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REPRODUCTIVE FREEDOM: ACCESS TO SAFE ABORTION- Arya Pandey¹**ABSTRACT**

The termination of pregnancy is termed as Abortion. Pregnancy and Abortion and Delivery of progeny are all concerned with women's body. Therefore, the right to decide whether to keep the child inside a woman or terminate the pregnancy should completely be vested in the hands of the women. Unfortunately, women across the globe are being denied of this right, that has a huge impact of their life and bodies. Recently, many states in the United States banned abortion that led to the spark of debate on abortions all over the world. The question arises is, does the government control the bodies of the women? or, Is prohibition of abortion violation of women's fundamental right? This article focuses to throw light on the situations relating to abortion in India and the United States. It deals with the rapid increase in unsafe abortion, due to the ban in abortion practises. This article aims to gather views on unsafe abortion practises and its consequences and tries to provide possible solutions.

INTRODUCTION

Abortion is termination of pregnancy. It is a very important procedure, and the decision whether to choose to keep the baby or abort it, should completely rest in the hands of the mother or individuals responsible for the child. Everyone should have access to safe abortion, and no one should be denied from making decisions for their bodies. Everyone has the right to choose what is good for them and what is better for their body, depriving them of abortion and forcing them to give birth could be a huge risk on life of mother as well as the unborn child. Denying the right to abortion leads to the illegal methods of abortion which are also commonly known as 'unsafe abortion' that puts a huge risk on the life of mother and child

¹ Second Year BBA LLB, Navrachana University

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and has led to maternal mortality in many cases in the past. India however, has shown a support towards abortion by introducing Medical Termination of Pregnancy (Amendment) Act 2021, which gives access to safe and legal abortion services on therapeutic, eugenic, humanitarian and social grounds to ensure universal access to comprehensive care.²

ABORTION LEGAL IN INDIA?

Abortion has been legal in India since 1971, with the enforcement of Medical Termination of Pregnancy Act 1971, with a set of limitations. But, while abortion has been legal in India since 1971, available research shows that 56% of the 6.4 million abortions that take place in the country are unsafe.³ In 2021, the government introduced amendment in the act and made provisions that gave a wider access to safe abortion to women. This amendment was made with the aim to end illegal or unsafe pregnancies and to reduce maternal mortality, it is also a step towards achieving the targets of Sustainable Development Goals. The aim of SDGs is to reduce the global maternal mortality ratio to less than 70 per 100,000 live births, by 2030.⁴ The new law, which came into force from 25 March 2021, will contribute towards ending preventable maternal mortality to help meet the Sustainable Development Goals (SDGs) 3.1, 3.7 and 5.6.⁵

The new Medical Termination of Pregnancy (Amendment) Act 2021, has provisions for terminating pregnancies for unmarried women, it also has a confidentiality clause that prohibits revelation of details of the women whose pregnancy is terminated except for the

²Medical Termination of Pregnancy (MTP) Amendment Act, 2021, Drishti Ias.

<https://www.drishtiias.com/pdf/1632732643-medical-termination-of-pregnancy-mtp-amendment-act-2021.pdf>

³Duggal R, Ramachandran V, *The abortion assessment project – India: key findings and recommendations*, Reprod Health Matters 2004

<https://pubmed.ncbi.nlm.nih.gov/15938165/>

⁴Good Health and Well Being, The Global Goals.

<https://www.globalgoals.org/goals/3-good-health-and-well-being/>

⁵India's amended law makes abortion safer and more accessible, WHO, Apr. 13, 2021.

<https://www.who.int/india/news/detail/13-04-2021-india-s-amended-law-makes-abortion-safer-and-more-accessible#:~:text=The%20new%20Medical%20Termination%20of,universal%20access%20to%20comprehensive%20care.>

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person authorised by law. In *Suchita Srivastava & Anr v. Chandigarh Administration*⁶ the Supreme Court held that women have the right to make reproductive choices and it falls under the ambit of Art 21 (Right to Life). The new amended act provides much access to safe abortion to women in India and ensures their right guaranteed under Art 21 are not violated.

Effectively implementing these provisions and a right-based approach to the abortion laws is crucial so that they become easy to access, thereby saving the lives of several women.⁷ It is a progressive legislation that aims to protect the female and the child.

AIM TO SAFE ABORTION BY INDIAN LEGISLATION ACHIEVED?

1. The aim of the Indian Legislation for access to safe abortions, has yet not been achieved. Unfortunately, a large proportion of women in India continue to utilize illegal and potentially unsafe abortions that jeopardize their health and contribute to significant mortality.⁸ The Centre for Enquiry into Health and Allied Themes (CEHAT), a Mumbai-based research institute, conducted research into this and interviewed women from different regions to find out the prevalent scenarios relating to abortion. One such woman shared her experience. She was stuck in an abusive marriage and found out that she was 8 weeks pregnant with an unwanted pregnancy, so she wanted to go for an abortion. However, the hospital staff insisted that she must get consent from her husband and a no-objection certificate from the police. Surprisingly, the law concerning abortion nowhere requires such permission, and sadly, this is not the story of just one woman but of most of them.⁹
2. Another hindrance is caused by the medical boards who interfere in issues of viability of foetus or applying social stigmas, explicitly judging the women who wants to terminate pregnancy and causing hindrance in her procedure.

⁶*Suchita Srivastava & Anr v. Chandigarh Administration*(2009), 14 SCR 989, (2009) 9 SCC 1

⁷Diksha Paliwal, *Abortion law in India*, ipleaders, Jul 19, 2023.
<https://blog.ipleaders.in/abortion-law-in-india/>

⁸Stillman M, Frost JJ, Singh S, et al. *Abortion in India: a literature review*,2014.
<https://www.guttmacher.org/sites/default/files/pdfs/pubs/Abortion-India-Lit-Review.pdf>

⁹ Paliwal, *supra note 7*

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3. The provisions made by the new amendment act does not allow all the women the right to abortion, only certain women who falls under the categories mentioned in the act causing discrimination. It fails to have a right-based approach but rather has a restrictive approach. The right to abortion is an intrinsic right of a woman, and thus, this Act infringes the same and fails to provide complete autonomy to the women who choose to terminate their pregnancy.¹⁰

Indian Legislation has made progressive step towards safe abortion, but the realm of abortion needs a wider and descriptive rule, so that it is available to all and there is no hindrance caused while trying to seek the procedure. Every woman should have the access to safe abortion only then the aim would be achieved.

ABORTION LEGAL IN US?

Abortion was legal in United States until the Supreme Court, in June 2022 overruled the decision in *Roe v. Wade*, opening the door for states to ban abortion outright. In the year since the decision, 14 states have made abortion illegal.¹¹This regressive decision took away the constitutional right of American women, right to abortion. Being denied from terminating pregnancy, they are being denied of their reproductive rights. Abortion rights are human rights and thus, women in US, are being denied of their human rights.Abortion bans in 14 States have made abortion services largely inaccessible and denied women and girls their fundamental human rights to comprehensive healthcare including sexual and reproductive health.¹²

UNSAFE ABORTIONS

Abortion when performed by person lacking the required medical skill or in environment that does not meet the minimal medical standards with less or no medical tools required is termed as unsafe abortions. When women are denied from terminating their pregnancy they are left

¹⁰Paliwal, *supra note 7*

¹¹*After Roe Fell: Abortion Laws by State*, Centre for Reproductive Rights.

<https://reproductiverights.org/maps/abortion-laws-by-state/>

¹²United States: Abortion bans put millions of women and girls at risk, UN experts say, UNHRC, Jun 2, 2023.

<https://www.ohchr.org/en/press-releases/2023/06/united-states-abortion-bans-put-millions-women-and-girls-risk-un-experts-say>

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with no other option, then to go for illegal abortions that are unsafe for their and the child's life. Banning Abortion does not mark a stop in the procedure, it makes it more unsafe and dangerous. And this increases the risk of maternal mortality. In contrast to a legal abortion that is carried out by a trained medical provider, unsafe abortions can have fatal consequences. So much so that unsafe abortions are the third leading cause of maternal deaths worldwide and lead to an additional five million largely preventable disabilities, according to the WHO.¹³

WHAT CAN BE DONE?

The only solution to end unsafe abortion practises and ensure access to safe abortion is by giving rights to every woman to terminating their pregnancy. Ending the discrimination by dividing them in different categories, and only providing the right to abortion to the women who fall under those categories. Ensuring that women and girls have access to abortion care that is evidence-based – which includes being safe, respectful and non-discriminatory – is fundamental to meeting the Sustainable Development Goals (SDGs) relating to good health and well-being (SDG3) and gender equality (SDG5).¹⁴

The right to abortion is not an opinion. It is a matter of international standards and international legal norms. It is a right underpinned by many human rights, including the rights to physical and mental integrity, the right to health and the right not to be unlawfully and arbitrarily killed through the withdrawal of safe services. It is essential for the dignity of all women and girls, and of everyone who can become pregnant.¹⁵

CONCLUSION

Abortion is the right of every pregnant woman, and therefore they should have safe access to the procedure. Denying them of right to abortion is denying them of their human right,

¹³Key facts on Abortion, Amnesty International.

<https://www.amnesty.org/en/what-we-do/sexual-and-reproductive-rights/abortion-facts/>

¹⁴Abortion, WHO.

https://www.who.int/health-topics/abortion#tab=tab_1

¹⁵Human rights defenders and health workers who face widespread abuse and criminalization for defending the right to abortion must be better protected, Amnesty International, Nov 24,2023.

<https://www.amnesty.org/en/latest/news/2023/11/human-rights-defenders-and-health-workers-who-face-widespread-abuse-and-criminalization-for-defending-the-right-to-abortion-must-be-better-protected/>

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questioning the preamble of the constitution of national as well as the international treaties. Denying access to safe abortion would only lead women to opt for unsafe procedures risking their life, therefore, to end the unsafe practises the right to abortion should be available to all.



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