This statement

[11] Universal Declaration of Human Rights art. 5, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).
[12] International Covenant on Economic, Social and Cultural Rights art. 12, Dec. 16, 1966, 993 U.N.T.S. 3.
[13] Nisha Ranjan, *A Critical Analysis of Reproductive Rights of Women in India: Legal Framework, Societal Challenges, and the Way Forward*, 13 Int'l J. Creative Rsch. Thoughts b658 (2025).
[14] Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, U.N. Doc. A/RES/34/180 (Dec. 18, 1979) (entered into force Sept. 3, 1981; ratified by India 1993).
[15] Marsha A. Freeman, *The Human Rights of Women Under the CEDAW Convention: Complexities and Opportunities of Compliance*, 91 Proc. Ann. Meeting (Am. Soc'y Int'l L.) 378, 380 (1997).

is clearly stated in the DEVAW[16] Declaration. Be it intimidation, coercion, or unwarranted deprivation of liberty, all of them fall under the category of threats.

A wide range of other human rights that are protected by international human rights law may also be violated when access to safe and legal abortion services is curtailed, or does not exist, unless there is good reason.[17] These rights encompass the right to be free from torture and cruel, inhuman and degrading treatment;[18] the right to life, health and information;[19] and the right to privacy, body autonomy and integrity; [20]the right to choose the number and spacing of children;[21] the right to liberty; the right to profit from scientific advances; and the right to freedom of conscience and religion.

In K.L. v. Peru,[22] the UN Human Rights Committee was the first to rule that a country may infringe on human rights by refusing to provide safe and legal abortions. This was the first occasion on which a government came under the obligation of an international body for human rights to compensate it for its failure to provide access to legal abortion services.[23]

***Mellet v. Ireland*[24]** is the case in which the UN Human Rights Committee found that the law on abortion in the Republic of Ireland was a human rights violation by prohibiting abortion in cases of fatal fetal abnormalities and forcing the victim to travel to the UK to have the procedure. Reproductive rights are a vital part of the global human rights system and are important for promoting human dignity and gender equity. Some organizations that champion reproductive rights are the UN, WHO, and the International Planned Parenthood Federation (UNFPA, 2021).

EVOLUTION OF ABORTION LAWS IN INDIA

[16] Declaration on the Elimination of Violence Against Women, G.A. Res. 48/104, U.N. Doc. A/RES/48/104 (Dec. 20, 1993).
[17]Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.
[18] ICCPR arts. 2, 3, 14, 26, Dec. 16, 1966, 999 U.N.T.S. 171; UDHR art. 7, G.A. Res. 217 (III) A (Dec. 10, 1948); India Const. arts. 14–18.
[19] ICCPR arts. 6, 9(1), Dec. 16, 1966, 999 U.N.T.S. 171; UDHR arts. 3, 7, G.A. Res. 217 (III) A (Dec. 10, 1948); India Const. art. 21.
[20] ICCPR art. 7, Dec. 16, 1966, 999 U.N.T.S. 171; UDHR art. 5, G.A. Res. 217 (III) A (Dec. 10, 1948); Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment arts. 1–16, Dec. 10, 1984, 1465 U.N.T.S. 85; India Const. art. 21.
[21] ICCPR art. 12, Dec. 16, 1966, 999 U.N.T.S. 171; UDHR art. 12, G.A. Res. 217 (III) A (Dec. 10, 1948).
[22] K.L. v. Peru, Human Rights Comm., Comm. No. 1153/2003, U.N. Doc. CCPR/C/85/D/1153/2003 (2005).
[23] Gargy Basu, *An Analysis of Abortion Laws in India from a Human Rights Perspective*, 7 Int'l J.L. Mgmt. & Human. 1891 (2024).
[24] Mellet v. Ireland, Human Rights Comm., Comm. No. 2324/2013, U.N. Doc. CCPR/C/116/D/2324/2013 (2016).

In the period before 1971, abortion had not yet been made legal, and it was also judged as an illegal act under Section 312 of the Indian Penal Code, which was put into existence during the British colonial period. Nevertheless, in 1971, it was stated that the Constitution of India recognized certain rights related to abortion for women.

THE MEDICAL TERMINATION OF PREGNANCY (MTP) ACT WAS CREATED IN 1971.

In 1964, the Shah Committee was set up by the Government of India in order to carry out research in the field of culture, medicine, and legal issues of abortion. In terms of its research method, the committee sought to collect information from the field and then sent recommendations about the legalization of abortion in India. The MTP Act of 1971 was introduced in accordance with the Constitution of India.[25] According to the MTP Act,[26] a licensed medical professional can perform abortions in approved medical institutions when certain requirements are met. Circumstances under which abortions can be performed according to the Act are threats to the life, physical or mental well-being of the woman, fetal anomalies, and failure of contraceptives. The Act also specifies the limitations on the period of gestation for abortion, setting out several requirements depending on different situations of pregnancy.

The enactment of the MTP Act was a substantial step in the direction of creating a more humane and rights-oriented regulatory approach to abortion in India. The Act recognized the right of women to avail themselves of safe and legal abortion services and aimed to reduce the public health problems associated with illegal abortions. Nevertheless, the application of this Act has encountered numerous problems throughout the years of its existence.[27]

MTP AMENDMENTS ACT (2021)

The MTP amendment bill was passed by both houses of Parliament in March 2020. This was one of the last laws brought in before the lockdown. The legislation included the key points of the previous Act but was more advanced and liberal in nature. The Act increased the limit for

[25] *The History of Abortion Rights in India and the US*, Drishti IAS (July 7, 2022), https://www.drishtiias.com/blog/the-history-of-abortion-rights-in-india-and-the-us.
[26] Medical Termination of Pregnancy Act, No. 34 of 1971, India Code (1971).
[27] Christabell Joseph, *The Evolving Landscape: Abortion Laws in India*, 12 Int'l J. Creative Rsch. Thoughts l96 (2024).

performing abortions from 20 weeks to 24 weeks.[28] With this Act, single women can now terminate their pregnancies due to contraceptive failure. In addition, women are entitled to privacy. However, it is permitted for medical organizations to give information regarding abortions only to authorized entities.

In the MTP (Amendment) Act, 2021,[29] India's abortion scenario has gained flexibility due to the reduction of barriers in the process as well as an increase in the gestational limit. Before, the practice of abortion within twelve weeks was allowed based on one doctor's opinion, and the same treatment between 12 and 20 weeks required the opinion of two doctors. After the new changes, the procedure up to 20 weeks can be approved by one medical professional, while the termination from 20 to 24 weeks requires approval of two doctors in a specific group of cases.[30] Any abortions after 24 weeks of pregnancy are allowed only for significant fetal deformities, with the permission of a State Medical Board. Amendments have been made to improve the availability of legal abortion procedures while maintaining the level of medical regulation.[31]

CONSTITUTIONAL DIMENSIONS: REPRODUCTIVE RIGHTS UNDER THE INDIAN CONSTITUTION

"The freedom of an individual woman to choose to have a child or elect to abort her pregnancy is within the purview of privacy." (Soli Sorabjee, 2018)[32]

The constitutionally guaranteed protection of reproductive rights is backed by a strong legal foundation with respect to Article 21 of the Constitution of India, which relates to the protection of life and liberty of the individual.[33] The Supreme Court of India, in ***Suchitra Srivastava and Anr. v. Chandigarh Administration (2009),***[34] ruled that a pregnant woman's reproductive rights were a part of her right to life encompassed under Article 21 of the Indian Constitution.

[28] Christabell Joseph, *The Evolving Landscape: Abortion Laws in India*, 12 Int'l J. Creative Rsch. Thoughts l96 (2024).
[29] Medical Termination of Pregnancy (Amendment) Act, No. 8 of 2021, India Code (2021).
[30] Ruchika Mohapatra, *Law of Abortion in India: Medical Termination of Pregnancy Act, 1971* [2001 & 2002] [full publication details not provided in original footnote].
[31] *The History of Abortion Rights in India and the US*, Drishti IAS (July 7, 2022), https://www.drishtiias.com/blog/the-history-of-abortion-rights-in-india-and-the-us.
[32] Barkha Dodai & Abhilash Arun Sapre, *Decoding Women's Reproductive Autonomy: A Critical Examination of Abortion Laws in India*, in *Gender, Environment, and Human Rights: An Intersectional Exploration* 75, 75 (2024), https://doi.org/10.4018/979-8-3693-6069-9.ch005.
[33] India Const. art. 21.
[34] Suchitra Srivastava v. Chandigarh Admin., (2009) 9 S.C.C. 1 (India).

Thus, the decision demonstrates the approach of the court towards maintaining a woman's right to make reproductive choices. Moreover, Article 14, which promises equality before the law, and Article 15, which prohibits sex-based discrimination, emphasize the necessity for non-discriminatory access to reproductive healthcare.[35] The constitutional pledge to achieve gender justice and human dignity thus establishes the normative basis for reproductive rights jurisprudence in the country.[36]

Moreover, it is noted that the right to abortion could be inferred from the right to privacy that is implied in Article 21**.** The Supreme Court in ***KS Puttaswamy v. Union of India 2017***[37]held that reproductive choice is an element of personal liberty protected by Article 21 of the Constitution of India. The Indian Penal Code of 1860 discusses the abortion-related provision in Sections 312-316 of the code (Sections 88 to 92 of the Bharatiya Nyaya Sanhita, 2023 (came into force on and from July 1, 2024) deal with "Of causing miscarriage, etc." These provisions are similar to Sections 312 to 318 of the Indian Penal Code, 1860.

India is bound by various international legal principles that recognize the idea of reproductive freedom. Countries must use acts such as the CEDAW and the Beijing Platform for Action to fulfill their commitments regarding reproductive health care services (United Nations 1979; United Nations 1995). However, the laws are rarely implemented properly, thus limiting their efficacy in providing women with the reproductive freedom that they need (Cook 1994). The legislation demonstrates the existence of a gap between the recognition of reproductive rights and the practical provision of the possibility of using them.[38]

To discuss and operationalize the constitutional rights of women provided in Articles 14, 15(3), 19 and 21, among others, two major legislations have been enacted: *(i) the Medical Termination of Pregnancy Act, 1971 (the MTP Act)*, and (ii) *the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (the PCPNDT Act)*, apart from penal

[35] Anshul & Mandeep Kaur, *Reproductive Autonomy and the Right to Medical Abortion: An Analysis*, 7 Indian J.L. & Legal Rsch. (2025).
[36] Adsa Fatima & Sarojini Nadimpally, *Abortion Law in India: A Step Backward After Going Forward*, Sup. Ct. Observer (Nov. 17, 2023), https://www.scobserver.in/journal/abortion-law-in-india-a-step-backward-after-going-forward (last visited Oct. 25, 2025).
[37] K.S. Puttaswamy v. Union of India, AIR 2018 SC (Supp.) 1841 (India).
[38] Jaspreet Kaur & Mandeep Kaur, *Reproductive Autonomy of Women as a Human Right: An Empirical Study with Special Reference to the State of Punjab*, Rsch. Square (June 15, 2026) (preprint).

provisions. The MTP Act limits the right to abortion, while the PCPNDT Act prohibits sex selective abortions.[39]

CRITICAL ANALYSIS AND GAPS IN THE INDIAN REPRODUCTIVE RIGHTS FRAMEWORK

Various Laws About Reproductive Rights of Women:

1. MEDICAL TERMINATION OF PREGNANCY (MTP) ACT, 1971 (AMENDED 2021)

This law allows for abortion, but only under certain conditions, mainly when it is necessary for the physical or mental health of the woman.

In 2021, this law was amended to set the maximum permitted gestation at between 20 and 24 weeks for several groups, including rape survivors and minors.[40]

Allowed unmarried women to access abortion under similar terms as married women. o Introduced the concept of a Medical Board for cases beyond 24 weeks.[41]

CRITICISM

The law in India does not provide full or unlimited rights to an individual to terminate a pregnancy according to his or her own wishes. The Medical Termination of Pregnancy (MTP) Act, 1971[42]states that abortions may be carried out after following certain laws, procedures and professional practices.

The Supreme Court has accepted that the act of reproduction is an integral part of an individual's private life and freedom to choose, as enshrined in Article 21 of the Constitution.[43] Nevertheless, the laws still regulate when one is allowed to have an abortion.

There is thus a contradiction between the right of women to take care of their bodies and the responsibilities of the state with regard to the health of the mothers and medical treatment.

[39] Bharatiya Nyaya Sanhita, 2023, §§ 88–92, No. 45 of 2023, India Code (2023) (in force July 1, 2024); see also Indian Penal Code, 1860, §§ 312–318, No. 45 of 1860, India Code.
[40] Barkha Dodai & Abhilash Arun Sapre, *Decoding Women's Reproductive Autonomy: A Critical Examination of Abortion Laws in India*, in *Gender, Environment, and Human Rights: An Intersectional Exploration* 75 (2024).
[41] Nisha Ranjan, *A Critical Analysis of Reproductive Rights of Women in India: Legal Framework, Societal Challenges, and the Way Forward*, 13 Int'l J. Creative Rsch. Thoughts b658 (2025).
[42] Medical Termination of Pregnancy Act, No. 34 of 1971, India Code (1971).
[43] India Const. art. 21.

In India, various regulations and practices discriminate against disadvantaged women, making their lives as citizens of the country difficult. Legal paternalism restrains people's liberty and does not allow them to choose the way they want to lead their lives. The consequences of the MTP Act and POCSO laws taken together make it impossible for minors to provide themselves with treatment for pregnancy termination in time because they are obliged to report their cases. Similarly, the Medical Board process for cases after 24 weeks often causes delays in procedures, which makes women have to go to courts for help.

2. PRE-NATAL DIAGNOSTIC TECHNIQUES (REGULATION AND PREVENTION OF MISUSE) ACT, 1994, AS AMENDED IN 2003 TO BECOME THE PRE-CONCEPTION AND PRE-NATAL DIAGNOSTIC TECHNIQUES (PROHIBITION OF SEX SELECTION) ACT,

To end the practice of sex determination of a fetus and tackle the problem of female foeticide, the Act regulates the use of pre-natal diagnostic techniques like ultrasound and amniocentesis. They can only be performed with the intention of identifying any genetic disorders,[44] metabolic disabilities, chromosomal disorders, some birth defects, as well as diseases and conditions associated with gender. The Act empowers the authorities to suspend or cancel the license of infringing clinics and laboratories and prescribes severe penalties and long-term imprisonment in case of violators.

CRITIQUE:

The Act deals with the methods, but not with the root causes of the problem such as dowry practices, preference for boys, or economic problems.

SOCIAL, CULTURAL AND POLITICAL ISSUES

Women's health is impacted not by lack of information, but due to violations of their human rights.[45] Sexual and reproductive rights are connected: breaking these rights, such as not having the choice of conducting a safe abortion or being sexually assaulted, causes negative effects. If women have power over their reproduction, they will be able to choose for themselves and their babies.[46]

[44] Anshul & Mandeep Kaur, *Reproductive Autonomy and the Right to Medical Abortion: An Analysis*, 7 Indian J.L. & Legal Rsch. (2025).
[45] M.F. Fathalla, *Women's Health: An Overview*, 46 Int'l J. Gynecology & Obstetrics 105, 105–18 (1994).
[46] Guang-Zhen Wang, *Reproductive Health in the Context of Economic and Democratic Development*, 3 Comp. Soc. 135, 135–62 [year not provided in original footnote].

India has particular social and cultural attitudes toward abortion, which affect the application of the existing legislation. People tend to avoid seeking assistance from health care professionals and follow unsafe methods due to fear of being criticized because they are worried about the potential consequences of their actions. However, this fear diminishes the interest of the health care professionals in giving the proper assistance and helping women solve such problems. Thus, it is necessary to involve communities to provide women with a chance to have easy access to safe abortions.[47]

ACCESSIBILITY AND AVAILABILITY OF SERVICES

The efficacy of India's abortion laws depends on the accessibility of abortion services to the population, including rural and remote regions. While the MTP Act paves the way for legal termination of pregnancies, it is a fact that women in tribal and backward regions are often unable to avail of these services since the available clinics are far away, transportation just isn't there, and proper medical professionals are not available. Due to better infrastructure and highly trained medical staff in urban areas, more abortions can be accessed and undertaken under medical supervision. On the contrary, in rural societies, abortions are usually performed by unqualified providers and may result in dangerous consequences, and access to reproductive healthcare services becomes even more complicated as there is no way to find all the necessary information leading up to an abortion.[48]

JUDICIAL APPROACHES TO REPRODUCTIVE RIGHTS IN INDIA

In ***X v. The Principal Secretary***[49] ruled that the statement of objects and reasons reveals that the MTP (Amendment) Act 2021 is mainly to enable more individuals to undergo safe and lawful abortions, which will help in reducing the rates of death and serious health complications during pregnancy.

Moreover, the increase in the cut-off period for terminating pregnancy in specific cases was considered significant in fulfilling the purpose of treating women choosing to terminate their pregnancies with dignity, allowing them to take charge of their lives, preserving their right to privacy, and ensuring that they are treated fairly at the same time.

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[47] Christabell Joseph, *The Evolving Landscape: Abortion Laws in India*, 12 Int'l J. Creative Rsch. Thoughts l96 (2024).
[48] Shuchita Mundle et al., *Increasing Access to Safe Abortion Services in Rural India: Experiences with Medical Abortion in a Primary Health Center*, 76 Contraception 26, 26 (2007).
[49] X v. Principal Secretary, Health & Family Welfare Dep't, AIR 2022 SC 4917 (India).

In ***Court on its Own Motion v. State of Maharashtra***[50] Noted that compelling a woman to carry an unwanted pregnancy inflicts physical and emotional damage on a woman. This makes her more anxious, which could harm her mental health due to the many challenges she may face, like social problems, financial issues, and other traumatic situations once the child is born.

The Supreme Court of India, in the cases *of* ***X v. Union of India,***[51] ***Mamta Verma v. Union of India,***[52] ***Meera Santosh Pal v. Union of India***,[53] and ***Sarmistha Chakraborty v. Union of India,***[54] allowed abortions to be carried out beyond 20 weeks, taking into consideration the adverse effect it may have on the mental health of the mother. The reasons for approaching the court may vary and may include cases of changing the living conditions of a woman during the time of pregnancy or safety issues, such as being unsafe or facing a mental issue. Other causes could be problems with the fetus being detected at a later stage, such as pregnancy for young or disabled women, or cases of pregnancies occurring due to rape or attack.

COMPARATIVE PERSPECTIVE

UNITED STATES OF AMERICA

Abortion was prohibited throughout the country by 1900, except for the case where the mother's life was endangered. Such draconian regulation was overturned in 1973 by the Supreme Court's historic ***Roe v. Wade***[55] decision, which held that it infringed a woman's fundamental right to privacy. In ***Dobbs v. Jackson***[56] women's Health Organization, however, decided in June 2022, the court overturned Roe, which it ruled does not give a woman the right to an abortion, and it returned that power to individual states to control or outlaw abortion. This step was instantly condemned by women's groups, public society, and even by old U.S. friends as a retrograde step, and was met with strong objection from nearly half of the states.

Gonzales v. Carhart (2007)[57] The case lay on whether the Partial- Birth Abortion Ban Act of 2003 was legal and constitutional. In doing so, the Supreme Court pointedly signaled that there would be no departure from the relentless socio- cultural disputes that have marked issues of reproductive rights within the nation by supporting the national ban on this procedure. This is a decision, in essence, that reflects great social and cultural challenges to women in relation to

[50] Court on Its Own Motion v. State of Maharashtra, 2016 SCC OnLine Bom 8426 (India).
[51] X v. Union of India, (2017) 3 S.C.C. 458 (India).
[52] Mamta Verma v. Union of India, (2018) 14 S.C.C. 289 (India).
[53] Meera Santosh Pal v. Union of India, (2017) 3 S.C.C. 462 (India).
[54] Sarmishtha Chakraborty v. Union of India, (2018) 13 S.C.C. 339 (India).
[55] Roe v. Wade, 410 U.S. 113, 35 L. Ed. 2d 147 (1973).
[56] Dobbs v. Jackson Women's Health Org., 597 U.S. 215 (2022).
[57] Gonzales v. Carhart, 550 U.S. 124 (2007).

their right to decide over their health and access to some specific health services. The ruling has been quite controversial; to many, this is seen as a big blow to women's reproductive rights and points further to the struggle that remains for women to have equal access to medical care without gender discrimination.

UNITED KINGDOM

In 1803, English law made abortion after quickening a crime, and death was often the punishment; if done before quickening (between 18-20 weeks of pregnancy), then it was usually a crime. Until now, human life was regarded as a part of a woman's body, and the unborn child had no rights. This meant that there was no moral issue in ending its life. After some time, in 1837, English law stopped using the rule that required a quickening and serious punishment, including the death penalty; abortion was allowed to some extent to save a woman's life. In 1938, the court updated an old law in the important case of ***Rex v. Bourne, in 1938***[58] said that the mother's mental pain was enough reason for an abortion.

CANADIAN

Reproductive autonomy is protected by the individual's rights to life, liberty, and security as outlined in Section 7 of the Canadian Charter of Rights and Freedoms, according to Canadian jurisprudence. In the case of ***R v. Morgentaler***,[59] the Supreme Court of Canada ruled that the previous criminal laws that forbade abortion were unconstitutional. The Court found that because the legal requirements for obtaining an abortion caused delays and health risks, they conflicted with a woman's right to security and bodily integrity. The Court emphasized that the government should not unduly interfere with a woman's decision to end her pregnancy.

NEPAL

In ***Lakshmi Dhikta v. Nepal (2009),*** the Supreme Court of Nepal ruled that limiting access to safe and legal abortion services is a human rights violation. Due to a lack of resources and financial constraints, women from rural and impoverished areas continued to face significant obstacles[60] even after abortions up to 12 weeks were legalized in Nepal in 2002. The Court examined the reproductive health provisions of the Interim Constitution with regard to the

[58] Rex v. Bourne, [1939] 1 K.B. 687 (Eng.).
[59] R. v. Morgentaler, [1988] 1 S.C.R. 30 (Can.).
[60] Nepal Gazette, pt. 52, extra issue 47, pt. 2, at 22–23 (2002) (Nepal); Legal Aid & Consultancy Centre, The Eleventh Amendment of the National Code of Nepal (Muluki Ain) on Women's Rights 6–7 (2002).

ICPD Programme of Action and the ICESCR. It underlined how important it is to guarantee that healthcare is available, reasonably priced, and distributed fairly. To reiterate the state's duty to offer[61] compensation, remedies, and policy modifications that ensure suitable access to abortion services,[62] the Court also cited international cases like ***Tysławc v. Poland (ECHR)***[63] *and* ***Paulina Ramirez v. Mexico (IACHR).***

RECOMMENDATION

Suggestions for Strengthening Reproductive Rights

i. The Medical Termination of Pregnancy framework should be reviewed by Parliament to acknowledge abortion as a fundamental right based on autonomy, privacy, and dignity within reasonable gestational limits, in line with recent court decisions.
ii. Improved training and development opportunities, including instruction on abortion services, should be made available to healthcare professionals, and medical education curricula should incorporate these.
iii. To fully support reproductive health, ethical and legal standards must be reinforced.
iv. In accordance with Articles 14 and 21 of the Constitution, the MTP Act should be changed to recognize abortion as a right within reasonable gestational limits.
v. Courts should always interpret abortion laws with consideration for women's real-life experiences and mental health. Examples of situations where marital rape was accepted as a legitimate reason to seek an abortion and situations where marital status was considered irrelevant to getting an abortion serve as examples of this.

CONCLUSION

The paper concludes that India needs to move from a model of permission-based abortion to a rights-based framework based on dignity, privacy, and bodily autonomy under Articles 14 and 21. Although constitutional guarantees exist and the 2021 MTP Act amendments have been implemented, structural barriers such as gestational limits, medical gatekeeping, stigma, and unequal access still limit access to safe abortion for marginalized women, and there is an urgent

[61] Lakshmi Dhikta v. Gov't of Nepal, Writ No. 0757 of 2066 (Jestha) (S. Ct. 2009) (Nepal), para. 94 (English translation on file with the Center for Reproductive Rights).
[62] Lakshmi Dhikta v. Gov't of Nepal, Writ No. 0757 of 2066 (Jestha) (S. Ct. 2009) (Nepal), para. 95 (English translation on file with the Center for Reproductive Rights).
[63] Tysiąc v. Poland, 45 Eur. H.R. Rep. 42 (2007).

need to legislate abortion as a right, strengthen healthcare infrastructure, train healthcare providers, and ensure gender-sensitive judicial interpretation so that domestic law aligns with international human rights obligations to ensure reproductive autonomy without coercion, discrimination, or undue state interference for all women.