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ACCESS TO SAFE ABORTION IN INDIA: A GAP BETWEEN LEGAL RECOGNITION AND GROUND REALITY

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Abstract

This paper talks about the contradiction between legal and constitutional recognition of access to safe abortion in India and the ground reality of the same across diverse contexts. At one side of the coin where the abortion rights in India are progressively determined by the Medical Termination of Pregnancy Act, 1971 specifically after its amendment in 2021 along with Article 21 of the Indian Constitution which guarantees reproductive autonomy to women and on the other side lies harsh realities which hinder the process of safe and accessible abortion caused due to societal stigma, administrative barriers, misinformation, and conflicting statutes.

Keywords: *MRTP, RMP, PCPNDT, Abortion, Gestation Period, Stigma*

INTRODUCTION

"A right without access is not a right at all, it's merely a promise on paper."

Our law guarantees progressive and idealistic recognition of safe abortion but the reality says something else. There lies a huge gap between law and access of law. India does not criminalize abortion in absolute sense but still women specially in rural and backward areas are not able to access timely abortion and it remains an arduous process.

The Medical Termination of Pregnancy Act, 1971 amended in 2021 expanded gestational limits and removed marital status discrimination which assured that voluntary termination of pregnancy is a legal medical service. The central theme of this paper is that the legal recognition of termination of pregnancy has not borne fruitful results consequently

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undermining the transformative progress and basic structure of constitution as it violates Article 21 of the Constitution.

STATUTORY FRAMEWORK

The Medical Termination of Pregnancy Act,1971 criminalizes abortion to prevent the society from unsafe and unreasonable terminations, while it also provides exceptions to various sections of the Indian Penal Code now Bhartiya Nyaya Sanhita,2023 which criminalizes miscarriage. It allows termination up to 20 weeks with the opinion of one Registered Medical Practitioner (RMP) and up to 24 weeks for certain categories with opinions from two medical practitioners. This upper gestational limit was expanded to 24 weeks via the amendment in 2021[1]for vulnerable groups like rape survivors, specially-abled women, and minors. According to this act the marital status of women was irrelevant for process of abortion, along with maintaining the confidentiality of abortion seekers. This act also lays down that medical boards may approve abortions in later stages in cases of fetal abnormalities.

In theory these amendments go hand in hand with international reproductive rights norms and work on removing marital discrimination and unreasonable barriers.

The Supreme Court of India has promoted reproductive autonomy as an essential part of right to privacy and dignity under article 21 of the Constitution. In landmark judgements, courts have clarified and interpreted laws related to safe and accessible abortion. Following are the landmark judgements:

1. *Justice K.S. Puttaswamy v. Union of India (2017)*[2]

   In this judgement, the Hon'ble Supreme Court held that freedom to decide over the matter of abortion comes under the ambit of Article 21 of the constitution. Court recognized that reproductive health and bodily decision is essential to personal liberty. This case constitutionalized reproductive autonomy but did not change the MTP regime absolutely.

2. *Suchita Srivastava v. Chandigarh Administration (2009)*[3]

   In this case the court held that "A woman's right to make reproductive choices is also a dimension of 'personal liberty' under Article 21." It explained how reproductive choice gives right to carry a pregnancy and also not to carry one.

[1]Medical Termination of Pregnancy (Amendment) Act, No. 8 of 2021, Gazette of India, Mar. 25, 2021
[2]Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 S.C.C. 1 (India)
[3]Suchita Srivastava v. Chandigarh Admin., (2009) 9 S.C.C. 1 (India)

3. *Murugan Nayakkar v. Union of India (2017)*[4]

The Hon'ble Supreme court in this case gave permission of termination beyond the limits provided in statutes for a 13-year-old rape survivor. This enables that the abortion can be carried on even beyond the limit mentioned in the law for special and certain cases.

Although this decision was taken on a humanitarian ground still it displays a harsh reality about women needing to reach the court for such time sensitive medical care too.

4. *X v. Principal Secretary, Health and Family Welfare Department (2022)*[5]

This progressive judgement laid down abortion rights for unmarried women under the 2021 amendment. The court held that marital status for termination is irrelevant, term "woman" includes unmarried females too, marital rape is a ground for abortion under the MTP framework. Despite all these theoretical advancements, implementation still remains weak.

BARRIERS UNDERMINING ACCESS

There lie various hinderances in the enforcement of abortion laws and pose a major challenge for progressive India. first and foremost, it is the prevalence of **healthcare infrastructure** in urban areas. The safe abortion facilities are available in developed urban areas including Tier-1 cities whereas rural area faces scarcity of trained medical professionals and required infrastructure for safe abortion. This clearly shows the Rural-Urban divide as people in rural areas are not able to avail these facilities moreover, they do not have any awareness about these laws which makes them follow the unreasonable norms laid down by the society.

The requirement of Medical Boards review for approving abortions beyond 24 weeks specially in fatally adverse cases causes delays that can be problematic at various levels. Medical Boards are often unavailable outside hospitals, and delays occur because of procedural challenges. It becomes so hectic for the woman to undergo judicial, administrative proceedings along with coping with the medical condition, both physiological and mental.

Medical termination or abortion is a really sensitive and **stigmatized topic**, especially for females which are unmarried or the ones which have conservative families. Despite the brilliant legal reforms, societal pressure puts them in a dilemma of whether to avail safe abortion services. Even where the law requires the consent of the female alone still family, communities, societies, or random advice givers take the decision in place of the woman and

[4]Murugan Nayakkar v. Union of India, (2017) 5 S.C.C. 719 (India)
[5]X v. Principal Sec'y, Health & Family Welfare Dep't, (2022) 10 S.C.C. 1 (India)

that woman becomes helpless and victimized. All this creates a sense of insecurity and fear in the minds of females.

Furthermore, medical termination happens to be an **expensive process** if carried out with safety. It becomes even more costlier in private hospitals. The public health centers are often regarded as a cheaper option but they lack the precision and excellence and often compromise with hygiene. This forces women to opt for the private facilities which is not possible for economically weaker families along with marginalized communities like Dalits, Adivasis and rural area residents. This makes the access of justice to those who have money and not all people of our country.

The Supreme Court in *X v. Principal Secretary (2022)*recognized structural disadvantage. Yet judicial recognition has not dismantled systemic inequality.

The Pre-Conception and Pre-Natal Diagnostic Techniques Act [6]was enacted to curb sex-selective abortion. However there has been seen a trend of increased inspections of abortion clinics which has created fear among providers and reduced willingness to offer services. The healthcare providers are misinterpreting it to be in compliance with abortion laws which leads to pharmacies and clinics stocking abortion pills that undermines lawful provisions. This causes a dilemma in minds of medical practitioners and hence a chilling effect which stops them from prescribing and giving abortion drugs due to fear of legal trouble.

The Protection of Children from Sexual Offences Act mandates reporting of sexual activity involving minors. This contradicts with confidentiality under the MTP Act placing healthcare providers in a position of legal tension and it hence discourages them from treating minors without reporting. This contradiction in law ultimately affects vulnerable girls.

Unsafe and unregulated abortions significantly contribute to maternal morbidity as when legal services regarding termination are not accessible, women reach to unregulated clinics for treatment, they use abortion pills without any prescription and it therefore increases health risks. All this suggests that statutes along don't guarantee access and safety.

LANDMARK JUDGEMENTS

1. *Devika Biswas v. Union of India (2016)*

[6]Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, No. 57 of 1994 (India)

This case emerged due to increasing deaths in sterilization camps. The Supreme Court in its judgement laid down that reproductive health is linked to Article 21 of the constitution it also recognized that reproductive services must meet safety standards. This case directs us to an interpretation that the access to reproductive health must be safe, dignifies and properly regulated otherwise it will be violative of Article 21 of the Indian Constitution.

2. *CEHAT v. Union of India (2003)*[7]

   Through this case the Hon'ble Supreme court strengthened the implementation of the PCPNDT Act for the prohibition of sex determination and selection. It improved the enforcement and regulation of these matters but contradicted between preventing sex determination and easy and safe abortion. Hence it created a chilling effect in minds of people.

3. *A v. Union of India (2018)*

   In this landmark judgement, the court allowed for medical termination or abortion even at 26 weeks when there is a fetal abnormality. This posed to be helpful for vulnerable females like rape survivors, minors etc. this judgement was really progressive in nature as it laid down judicial willingness to override limits created by the statutes. Still may writ petitions lay down that there occur multiple delays due to inefficient administration.

4. *Z v. State of Bihar (2018)*

   This case contradicts with the one mentioned above as it declared the denial of abortion past 26 weeks despite rape circumstances. It hence highlights absence of compassion in judiciary and rigid statutory ceilings. It shows that courts are not always liberal and sometimes put statues above actual justice.

5. *High Court on its Own Motion v. State of Maharashtra (2016)*

   The Bombay High Court in this case laid down certain guidelines about speedy and efficient working of medical boards in cases of termination. It recognized delays caused in the systems and emphasized on procedural streamlining. It highlights how judiciary is actively involved in managing access to safe and timely abortion hence granting justice.

6. *Laxmi Mandal v. Deen Dayal Harinagar Hospital (2010)*

   In this case the Delhi High Court held that the refusal of maternal healthcare is violative of Article 21 of the Constitution. It therefore recognized maternal healthcare rights as

[7]CEHAT & Ors. v. Union of India, (2003) 8 S.C.C. 398 (India)

enforceable rights. Abortion also falls within the ambit of this legal judgment as it requires maternal care and health facilities.

COMPARITIVE ANALYSIS

When we look at abortion laws through the perspective of human rights, the focus diverts from "Is it legal?" to "Can women actually access it safely, affordably, and without fear of stigma?" International human rights aim to increasingly treat access to safe abortion as a part of the basic human dignity and equality. Under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), it is expected from countries worldwide to remove barriers and hinderances that prevent women from accessing healthcare, including reproductive services. Similarly, the International Covenant on Civil and Political Rights (ICCPR) protects the rights to life and privacy, which global human rights bodies have interpreted to include reproductive decision-making. The World Health Organization (WHO) [8]also emphasizes that abortion services must be available, accessible, acceptable, and of good quality and hygiene. In other words, legality alone is not enough real access matters the most.

Different countries approach the issue of abortion in different ways. In the United Kingdom, abortion is regulated under the Abortion Act 1967 which allows termination up to 24 weeks with approval from doctors, and services are largely provided through the public healthcare system. As the system is funded by people, women generally face lesser financial barriers and won't have to worry about expenses. South Africa goes a step further with the Choice on Termination of Pregnancy Act 1996. There, abortion is available on request up to 12 weeks and under certain conditions afterward. Importantly, South Africa's Constitution directly protects dignity, bodily integrity, and access to healthcare, making abortion more clearly linked to constitutional rights rather than treated as an exception to criminal law.

On the other hand, the United States shows how unstable abortion rights can be. For nearly fifty years, *Roe v. Wade* recognized abortion as part of the constitutional right to privacy. However, in 2022, the U.S. Supreme Court overturned that protection in *Dobbs v. Jackson Women's* Health Organization, allowing individual states to restrict or ban abortion. This led to strict bans in several states, showing that when rights are not firmly protected by legislation or constitutional reform, they can be reversed.

[8]World Health Organization, Abortion Care Guideline (2022)

Ireland provides another example of change. For many years, abortion was almost completely banned under its Constitution. After a national referendum in 2018, the restriction was removed, and a new law now allows abortion on request up to 12 weeks. This shift reflected growing recognition that women's health and autonomy should not be controlled by rigid constitutional prohibitions.

Compared to these countries, India's law appears relatively progressive. The Medical Termination of Pregnancy Act allows abortion under defined conditions and was expanded in 2021 to include unmarried women and extend gestational limits. However, India's system still depends heavily on medical approval and administrative procedures. In many rural areas, trained providers and certified facilities are limited. When access depends on geography, income, or social acceptance, the right becomes uneven in practice.

From a human rights perspective, the real issue is not whether India permits abortion on paper, but whether every womanregardless of where she lives or her financial statuscan access safe and timely care. International standards suggest that true reproductive freedom requires more than legal permission it requires practical, equal, and stigma-free access.

Against this backdrop, India occupies an intermediate position. Its Medical Termination of Pregnancy Act, 1971 (as amended in 2021), is more liberal and permissive than many Asian jurisdictions, yet it remains structurally provider-centric and embedded within a criminal law framework. Unlike South Africa's rights-based model, Indian law continues to condition access on medical opinion and administrative oversight. From a human rights perspective, the persistence of infrastructural deficits, rural-urban disparities, and statutory conflicts with laws such as the PCPNDT Act and POCSO Act raises concerns regarding compliance with India's international obligations under CEDAW and the ICCPR. Therefore, while India's formal legal framework reflects progressive intent, comparative analysis reveals that true alignment with global human rights standards requires not only statutory permission but guaranteed, equitable, and stigma-free access in practice.

REFORMS

If India truly wants reproductive rights to be meaningful, the focus must shift from just having a law to making sure women can actually use it without difficulty. The Medical Termination of Pregnancy Act provides legal permission, but permission alone is not enough.

Real change requires improvements in healthcare systems, legal clarity, and social attitudes and removal of stigma and fear.

The first and most important reform is **strengthening healthcare infrastructure**, especially in rural areas. Many women in rural areas struggle to find a certified hospital or skilled and reliable doctor nearby. The government should increase the number of approved abortion centers at the district and primary health levels. More doctors, nurses, and mid-level healthcare workers should be trained in safe abortion procedures, particularly early medical abortion. Expanding telemedicine services can also help women in remote areas consult doctors privately and safely which will reduce the travel costs and delays.

Secondly, there should be **simplification of legal and administrative processes**. Currently, abortion often depends on the approval of one or two doctors, and in certain cases, even a Medical Board. While these safeguards were introduced for safety reasons, they cause unnecessary delays. Clear and uniform guidelines across states would help ensure that approvals are given quickly and consistently. The system should trust women's decisions and treat them as capable individuals rather than forcing them to repeatedly justify their choice and question it in self-doubt.

Thirdly, there needs to be **better coordination** between different laws. Sometimes, the enforcement of the PCPNDT Act, which aims to prevent sex-selective abortions, creates fear among doctors and clinics that provide lawful abortion services. Similarly, compulsory reporting requirements under the POCSO Act discourages minors from seeking confidential care. The government should issue clear directions so that these laws do not unintentionally block access to safe abortion. Protecting women and preventing misuse of law must go hand in hand.

Economic barriers also hinder the process of safe and timely abortion so they should also be addressed. Even when abortion is legal, the cost of private healthcare can be high. Public hospitals should ensure that safe abortion services are available free of cost or at affordable rates. Essential medicines and trained staff must be consistently available so that women do not have to depend on expensive private clinics.

Finally, **social stigma** remains a serious obstacle. In many communities, women fear being judged for seeking abortion, especially if they are unmarried. Public awareness campaigns can help normalize abortion as part of reproductive healthcare. Sensitization training for doctors and hospital staff is equally important so that women are treated with respect and confidentiality.

In the end, improving access to safe abortion is not just about changing words in a statute. It is about building a system where women feel safe, supported, and respected when making deeply personal decisions. Only then can reproductive rights become a lived reality rather than a promise written in law.

CONCLUSION

To conclude we can say that the question of abortion in India is not just a legal issueit is a deeply personal and social issue that affects the dignity, health, and freedom of women. Over the years, the law has evolved, especially with amendments in the Medical Termination of Pregnancy Act and progressive judicial decisions. These developments show that the legal system recognizes the importance of reproductive choice. However, having a law on paper is not the same as ensuring justice.

Many women in India still face practical barriers such as lack of nearby medical facilities, social stigma, financial constraints, and confusion created by contradictory laws. Rural women, unmarried women, and minors are often the most affected and vulnerable. Even when abortion is legally permitted, fear of judgment or delay in medical approval discourages women from seeking safe and timely help. This creates inequality between those who can afford private care and those who cannot.

Reproductive rights are closely connected to the constitutional values of dignity, privacy, and equality. When a woman is forced to continue a pregnancy against her will due to social or systemic barriers, her autonomy is indirectly compromised. At the same time, the law must balance ethical concerns and ensure safety, which makes the issue sensitive and complex. The solution, therefore, is not extreme positions but balanced reforms that strengthen healthcare access, clarify legal procedures, and reduce stigma.

True empowerment will come when women can make reproductive decisions without fear, delay, or discrimination. The aim should be to create a system where healthcare providers act with sensitivity and society responds with understanding rather than judgment.

In the end, reproductive choice is not about encouraging abortion it is about trusting women with their own bodies and futures.

As Ruth Bader Ginsburg rightly said, *"The decision whether or not to bear a child is central to a woman's life, to her well-being, and dignity."*