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Reproductive Rights in India and the Way Forward

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Abstract. Pregnancy is a process inherent to the propagation of species, and the right to continue or discontinue the pregnancy electively appears to be exclusive to humankind and has been a much-debated topic since ancient times. Religious rationales believe that aborting a fetus is a "sin," and this line of thinking makes the act of abortion an offense in almost all jurisdictions. However, with the advent of the human rights concept, particularly with the second generation of human rights, individual liberty becomes one of the most honorable and demanding rights. Some countries like Norway, the UK, and the USA have taken the lead in providing this right to pregnant women, where the United Kingdom introduced legislation in 1967 and

became the first European country to allow abortion right, statutorily, though limited in character, and the Supreme Court of America declared abortion as a fundamental right in 1973. Nevertheless, change is the reality of life, which is also true in this regard. Over time, on the one hand, the abortion right has reached a new height, and on the other hand, in its originating country, it comes under constant attack, as the American Supreme Court has overturned its earlier decision and allowed the states to legislate their laws regarding the right to abortion. The BRICS countries are also going in a similar direction on aborting a fetus even though there are few variations. India facilitated this right through specific legislation in 1971.

Keywords: reproductive rights; abortion; pregnancy; fetus; BRICS countries; legislation.

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Introduction

The very object of recognizing reproductive rights as a human right is to honor individual liberty and facilitate couples to decide their own choices relating to conceiving the womb and the persistence of gestation or even aborting the fetus. Therefore, having a wide range of liberties, this right also grants the use of contraception, termination of pregnancy, reproductive health services, and sex education. Being internationally recognized through various declarations and covenants, the Indian Constitution aligns with the same line of thinking, as the judicial interpretation suggested that various rights concerning reproductive health include the right to life and personal liberty enshrined under Article 21 of the Indian Constitution.[1]

Regarding reproductive rights, the abortion of an embryo or *fetus* has always been sensitive and controversial issue amongst the various schools of thought, wherein one group argued that individual liberty should be honored at any cost, and therefore the right to abortion should be available on demand, while the other group believed that a lack of regulation or blanket permission for voluntary abortion will be a sin and an unethical act because no one has the right to kill an embryo or fetus which would become a living being in the future.

It is a widely accepted fact that equality, which is a natural right, must be valued; similarly, individual liberty should not be disregarded. Regarding this controversial approach, two schools of thought, namely, utilitarianism and libertarianism, emerged and focused on the conflicting interests between the state and the individual. The utilitarianism philosophy advocates that state policies should be framed in a manner to ensure the highest happiness for a maximum number of people, even if the interest of a few individuals suffers. Yet, libertarian philosophy in this regard states that personal autonomy cannot be restricted by the State unless it interferes with the individual liberty of others.

At the beginning of this paper, it must be clarified that reproductive rights are concerned not only with the choices related to reproduction but with its broader sense, which also includes the subjects and services related to reproductive health. Undoubtedly, reproductive health rights overlap to a certain extent, especially concerning information and services related to prophylactic devices, abortion, and sexually transmitted diseases. As sexual health and reproductive rights, in general, are recognized as human rights by the international community based on individual liberty, it is the foundation of the self-determination of the couple, especially over their bodies and sexual lives.

It is worth mentioning that before the emergence of contemporary legal theory, natural law philosophy significantly influenced the perspectives and thoughts of policymakers, planners, and legislators. In the late 18th century, the prevailing legal

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[1] *See*, *Justice K.S. Puttaswamy v. Union of India* (2017) 10 SCC 1.

theory was the "natural law school," which held the fundamental view that "law is what it ought to be." This school of thought placed substantial emphasis on reason, equity, and good conscience, equating these concepts with law. In stark contrast, the nineteenth century saw the rise of the positivist school of law, which argued that law must be separated from morality and instruct courts to avoid ethical, social, and equitable considerations, focusing strictly on the literal interpretation of the law.

Due to religious sentiments, early societies generally held the view that abortion is not permitted except for the life-threatening condition of the woman. It was believed that interrupting a pregnancy was unethical and constituted an offense punishable under the laws.[2] Therefore, any hindrance in pregnancy was considered with all weightiness, and it was also a wrongdoing against the order of divinity. For illustration, the Roman Catholic Church favors a fetus, as it believes that a fetus has its soul from the time of conception and thus should be considered a human being.[3] The Mahabharata also says that "if the fertile period of women goes unutilized, it will be a sin tantamount to embryo murder."[4] Some of the other well-reputed writings also say that the woman who undertakes abortion acts as a prostitute and would be re-born in the same form in the next life.[5]

Moving towards modern jurisprudence, especially with its human rights concept, these traditional tenets have gone through a drastic change, where the advent of individual liberty has led to a more liberalized view on the issue of aborting the fetus in the beginning based on medical emergency and after that choice-based personal liberty. The journey of liberalization of reproductive choices is not tranquil yet but is continuing its way.

In light of the above introductory remarks, the paper discusses reproductive rights at the center point of the right to abortion. The study will move around various developments that occur nationally and internationally in the way of liberalizing this right. The paper also provides a detailed study of the BRICS countries' position in this regard.

1. Meaning and Extent of Abortion

In its common connotation, abortion refers to the killing of a baby in its premature state. In its dictionary meaning, the act of abortion is a subtraction or dismissal of

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2 Aramesh, K. (2019). Perspectives of Hinduism and Zoroastrianism on abortion: A comparative study between two pro-life ancient sisters. *Journal of Medical Ethics and History of Medicine*, *12*(9), 1340.

3 Paul, E. W., & Schaap, P. (1980). Abortion and the law in 1980. *New York Law School Law Review*, *25*(3), 497–525.

4 Quoted by Manekar, K. (1973). *Abortion: A social dilemma* (p. 24). Vikas.

5 Kautilya's Arthashastra provides for the imposition of a fine of 1,000 panas for the miscarriage by physical assault, and a fine of 500 panas by administering drugs, and 250 panas.

an embryo or fetus from the womb of an pregnant woman, resulting in or causing its death.[6] The occurrence of abortion may be natural too, which is commonly known as a miscarriage, but, again, the term abortion generally denotes a induced procedure irrespective of the time of the period of the womb; however, sometimes it is demarcated as a miscarriage or willful end of gestation prior to 20 to 24 weeks of a gestational period, which is presumed as the non-viable stage of a fetus.[7] Hence, considering the purpose and procedure, the occurrence of abortion may be of two types, i.e., spontaneous abortion and induced abortion. An abortion that occurs naturally, due to any complications during the pregnancy of a woman for any reason, is called spontaneous abortion. This type of abortion is generally termed a miscarriage.

Conversely, induced abortion is not natural. It is performed intentionally, either due to a medical emergency or, most often, as a matter of choice. It may be further divided into two categories. The first category of induced abortion is therapeutic abortion, which is intended to protect the well-being of the woman if the life of the woman is in hazard or if there is a possibility that the fetus will be born in a disabled state. Such procedure is termed a therapeutic abortion. The second category of induced abortion is elective abortion, which it is induced for any other reason, except medical reasons. Therefore, it is also known as elective abortion. It is pertinent to note that both the embryo and fetus refer to the unborn child at different chronological stages. Thus, the term abortion may be understood as an intended way to terminate the undesired pregnancy.

2. Reason for Allowing Abortion

As mentioned earlier, in both the past and present, all religions strongly disapprove of abortion. This leads to a frequent question: if the mother has the right to terminate her pregnancy, should not the child have a right to life? Ronald Dworkin conducted an in-depth analysis of abortion and did not endorse the extreme viewpoints of those advocating for a complete abortion ban, as he argued that a fetus is a being with moral value from the moment of conception.[8] According to Dworkin, a fetus does not have interests before the third trimester.[9] The reason behind is that a fetus is unable to feel pain until later in the pregnancy because its brain is not adequately developed until then. Experts of medical sciences are also of the view that the fetal

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[6] Abortion. (n.d.). Merriam-Webster. https://www.merriam-webster.com/dictionary/abortion

[7] Moscrop, A. (2013). 'Miscarriage or abortion?' Understanding the medical language of pregnancy loss in Britain; a historical perspective. *Medical Humanities*, *39*(2), 98–104.

[8] Dworkin, R. (1999). *Freedom's law: The moral reading of the American Constitution* (pp. 90–91). Oxford University Press.

[9] He says that not everything that can be destroyed has an interest in not being destroyed.

brain develops sufficiently to feel pain around the 26th week.[10] Therefore, whether abortion contradicts the interests of a fetus should it be determined by the interest of the fetus itself, considering what those interests would be if the right to abortion was not exercised. He asserted that something that is not alive cannot possess any interests. A fetus may only have interests once it reaches viability, which occurs only after the third trimester.[11]

Apart from the above contentions in favor of the right to abortion, it would also be important to note that if the law is too strict against this right, then a woman seeking abortion will be forced to choose illegal and unsafe abortion, which is not only dangerous to her life but also contrary to the intent of legislators who never intended, even in their worst considerations, to bring about such a dire situation. Further, according to recent statistical data,[12] globally, out of a total of 295 thousand maternal deaths each year, there are 39,000 deaths caused only due to unsafe abortions, which is a 4.7 to 13.7 percent death of the total maternity deaths in the world. This data also clarifies that 7 million women require medical treatment each year due to complications arising from risky induced abortions in the world. Due to the rigidness of the laws against the right to abortion, there are a total of 73 million induced abortions and 33 million unsafe abortions conducted in the world every year.

The above discussion demonstrates that there are compelling arguments for recognizing the right to abortion, instead of having full restrictions against it or declaring it a punishable offense. Probably, that was the reason why India moved away from its stringent prohibitions against the right to abortion and enacted its specific legislation, namely, the Medical Termination of Pregnancy Act in 1971, which was later amended in 2021. Before discussing the provisions of this legislation, it will be relevant to focus on the position of abortion rights in other countries.

3. Right to Abortion and Global Perspective

On the issue of the right to abortion, the entire world may be divided into three categories. There are some countries where abortion rights are accessible on demand, while in most jurisdictions, abortion is restricted and available on certain grounds, like medical or social grounds, and in a handful of jurisdictions, it is entirely prohibited.

The following table[13] demonstrates this position in a few specific countries:

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[10] *See*, Gorstein, C. (1988). *Science and the unborn: Choosing human futures* (p. 13). Basic Books.

[11] Dworkin, 1999.

[12] UNFPA. (2022). *Seeing the unseen: The case for action in the neglected crisis of unintended pregnancy.* https://www.unfpa.org/sites/default/files/pub-pdf/EN_SWP22%20report_0.pdf

[13] Countries where abortion is illegal 2025. (n.d.). World Population Review. https://worldpopulationreview.com/country-rankings/countries-where-abortion-is-illegal

Country	Legality	Restrictions	Grounds
Afghanistan	Available	Restricted	To save the mother's life
Australia	Available	Unrestricted	No specific grounds
Argentina	Available	Unrestricted	No specific grounds
Bangladesh	Available	Restricted	To save the mother's life
Belgium	Available	Unrestricted	No specific grounds
Bhutan	Available	Unrestricted	No specific grounds
Brazil	Available	Unrestricted	No specific grounds
Canada	Available	Unrestricted	No specific grounds
Denmark	Available	Unrestricted	No specific grounds
Dominican Republic	Not available	Restricted	Entirely prohibited
DR Congo	Not available	Restricted	Entirely prohibited
Egypt	Available	Unrestricted	To save the mother's life
El Salvador	Not available	Restricted	Entirely prohibited
Fiji	Available	Restricted	On socio-economic grounds
France	Available	Unrestricted	No specific grounds
Germany	Available	Unrestricted	No specific grounds
Haiti	Not available	Restricted	Entirely prohibited
Honduras	Not available	Restricted	Entirely prohibited
Hong Kong	Available	Restricted	On socio-economic grounds
Hungary	Available	Restricted	To save the mother's life
India	Available	Restricted	On socio-economic grounds
Indonesia	Available	Restricted	To save the mother's life
Iran	Available	Restricted	To save the mother's life
Iraq	Not available	Restricted	Entirely prohibited
Ireland	Available on demand	Unrestricted	Up to 12 months fully open
Israel	Available	Restricted	To preserve physical or mental health
Italy	Available	Restricted	No restriction
Japan	Available	Restricted	To preserve health on socio-economic grounds

Jordan	Available	Restricted	To preserve physical health
Laos	Not available	Restricted	Entirely prohibited
Madagascar	Not available	Restricted	Entirely prohibited
Malaysia	Available	Restricted	To preserve physical or mental health
Malta	Not available	Restricted	Entirely prohibited
Marshal Islands	Not available	Restricted	Entirely prohibited
Mauritania	Not available	Restricted	Entirely prohibited
Mexico	Available	Restricted	To save the mother's life
Nepal	Available	Unrestricted	No specific grounds
Netherlands	Available	Unrestricted	No specific grounds
New Zealand	Available on demand	Unrestricted	No specific grounds
Nicaragua	Not available	Restricted	Entirely prohibited
Nigeria	Available	Restricted	To save the mother's life
North Korea	Available	Unrestricted	No specific grounds
Norway	Available	Unrestricted	No specific grounds
Pakistan	Available	Restricted	To preserve physical health
Palau	Not available	Restricted	Entirely prohibited
Philippines	Not available	Restricted	Entirely prohibited
Poland	Available	Restricted	To preserve physical health
Qatar	Available	Restricted	To preserve physical health
Republic of the Congo	Available	Restricted	Entirely prohibited
Russia	Available	Unrestricted	No specific grounds
San Marino	Not available	Restricted	Entirely prohibited
Sao Rome and Principe	Not available	Restricted	Entirely prohibited
Saudi Arabia	Available	Restricted	To preserve physical health
Singapore	Available	Unrestricted	No specific grounds
South Africa	Available	Unrestricted	No specific grounds
South Korea	Available	Restricted	To preserve physical health
Spain	Available	Unrestricted	No specific grounds

Sri Lanka	Available	Restricted	To save the mother's life
Sudan	Available	Restricted	To save the mother's life
Suriname	Not available	Restricted	Prohibited altogether
Sweden	Available	Unrestricted	No specific grounds
Switzerland	Available	Unrestricted	No specific grounds
Syria	Available	Restricted	To save the mother's life
Taiwan	Available	Restricted	To preserve health or on socioeconomic grounds
Thailand	Available	Restricted	To preserve physical or mental health
Tonga	Not available	Restricted	Prohibited altogether
Turkey	Available	Unrestricted	No specific grounds
Uganda	Available	Restricted	To save the mother's life
Ukraine	Available	Unrestricted	No specific grounds
United Arab Amirah	Available	Restricted	To save the mother's life
United Kingdom	Available	Restricted	To preserve health or on socioeconomic grounds
United States	Depend upon territory	Depends upon States	Varies by state
Uruguay	Available	Unrestricted	No specific grounds
Venezuela	Available	Restricted	To save the mother's life
Vietnam	Available	Unrestricted	No specific grounds
Yemen	Available	Restricted	To save the mother's life
Zimbabwe	Available	Restricted	To preserve physical health

It is necessary to clarify that the above table demonstrates the position of some specific countries, and almost all other countries that are not mentioned in the table are also very lenient towards the right to abortion, and by their specific legislations have provided this right with or without certain restrictions. The table indicates that the right to abortion is globally recognized, and there are only 24 countries where this right is entirely prohibited.[14] In sixty-six countries, abortion is allowed if it is dangerous to the life of the mother, and in sixty-one countries, abortion is allowed for numerous causes, along with the safeguarding of her physical or psychological state or attention of her societal or fiscal circumstances. Further, approximately 76 countries

[14] Abortion is considered a crime in El Salvador, Malta Nigeria, Botswana and Zimbabwe.

have permitted abortion for any reason for a common threshold of 12 weeks. It also appears that some countries besides the United States permit abortion without any boundaries but after 15 weeks, it comes under restrictions.[15] Therefore, it reflects that few countries permit abortion more permissive than others. In England, for example, a woman must have approval for the procedure from two doctors. In Bolivia, serious health risks are required to justify an abortion. In France, women can obtain an abortion on demand till the completion of 14 weeks of the pregnancy. According to the Abortion Act, 1975, any woman suffering from agony due to her unwilful pregnancy may terminate her pregnancy lawfully after psychological counseling and observing a mandatory one-week waiting period. Beyond 14 weeks, the procedure is allowed only if two doctors agree that it is required to avoid serious risk to her well-being or a strong probability of severe fetal impairment. However, recently in February 2022, this threshold was increased from 14 to 16 weeks, demonstrating a more lenient approach towards the right to abortion. Some states in the USA follow the same rule in their statutes that was decided through the famous case of *Roe v. Wade*.[16]

In Europe, the United Kingdom was the first country that liberalized its abortion laws by the Abortion Act, 1967, which established the right to abortion subject to certain restrictions.[17] This Act was amended in 1990 and came out with the new name of Human Fertilization and Embryology Act, 1990, which allows two doctors to approve within 24 calendar weeks for terminating a pregnancy. In England, as previously mentioned, abortion can be carried out at any point if it is necessary to avert serious, permanent harm to the health of the woman, to eliminate a peril to her life, or in cases of severe fetal abnormality. Nonetheless, it is important to highlight that in England, women do not have the right to an abortion on demand; rather, it is up to medical professionals to determine the eligibility for the procedure.

In Sweden, the Swedish Abortion Act, 1974 granted women more liberal access to abortion, allowing it upon request until the eighteenth week of pregnancy. After this period, it is permissible for medical, socio-economic, or legal reasons with approval from the National Board of Health and Welfare. Similarly, Denmark's Pregnancy Act, 1973 permits women to obtain an abortion on request up to twelve weeks of pregnancy. Beyond that period, an abortion can be obtained if approved by a hospital committee for socioeconomic reasons such as health, age income, housing situation, personal interests, rape, and potential fetal impairment.

Turkey's Population Planning Law of 1983 governs abortion, permitting it within the first 10 weeks of pregnancy. However, married women are required to get their husband's consent for the termination of the pregnancy. After the 10-week mark,

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[15] These include North Korea, Iceland, New Zealand, Singapore, Canada and Vietnam.

[16] 410 US 113 (1973).

[17] In Northern Ireland abortions is available only to protect life of the women and her physical-mental health.

abortions are permissible with the consent of two doctors including a gynecologist who will certify that the life of the woman is in danger or there is a risk of severe fetal impairment.

In Romania, since 1989, women have been permitted to request an abortion up to the 14th week of pregnancy; procedures after this point are permitted only on therapeutic grounds. In Germany, abortion is allowed upon request until 12 weeks, and until 22 weeks if the woman believes it is necessary for her physical or mental well-being or her current or future living conditions. In Nepal, as of September 27, 2002, abortion became a legal entitlement at the request of the mother up to 12 weeks of pregnancy. However, in case of rape or incest, an additional 6-week period is allowed. More liberally, abortion can be performed at any time in Nepal considering the risk to the life of the woman. However, Nepalese law prohibits sex-selective abortion to prevent prenatal discrimination based on sex. Conversely, in Chile, abortion is completely banned without exceptions, even in circumstances aimed at preserving a woman's life. Similarly, in Nigeria, abortion is illegal nationwide unless performed to save the mother's life. The Philippines also criminalizes abortion.

The above discussion reveals that with a few exceptions, almost all countries recognize this right and, through their respective laws, demonstrate a degree of respect for reproductive rights. However, finally moving towards the United States of America, which was the leading actor in recognizing and honoring individual rights, has recently taken a U-Turn regarding the right to abortion. It should be noted that originally there was no provision regarding the right to abortion in the American Constitution, but the case of *Roe v. Wade*,[18] established the right to abortion as a fundamental right in the United States. The American apex judicial body by this decision pronounced that in its permitted range of regulation, i.e., after the first trimester, the Constitution guarantees to elect abortion as a right. Again, in 1992 in America, the Supreme Court in the celebrated case namely, *Planned Parenthood v. Casey*[19] endorsed the above right nonetheless and permitted additional restrictions, such as waiting periods and parental consent requirements.

However, finally, in the case of *Dobbs v. Jackson Women's Health Organization*,[20] the United States Supreme Court refused to confer a right to abortion. This decision overruled both of its earlier decisions. Now, with its recent verdict, the individual States can regulate the issue of abortion on its own and overturn the *Roe case*.[21]

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18 410 US 113 (1973).

19 505 US 833 (1992).

20 No. 19-1392, 597 US (2022).

21 410 US 113 (1973).

3.1. Right to Abortion and BRICS+ Countries

After discussing the position of abortion law in various countries around the world, the upcoming study will provide a more specific overview of the legal stance on abortion in BRICS countries–Brazil, Russia, India, China, and South Africa–based on their statutes, drawing from available information on global abortion laws. The BRICS nations have diverse legal frameworks influenced by cultural, religious, and political factors, leading to varied approaches to abortion rights.

3.1.1. Brazil

In Brazil, abortion is highly restricted. It is illegal except in three specific circumstances: when the pregnancy results from rape, when the pregnancy carries a risk to the life of the mother, and when the fetus has anencephaly or a severe brain abnormality. Outside these cases, abortion is prohibited and carries a penalty of imprisonment from 1 to 3 years.[22] Additionally, in 2020, a regulation was passed under the Bolsonaro administration that required medical professionals to report rape-related abortions to the police, potentially deterring survivors from seeking legal abortions. These restrictions reflect Brazil's traditional socio-political landscape, particularly influenced by religious beliefs. Despite these limitations, illegal abortions remain common, often leading to unsafe procedures. There is also a proposed bill in 2024, which aims to limit legal abortions to 22 weeks and punish abortions after that point with penalties equivalent to homicide. This bill is controversial and has led to significant public arguments and protests.[23] While there is general societal opposition to abortion in Brazil, there is also strong support for allowing it in cases of rape, and many oppose imprisoning women who undergo the procedure. Concerns exist about the impact of restrictions on women's reproductive rights and the potential for unsafe abortions if access is limited.

3.1.2. Russia

For the first time since the end of communism, Russia enacted laws aimed at limiting access to abortion on July 14, 2011. These laws mandate that at least 10 percent of all promotional materials for abortion clinics include warnings regarding the possible health risks associated with the procedure. Although Russia has maintained a very permissive stance on abortion since the 1950s, with free abortions available at all licensed medical facilities, there has been a rising influence of anti-abortion groups within the government, leading many to worry that this legislation is merely a precursor to more restrictive measures. It is interesting to note that Russia was the pioneer in permitting abortion in all circumstances back in 1920,

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[22] Valpassos, C. A. M., Klujsza, S. G., & Scott, J. B. (2025). Attacks on reproductive rights in Brazil. *The Lancet*, *405*(10477), 462–463.

[23] Polo, C. (2024, July 8). *The WHO wants Brazil to allow infanticide. Can we stop them?* Population Research Institute. https://www.pop.org/the-who-wants-brazil-to-allow-infanticide-can-we-stop-them/

and access has largely been free from constraints.[24] There was a brief period from 1936 to 1954 when Joseph Stalin criminalized it in a bid to boost the population, but otherwise, abortion has been readily available and prevalent. Presently, Russia's abortion rates rank among the highest globally.[25] Currently, abortion is allowed on request throughout the initial 12 weeks from conception. After that period, abortion can occur under certain conditions, including cases of rape, fetal anomalies, or when hazardous to health or life. This comparatively liberal stance on abortion in Russia is rooted in Soviet-era policies that regarded abortion as a routine medical procedure. Nevertheless, there have been recent movements to tighten access, motivated by declining birth rates and the influence of the Russian Orthodox Church. For instance, some regions have implemented mandatory counseling or waiting periods to deter abortions, although these measures are not yet applied at the national level. The nascent anti-abortion movement in Russia receives strong support from the Russian Church. Opponents of abortion rights have adopted the American label "pro-life" and have been actively protesting outside abortion clinics. Additionally, President Medvedev's wife, Svetlana Medvedeva, has been an outspoken advocate against abortion; she has launched a campaign named "Give Me Life!" and has promoted a "week against abortion." However, Russia's shrinking population plays a significant role in the push to limit abortion access.

3.1.3. China

China has some of the most permissive abortion laws among the BRICS nations. Abortion is legal on request with no gestational limit, provided it is performed in authorized medical facilities. This policy aligns with China's historical approach to population control, including the now-relaxed one-child policy. However, recent government guidelines, such as those issued by the State Council in 2021, have called for reducing "non-medically necessary abortions" to encourage population growth amid an aging demographic. Despite legal access, social pressures and gender-based abortions remain concerns in some areas.[26]

3.1.4. South Africa

The South African abortion law is considered progressive through the Choice on Termination of Pregnancy Act, 1996. As per this Act, abortion rights are available to South African women on demand up to 12 weeks of gestation. Between 12 and

[24] Avdeev, A., Blum, A., & Troitskaya, I. (1995). The history of abortion statistics in Russia and the USSR from 1900 to 1991. *Population: An English Selection*, *7*, 39–66.

[25] Sakevich, V. I., & Denisov, B. P. (2014). *Birth control in Russia: Overcoming the state system resistance* (Higher School of Economics Research Paper No. WP BRP 42/SOC/2014). https://www.hse.ru/data/2014/09/30/1100429010/Sakevich,%20Denisov.%20Birth....pdf

[26] Mei, L., & Jiang, Q. (2025). Sex-selective abortions over the past four decades in China. *Population Health Metrics*, *23*(6), 1–16.

20 weeks, it is permitted for health risks, socio-economic reasons, rape, incest, or fetal abnormalities. After 20 weeks, abortion is allowed in cases where the mother's life is endangered or where the fetus is suffering from any serious malformations.[27] The law reflects South Africa's commitment to gender equality and reproductive rights post-apartheid, but access is hampered by social stigma, conscientious objection by healthcare providers, and limited facilities in rural areas.

It is important to note here that the initial BRICS nations refer to Brazil, Russia, India, China, and South Africa. However, in 2024, the BRICS group was expanded, and five more countries–Egypt, Ethiopia, Iran, Saudi Arabia, and the United Arab Emirates–were also included in this group. Below is an overview of the legal stance on abortion in these additional BRICS countries based on their statutes, drawing from available information on global abortion laws.

3.1.5. Egypt

In Egypt, abortion is highly restricted under the Penal Code. It is banned except in circumstances when the procedure is needed to save the life of a pregnant woman or preserve her physical health. Fetal abnormalities or rape are not recognized as legal grounds for abortion. Egypt's conservative social and religious context, predominantly Islamic, heavily influences these restrictions. Illegal abortions are common, often performed in unsafe conditions, and women face legal penalties, including imprisonment, under Articles 260 to 264 of the Penal Code.[28]

3.1.6. Ethiopia

Ethiopia has relatively progressive abortion laws in Africa, governed by the Criminal Code of 2005. In Ethiopia, abortion is legal in cases of rape, incest, fetal abnormalities, or when the pregnancy jeopardizes the life of a woman or threatens her health, including psychological well-being. Minors or women with physical or mental disabilities can also access abortion. There is no explicit gestational limit, but the law requires the procedure to be performed by a licensed medical professional. Despite legal provisions, access is limited by social stigma, lack of trained providers, and inadequate healthcare infrastructure, particularly in rural areas.[29]

3.1.7. Iran

Iranian abortion laws are restrictive and shaped by Islamic legal principles. Abortion is permitted only within the first 18 weeks of pregnancy in case of a dangerous situation

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[27] Hera, R., Nojoko, S., Stiegler, N., & Bouchard, J. P. (2025). Abortion in South-Africa: Does a liberal legislation really impact safe access and use? *Annales médico-psychologiques*, *183*(2), 185–194.

[28] DW. (2023, January 17). *Egyptian activists: We need to talk about abortion*. https://www.dw.com/en/egyptian-activists-we-need-to-talk-about-abortion/a-64408518

[29] Muzeyen, R., Ayichiluhm, M., & Manyazewal, T. (2017). Legal rights to safe abortion: knowledge and attitude of women in North-West Ethiopia toward the current Ethiopian abortion law. *Public Health*, *148*, 129–136.

for the life of the mother or where the developing fetus has serious abnormalities incompatible with life, as determined by a medical panel. Rape, incest, or socio-economic reasons are not recognized as legal grounds. The process requires approval from multiple authorities, including medical and judicial bodies, making access challenging. Additionally, Articles 51, 52, and 53 of the Criminal Code prohibit the promotion and free distribution of contraceptives in healthcare settings.[30] This shows Iran's conservative religious framework limits broader reproductive rights, and illegal abortions carry legal and social consequences.

3.1.8. Saudi Arabia

Saudi Arabia has some of the most restrictive abortion laws, rooted in Islamic Sharia law, where aborting a fetus is prohibited unless there is a necessity to save the life of the woman. This necessity is determined by a panel of medical experts. No other grounds, such as rape, incest, or fetal abnormalities, are legally recognized.[31] The country's conservative religious and cultural norms strictly regulate reproductive rights, and illegal abortions are rare due to severe legal penalties and societal oversight. Access to safe abortion services is virtually non-existent outside the life-saving exception.

3.1.9. United Arab Emirates

In the United Arab Emirates, abortion is also highly restricted and governed by Federal Law No. 3, 1987. It is permitted only on the same grounds as in Saudi Arabia, provided the pregnancy is within the first 120 days (approximately 17 weeks).[32] However, new legislation that came into effect on June 21, 2024, has added new categories for cases in which abortion is permissible in the UAE. Cabinet Resolution No. 44 of 2024 adds three more circumstances in Article 4 of the resolution. A woman can now obtain abortions if the pregnancy results from rape, incest, or forceful intercourse where consent was not provided or could not be provided, such as when the victim is mentally impaired and her consent is invalid. In addition, the resolution also provides for abortions to be permitted at the request of spouses.[33]

3.1.10. Indian Position and the Law on Abortion

India began its journey with a strict and restrictive approach to the issue of the right to abortion. It is undoubtedly true that in 1860, when the Indian Penal

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30 IranWire. (2022, February 1). *Free contraceptives banned at public health centers in Iran*. https://iran-wire.com/en/iran/71218/

31 Harty, C. (2023, October 9). *Exploring the stance of Saudi Arabia: Is abortion permissible in the kingdom?* MedShun. https://medshun.com/article/does-saudi-arabia-allow-abortion

32 Abortion in UAE. (n.d.). Wirestork. https://wirestork.com/abortion-in-uae/

33 Al Kabban & Associates. (2024, June 26). *UAE expands legal grounds for abortion with new resolution*. https://alkabban.com/new-uae-abortion-resolution-2024/

Code was enacted, Indian society was entirely different. Considering the socio-economic conditions of the society at that time, cultural thoughts evolved with contemporaneous changes, and with a background of revering all life forms as a mark of humanity, the lawmakers in India in 1860 agreed that abortion should be declared an offense under the Code. So, if anyone compares the law of that time with present society, they may say that the law was harsh, but it must be acknowledged that it was the demand of the then society, and the law resonated with public perception. This was the reason that the Code of 1860 prohibits the willful abortion of the womb, contained under Sections 312 to 316. It is also clarified by the above sections that if such miscarriage is committed by a woman on her womb, she will also be penalized under this section.[34]

Thus, a plain reading of Section 312 makes it clear that the 1860 Code chose a middle path regarding the right to abortion, as voluntarily causing miscarriage was declared an offense, but it was not an offense if such miscarriage was done in good faith with the intent to save the life of the mother. This also indicates that even before the introduction of the Medical Termination of Pregnancy Act, 1971, abortion was allowed but with the condition of its being for a lifesaving purpose for women who were pregnant. It is worth mentioning here that now the above law has been abolished, and Sections 88 and 89 of the Bharatiya Nyaya Sanhita, 2023, deal with the issue.

In this regard, reference can be made to a longstanding English case of *Rex v. Bourne*,[35] in which therapeutic miscarriage was declared legal. In that case, a fifteen-year-old girl was raped by someone, resulting in her pregnancy. A medical practitioner terminated her pregnancy at her request, but thereafter he was charged with causing a criminal abortion. Mr. Justice McNaughton, after considering the facts and circumstances of the instance, decided that where the medical procedure to abort the fetus was *bona fide* with the intention to save the life of the mother, then the medical personnel may be allowed to discharge, and in those circumstances, abortion is allowed.

4. Walking towards Liberalization

The law embodied in the Code of 1860 gave a bitter experience to Indian society. As cultures move forward in time and thinking evolves contemporaneously, some assumptions are questioned, and there is a felt need to devise a new order for the smooth running of society as a whole. A similar alteration was seen in the attitude towards abortion in Indian society by the nineteenth century. With the growing cost of living, smaller families were preferred, and with women participating in multiple

[34] Committing miscarriage is punishable under Sections 88 and 89 of the Bharatiya Nyaya Sanhita (2023).

[35] 3 All ER 615 at 62 (1938).

roles in a developing society, unplanned pregnancies became a deterrent to their life plans. It is true that "family planning" can be optimized by better education regarding contraception, but there was an intermediate transitory period when the use of contraception was not properly adopted, and yet the need to curtail family size was felt, so "contraceptive failure" became a justified reason to seek a legally covered abortion. Though it is true that under religious consideration, abortion was looked at or still is beheld as a sin and wrongful action, this line of thinking has now taken a progressive move.

Another important development in the late 19th century was the development of new methods of fetal monitoring in pregnancy, which led to prenatal diagnosis of fetal malformations. The birth of a physically handicapped child can have deleterious effects not only on the perinatal health prognosis but also affects family dynamics adversely and can lead to financial and psychological distress for the parents and caregivers. The point of prenatal diagnosis is to provide a logical solution to the problems, and the logical solution for lethal anomalies or those with very poor post-natal prognosis is to offer termination of that pregnancy to prevent unnecessary perinatal complications, which may sometimes even pose a risk of severe morbidity and mortality for the mother. After considering the various repercussions, it was thought that putting a blanket restriction on the act of abortion may cause a doomed situation. For example, the available statistical data[36] on this issue indicated that the general citizens of this country have never been in favor of a blanket prohibition on abortion, and due to that, even after the restrictive law under the Indian Penal Code, 1860, there was a gross violation of Section 312 of the Code. Here the authors are willing to clarify that they are not advocating that if there is any gross violation of any law, it must be removed from the statute book, but considering the opinion that law is a mirror of societal thinking, their humble request is that if so, it should be the onus of the government to re-look into the existing provisions and, if possible, grant some reasonable relaxation. The experiences have shown that due to the strictness of the penal law, a pregnant woman who was willing to abort her pregnancy due to personal reasons was compelled to secretly take the services of an unqualified person for the same, with all the perils of indisposition and impermanence. The study on this point also shows that about 4 percent of the overall deaths of women are a result of complications resulting from unsafe abortion, particularly if done by inexperienced medical personnel.[37] At the same time, materialistic clinicians exploit desperate victims of pregnancy by extracting a gigantic sum of money for performing abortions. Not only this, but the inflexibility of the legal requirements in seeking abortions has been answerable to a boundless degree for several offenses, corruptions, wrongdoing, and unhappy situations, such as suicidal attempts by

[36] *See* Bahadur, K. P. (1977). *Population Crisis in India* (pp. 165–169). National.

[37] Rao, K. N. (1972). Abortion and family planning. *Journal of the Indian Medical Association*, *59*(8), 337–341.

expecting women, infanticides, and relinquishment of cruel progeny. Similarly, very recently in this regard, an analytical study published under the auspices of the United Nations Population Fund demonstrated that about 67 out of a hundred abortions in the Republic of India are deemed to be unsafe and kill at least eight women on average per day.[38]

The above result of the strictness of the law is appealing and compels us to think over the issue. It is pertinent to note here that the consequence of hidden abortion is not only the story of India but is also rampant in well-advanced countries. According to a study conducted on the issue, 1.2 million unlawfully induced abortions happen yearly in the United States.[39] About five to ten thousand women die per year due to illegal abortions and suffer physical and psychological injury.[40] Undoubtedly, it was neither the purpose of the Indian Penal Code, 1860, nor the Bharatiya Nyaya Sanhita, because Sections 312 of the earlier Code or Sections 88 and 89 of the Code of 2023 were enacted with a virtuous intention to facilitate the life of an unborn kid as well as to prohibit the offense of female feticide or even to check the misuse of abortion in general. However, the problem was that undue enforcement of prohibiting abortion in all cases was posing a difficult situation not only for unmarried girls or widows but also for married women who conceived due to failure of contraceptives or even did not look for pregnancy due to personal choice or reasons.

Therefore, after considering the practical and humanitarian approach as well as the vulnerable position of women in Indian society, society started to think that it would be better to liberalize the harsh law of abortion, which would take them back from the difficult situation of humiliation, pain, and agony.

With the passage of about 104 years, this view was finally adopted in India, undoubtedly not on the above contentions regarding liberalization but rather with the intent to implement family planning in this country. This idea was introduced by an institution of the Government of India, namely, the Central Planning Board in 1964, under a vibrant plot of a family planning scheme to check the wide-ranging problem of population.

Keeping the above object in mind, the Shri Shanti Lal Shah Committee was constituted to investigate the possibility of liberalization of abortion law and its possible way of reformation. The prime question before the committee was whether it is possible to allow the act of abortion outside of the coverage of life-saving of women. On this question, the committee entirely agreed that the existing law contained under Sections 312 to 316 of the Indian Penal Code, 1860,

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38 UNFPA, 2022.

39 Cates, W., Jr., & Rochat, R. W. (1976). Illegal abortions in the United States: 1972–1974. *Family Planning Perspectives*, *8*(2), 86, 86–88.

40 Binkin, N., Gold, J., & Cates, W., Jr. (1982). Illegal-abortion deaths in the United States: Why are they still occurring? *Family Planning Perspectives*, *14*(3), 163–167.

related to miscarriage should be liberalized. To implement the above report of the Shah Committee, in the year 1970, the Indian Government placed a bill, namely, the Medical Termination of Pregnancy Bill, in the Parliament, which was passed in August 1971 with the name Medical Termination of Pregnancy Act, 1971, and became operational from April 1, 1972.

As mentioned above, steps towards liberalizing the draconian law of miscarriage were taken by the policymaker with the intent to apply family planning.[41] However, due to tremendous pressure created by religious groups, the government never accepted this version, and in its sanctioned declarations, the Act imagined three objectives of liberalizing the old laws. These objectives are:

1. Protecting against the risk to life or health of the woman.

2. Against sexuality or sensual physical communication with women with mental disabilities.

3. Against deformities and diseases.

Thus, with the introduction of the Medical Termination of Pregnancy Act, 1971, the old rigid law was relaxed, and apart from the lifesaving purpose for women, certain choice-based grounds for abortion were also provided. This Act has also been changed with amendments and judicial interpretation from time to time. Before discussing those developments, it would be necessary to investigate certain important provisions of the Act.

In India, the Medical Termination of Pregnancy Act, 1971, offers a generous basis for procuring an abortion. The Act made Section 3 an overriding section over the Code of 1860. Again, Section 4 of the Act allows only those terminations of pregnancy that are conducted in government-controlled hospitals as the Government may specify from time to time.

It is already indicated that in India, abortion rights are not available to women on demand, and that can only be done with the permission of registered medical practitioners. In this regard, under Section 3 of the Act, abortion was declared legal within the initial 12 weeks of pregnancy with the consent of one doctor and after 12 weeks to the 20th week by two doctors. If the said doctors considered that abortion may be done because the circumstances reveal that there is a risk to the life of the mother or there is a possibility of grave injury to her health whether mental or physical, or even if there is an apparent risk to the unborn child because there is a strong possibility that the child would suffer from physical or mental abnormalities or may be seriously handicapped.[42]

It is necessary to note here that the above provisions of the Act were first amended in 2003 and incorporated a positive level of lucidity to it. Though it is also

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41 Chattopadhyay, S. (1974). Medical Termination of Pregnancy Act, 1971: A study of the legislative process. *Journal of the Indian Law Institute*, *16*(4), 549–569.

42 *See*, Explanations 1 and 2 of the Section 3 of the Act.

true that even after the amendment, permission for aborting the womb is still in the hands of registered medical practitioners, the intention of the changes was to make the procedure of termination safer by stopping underqualified practitioners from being consulted on the subject. Therefore, it was a beneficial change for the protection of women. The definition of fetal anomalies and their implications will be better understood by specialists who deal with fetal problems as a matter of special interest. There is now a sub-specialty in Obstetrics and Gynaecology all over the world called "Fetal medicine," and a fetal medicine specialist must be a part of the medical board opining on these issues. After this amendment, the Act was again revised in 2021. Employing this amendment Act, the period of termination of pregnancy was extended. Now the view of one enumerated medical practitioner is obligatory up to 20 weeks, and the estimation of two doctors will be essential for aborting the pregnancy between 20–24 weeks.

It should be noted very carefully that through this amendment, the pregnancy period borderline for termination of the womb has been amplified from twenty to twenty-four weeks, but this change can be enjoyed only by 7 classes of women, which include victims of rape or sexual assault, or incest; pregnant minors; those whose marital status changes due to unfortunate widowhood or divorce during ongoing pregnancy; women incompatible with life due to physical disabilities; mentally ill; fetal malformation or if the child is born with a substantial risk of life or may suffer from serious physical or mental abnormalities; and women with pregnancy in humanitarian settings or disaster or emergencies. In addition to this, an important step has been taken to include unmarried girls who can now exercise their right to abort on grounds of failure of protecting pills or other methods. Nonetheless, the extended period of 24 weeks was not available to an unmarried girl who is willing to abort the pregnancy of her choice without coming under the above-mentioned seven categories. Therefore, unmarried girls were allowed to terminate their pregnancies for only up to 20 weeks.

The discussion indicates that the revised laws permit abortions up to 20 weeks based on the evaluation of a single medical professional. To abort between 20 to 24 weeks, consensus from two medical specialists is still needed. Women in special situations, including victims of rape or incest, women with disabilities, and minors, are allowed an extension of the gestation period, and if there are serious fetal abnormalities, a Medical Board at the state level will assess whether abortions after 24 weeks can be permitted. Only specialists in Obstetrics and Gynecology are authorized to conduct abortions. The identity and extra details of a woman whose pregnancy has been terminated must not be disclosed, except to those legally permitted. Therefore, for pregnancies arising out of sexual assault or rape that surpass 24 weeks, the only remedy is to submit a writ petition to the courts.

Accordingly, when the fetus was diagnosed with *spina bifida*, a non-curable condition associated with the pregnancy, the Honorable Calcutta High Court

legalized a 37-year-old woman to abort her pregnancy at 34 weeks.[43] Similarly, in August 2021, the Bombay High Court approved a 20-year-old woman to undergo medical termination of her pregnancy due to her fetus being diagnosed with Arnold Chiari Malformation II, which is a brain defect that can lead to severe spinal issues, along with bilateral clubfoot at 33 weeks.[44]

These cases are very apt reminders to us that some fetal malformations may develop later in pregnancy or evolve in their severity, thus altering the prognosis and making termination of pregnancy a justifiable option. While the permission for late terminations is now being granted, the law also needs to address the issue of the possibility of "signs of life" in the newborn who is delivered after a "termination" at late gestation. This situation presents a very severe dilemma for parents and caregivers because you just have to "wait and watch" till the baby dies!! In countries like the UK and France, there is a provision for doing "feticide" before the process of "termination" of the pregnancy to avoid this terrible situation. As of now, the feticide aspect is left at the discretion of the medical board, and unless mentioned, the provision is ambiguous and open to interpretation and hence misinterpretation.

Considering the above cases, it would be interesting to recall that undoubtedly, in 2021, the Medical Termination of Pregnancy Amendment Act extended the gestational period from twenty to twenty-four weeks as a welcome move, but even though this amendment Act did not recognize the abortion right on demand. After this amendment, the Honourable Supreme Court received two important petitions in which contradictory decisions have been given. In September 2022, in the case of *X v. Principal Secretary, Health and Family Welfare Department*,[45] while allowing abortion to an unmarried woman, the court held that for enjoyment of any rights, making any distinction based only on marital status is unconstitutional. The Supreme Court also opined that an undesirable pregnancy has grave and damaging paraphernalia on the life of a lady because it disreputes her education, her vocation, and even her mental comfort. Therefore, it also recognizes the unmet needs of marital rape survivors in their unwanted pregnancy. On the flip side, concerning the situation of an unmarried woman, in this case, the Supreme Court specified that all women, irrespective of their nuptial position, have the right to harmless and legal abortion. A three-judge bench consisting of Mr. Justice D.Y. Chandrachud, Mr. Justice Surya Kant, and Mr. Justice A.S. Bopanna issued a ruling in her favor after hearing the petition requesting the end of her gestation at 23 weeks and five days. In this particular instance, the petitioner initially pursued relief from the Delhi High Court, but the court rejected the request because the applicant's situation did not fall under any provisions of the Medical

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43 *See*, *Smt. Nivedita Basu v. The State of West Bengal & Ors*, WPA 2513 of 2022.

44 Khan, M. K., & Ali, K. (2022). Medical termination of pregnancy (Amendment) ACT 2021–A review. *IP International Journal of Forensic Medicine and Toxicological Sciences*, *7*(1), 1–3.

45 SCC Online SC 905 (2022).

Termination of Pregnancy Act, 1971. Subsequently, she turned to the highest judicial body of the land. The Supreme Court remarked that the High Court's decision had adopted a disproportionately obstructive interpretation of the Medical Termination of Pregnancy Act's provisions, specifically Rule 3-B of the Medical Termination of Pregnancy Rules, 2003, which details the categories of women authorized to terminate pregnancies between 20 to 24 weeks. It is important to highlight that Rule 3-B(c) of the Medical Termination of Pregnancy Rules, 2003, addresses a change in marital status during the ongoing pregnancy through widowhood or divorce. Before this ruling, unmarried women in consensual relationships were allowed to remove their gestations only up to the 20-week mark.

In its decision, the court emphasized that "change in marital status" must be interpreted broadly, as the amended provisions of 2021 replaced the term "husband" with "partner," indicating an intention to include unmarried women as demonstrated by the phrase "woman or her partner." However, the court also clarified that the definition of "woman" within the judgment encompasses individuals other than cis-gender women who may need access to benign medical termination of their pregnancies.

Finally, the Supreme Court clearly stated that any restrictive interpretation of Rule 3-B of the Medical Termination of Pregnancy Rules, 2003, that applies solely to married women would be discriminatory against unmarried women and contravene Article 14 of the Constitution. Hence, the court concluded that legal provisions should not dictate who benefits from a statute based on narrow patriarchal perceptions of acceptable sexual behavior, which create harmful distinctions and exclude certain groups due to their circumstances. The court also noted that dignity is a fundamental aspect of Article 21 of the Indian Constitution, which addresses the right to life and personal liberty. The ruling further emphasized,

> The denial of control to women over their own bodies and lives would infringe upon their dignity. The ability to make one's own choices is essential to the right to self-respect and dignity. This right would be destabilized if women were involuntarily compelled to carry unwelcome pregnancies. Reproductive independence requires that every pregnant woman has the inherent right to choose an abortion without needing consent or approval from outside parties.

It also reemphasized that the right to reproductive autonomy is closely linked to the right to bodily autonomy.

It was a delightful decision, but in the year 2023, the court took a U-turn and gave a setback to its previous judgment. In the case of *X v. Union of India*, a married woman who already had two children moved to the court to get permission to abort a 24-week pregnancy on the grounds of lactational amenorrhea, which leads to breastfeeding women not menstruating. Rejecting her case, the court held that the case failed to attract Section 3(2-B) of the Act. In the opinion of the Supreme Court, her case also did not fulfill the criteria given under Section 5 concerning the threat to the life of women.

All the contentions such as cerebral well-being, postnatal hopelessness, psychosis, and miserable suicide tendency to cause harm to herself and her two children were also rejected by the court. It is submitted respectfully that though the amended provisions are progressive on paper, on the applicability level they fail to move away from the gestational limits approach because the decision confines reproductive rights within the boundaries of Section 3(2-B) and Section 5 of the Act by not considering the special actualities of the case.

Further, it is also important to highlight that the 2021 amendment, along with its original Act and the amendment from 2003, limited the use of the term "women," which excludes transgender individuals and those from other gender minorities from benefiting from the bill. In India, a considerable percentage of the inhabitants identify as transgender and experience severe discrimination, including incidents of sexual assault and rape. If someone from the transgender or intersex community becomes pregnant under these conditions, they would lack the same options available to a cisgender female. The Indian judiciary must consider this issue in its deliberations.

5. Right to Privacy and Abortion

The issue of abortion has also been closely connected with the right to privacy. Dealing with the issue, a constitutional bench comprising nine judges of the Supreme Court, in the case of *Justice K.S. Puttaswamy v. Union of India*,[46] declared the right to privacy a fundamental right under Article 21 of the Indian Constitution. This is to say, individual autonomy covers reproductive rights, as predicted by the U.N. International Conference on Population and Development, 1994.

This problem appeared within the framework of the Medical Termination of Pregnancy Act of 1971, which regulates abortions in this country. The Act permits legal abortions only under specific circumstances. It imposes boundaries to equilibrium the woman's right to privacy with the genuine interest of the State in safeguarding the female's strength and the capableness of human life. An additional frequently cited rationale is that limitations on abortions are essential to avoid abortions intending to sex selection. However, the 46-year-old legislation faced increasing criticism over the years for being overly deterring and not aligning with advancements in medical technology. The privacy ruling considerably strengthens appeals for reform, creating additional opportunities to challenge Sections 3 and 5. It violates the rights of women to make decisions about reproduction, already recognized as integral to the right to privacy by the courts. At any point during pregnancy, a woman cannot independently elect to end the pregnancy, which hinders her from exercising her rights to bodily autonomy and making independent choices regarding her body. In practice, in India, the right to an abortion is centered on the doctor, who retains ultimate authority

[46] 10 SCC 1 (2017).

over the body and choices of women throughout their pregnancy. Moreover, the commandment only acknowledges medical hazards as valid reasons for an abortion, invalidating all other motivations a woman may have for wanting to remove her pregnancy.[47] These medical menaces become even more pronounced after 20 weeks; under such circumstances, a woman must complete the pregnancy unless it poses a serious threat to her life, even if other grounds related to fetal corporeal and cerebral aberrations under Section 3 are fulfilled. The legislation does not take into account non-medical issues such as the financial implications of child-rearing, impacts on career choices, or any other personal factors. Additionally, the Act overlooks the struggles of married women who are compelled to conceive and carry a pregnancy to term against their will, as marital rape for women older than 15 years is not legally acknowledged as rape.[48]

It is respectfully submitted that, undoubtedly, the state be empowered to put restrictions on any fundamental right, but the limitations imposed by the state must be within constitutional norms. It must come under Article 21, which guarantees the fundamental right to life and personal liberty, and entails a just, reasonable, and fair test as given in the case of *Maneka Gandhi v. Union of India*.[49]

Consequently, a woman is required to possess the right to make decisions regarding her own body and reproductive health on her terms. It has been asserted that since pregnancy happens within her body and has significant insinuations for her well-being, the rights of an unborn fetus cannot be ranked over those of a living woman. Therefore, both the Bombay High Court and the Supreme Court have underscored the autonomy of women in making conversant choices about their bodies, productiveness, and generative matters. Even though the apex judicial body has permitted abortions beyond twenty weeks, the necessity for women to approach the courts illustrates an additional barrier to access to harmless and lawful abortions. In a nation where unsafe abortions frequently lead to maternal fatalities, there is a pressing need to synchronize the Act's provisions with the views of the Indian Judiciary. This alignment would significantly help in tackling privacy issues and diminishing the stigma associated with abortion.

Conclusion

The study conducted under this paper reveals that, barring a handful of jurisdictions, the right to abortion is recognized in almost all countries, wherein this

[47] Section 3 requires approval of one doctor to abort pregnancy upto 12 weeks and two doctor for 12 to 20 weeks.

[48] Considering the privacy judgment, a two-judge SC bench recently read down the exception for marital rape and held that forced sex with all minor wives, and not just wives under the age of 15, would constitute rape. The larger exception for marital rape is also expected to be debated further.

[49] AIR 1978 SC 597.

right is slowly but continuously expanding as far as its dimensions are concerned. In a country like India, the recent verdict of the Supreme Court proves that the right to abortion, which was not available at a point in time when abortion was declared an offense, is finally decriminalized and became a right, and now it is moving in a more progressive direction. As the study discussed, during the British period, the Indian Penal Code was passed in 1860, which makes the act of miscarriage a punishable offense with imprisonment, fine, or both. The law continued even after independence, and it was not until 1971 that the Indian Parliament developed and enacted a distinct law concerning reproductive rights, known as the Medical Termination of Pregnancy Act, 1971. This legislation granted women a limited right to abortion, contingent upon the approval of medical professionals. After more than 25 years, the Indian Parliament recognized the shortcomings of this law and made amendments to it in 2003. Subsequently, in 2021, it expanded the timeframe for pregnancy terminations to 24 weeks for precise groups of women, including survivors of rape, minors, those with mental disabilities, and women carrying fetuses with abnormalities. However, the Act still systematically excluded unmarried girls in consensual relationships, thus denying them bodily autonomy. The Supreme Court, however, identified this as discrimination based on matrimonial rank and ruled that the right to abortion up to 24 weeks should be accessible, regardless of marital status. As a result, an unmarried girl who becomes pregnant in a consensual relationship is now entitled to terminate her pregnancy within 24 weeks, just like a married woman.

Given the previously mentioned concern, it can be confidently stated that the recent ruling by the Supreme Court reinforces India's dedication, as expressed in various international agreements, to guarantee harmless and permissible abortion as a legitimate right for every woman. This decision regarding equality and the right to choose is especially significant for a nation where women's bodies have historically been subjected to patriarchal scrutiny, signalling a much-needed leaving from the obsolete belief that only married women engage in sensual relations and that consequently, the law must only cater to them. This reflects the profound changes and evolving perspectives that are emerging within traditional Indian society. It is important to note that in India, with 73 million single women who previously lacked legal and safe access to abortion after 20 weeks, the extension of the Medical Termination of Pregnancy Act, 1971, will be highly progressive for this specific group of women.

To sum up, it may be concluded that even after the liberalization of abortion rights in India, it still depends on the will and decision of the medical board and has not yet become a right of women in the true sense. Therefore, it is requested that the right to abortion should be granted to women as a choice, and unnecessary restrictions should be removed in this regard, which would be a great step towards legal and safe abortion.

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