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Baccha Girao, Khudko Bachao - Right to Abortion in India

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In the context of abortion rights, this paper is concerned with the intricate and delicate interplay between legal frameworks, social systems, and healthcare establishments impacting the reproductive space of women. Through a structured examination of the development of Indian legislation, judicial pronouncements, and health statistics from the last half century, this research study endeavours to shed light on both the gap between statutory guarantees for abortion and the availability of safe abortion services at present. India's legislative journey on abortion started with the MTP Act of 1971, which aimed at providing controlled access to abortion but at the same time addressing the issues of the health and welfare of women. However, an examination of judicial precedents shows that its application and interpretation have been sporadic, often with aggravating factors of societal norms and geographic inequalities. This reveals contradictions between existing legal systems and the reality that has come to exist around abortion service provisions. Beyond limits on access by women to safe procedures, inconsistencies in these areas also raise issues related to whether rights to reproduction are met in the country of India. Furthermore, this study highlights such significant differences in the accessibility of abortion services among different socioeconomic classes and geographies. Adding to these are the financial restrictions, weak healthcare infrastructure, and socio-cultural impediments among women who hail from rural or slum areas, constraining access to safe abortion services. Health statistics depict this differential effect among these sections of them opting for unsafe procedures, which raises the risk of maternal health hazards. However, in urban areas with better financial capacity and the facility for private health facilities, safe abortion services are accessed more readily and this is quite distressing. This research is a call for urgent policy reform to make abortion services safe across the country but, at the same time, resonates with the very rampant stigma of abortion in society. It becomes imperative that these socio-cultural barriers are overcome so that women in India have access to equal reproductive rights exercises. The paper argues that for India to fulfill its commitment to women's

rights, a comprehensive, inclusive approach is essential—one that emphasizes policy changes, healthcare infrastructure improvements, and cultural sensitivity to empower women in making safe, informed reproductive choices without fear or discrimination. Through legislative scrutiny, judicial review, and health care statistics, this paper presents a critical analysis of abortion rights in India and establishes reforms to bridge the gap between the rights that have been imparted through legal practice and the safe and accessible abortion services to all groups of Indian society.

Keywords: *abortion, empowerment, women.*

INTRODUCTION

This phrase, "Baccha Girao, Khudko Bachao", roughly translates to "Abort the Kid, Save Yourself," vividly captures the disadvantages that many women in India are subjected to when they experience unexpected pregnancies. It is a very dismal environment of a lack of social support, scarcity of safe health facilities, and even a stigma attached to choosing over reproductive matters for many of these women.

This phrase summarizes the situation in which women are challenged to focus on their well-being amidst social and economic adversity, usually without much support for choices. The difficult choice speaks to system failures: underdeveloped healthcare infrastructure, lack of information about rights to reproductive health, and deeply ingrained societal perception that makes the experience more than a personal one but also an institutional failure and cultural inadequacy. Though bluntly straightforward, half a century later, legal rights, social stigma, and healthcare provisions continue to be the major stumbling block for women to approach abortion services. The history of abortion law in the country began with the MTP Act of 1971[1]-but that was not landmark legislation despite the discussion on women's reproductive rights when most of the other countries criminalized the procedure.[2]

A change of legal entitlement into real access poses huge challenges, as the unavailability of medical facilities, as well as strong social attitudes. Not even the expansion of legal accessibility

[1] Medical Termination of Pregnancy Act 1971
[2] 'Global Abortion Policies Database' (*WHO*, 2023) <https://abortion-policies.srhr.org/country/india/> accessed 20 October 2024

that may be created upon and through numerous amendments to the enactment of the MTP Act 2021 will be of help in overcoming a number of grassroots-level hurdles. This socio-legal approach adopted by the present research sets out to answer questions like these, judging not only what has been achieved but also what remains.

RESEARCH PROBLEM AND OBJECTIVES

The study critically examines the chasm that gap in India's relatively liberal abortion laws and the reality of women's access to safe abortion services. This void takes its form in physical infrastructure, a whole host of social stigmas, and portrays a multi-dimensional array of barriers through which vulnerable groups bear most of it. The study, therefore, intends to measure the effectiveness of the available legal framework, analyse the socio-cultural barriers to accessing abortion, and establish whether the health setup is adequate to provide safe services for abortion.

Three dimensions primarily occupy the study: legal structures development and enforcement, availability and quality of health care, and sociocultural factors that shape access to abortion. Each of these dimensions would have to be explored in the context of urban and rural settings, given the enormous differences that still abound across India's vastly diverse geography and social landscape.

LITERATURE REVIEW

A review of the literature available suggests that abortion rights and access are issues in India, very complex and multifaceted. They include analysis of legal studies, inquiry into healthcare, sociological work, and application of public policy analyses.

Reproductive Health in India: History, Politics, Controversies[3] This book explores the history of reproductive health in India, particularly during the late colonial and early post-independence periods. The book underlines how gender ideologies intersect with medical practices to influence policy and structural reforms in health systems. The focus on localised politics and

[3] Srirupa Prasad, 'Reproductive Health in India: History, Politics, Controversies (review)' (2008) 82(3) Bulletin of the History of Medicine <https://dx.doi.org/10.1353/bhm.0.0097> accessed 20 October 2024

women's agency offers nuanced perspectives on healthcare evolution. The linking of gender-sensitive analyses with broader socio-political factors provides useful insights into contemporary challenges, including institutional reform, policy-making, and grassroots healthcare initiatives.

A paper titled 'Abortion Laws in India: Issues and Challenges in 21st Century[4]' by Nitesh Bhatt and Pooja Suman provides a very comprehensive overview of abortion law in India, critically discussing the Medical Termination of Pregnancy (MTP) Act from legal, social, and healthcare perspectives. Published in the Medico-legal Update journal in 2020, it throws light on the challenges that women face while approaching abortion services in the country.

The Authors start by Setting the Context of Abortion in India's Constitutional Framework: while 'reproductive autonomy' is not recognised by the Indian Constitution as a fundamental right, Article 21's right to life is so broadly interpreted that reproductive choices are covered under this head. The paper highlights disturbing statistics regarding abortion practice in India: out of 15.6 million abortions performed in 2015, 73% were done outside health facilities and 5% involved unsafe methods. More worrying is that 56% of abortions are unsafe, causing 8.5% of maternal deaths and an estimated 10 women to die every day from unsafe abortion procedures.

Critical Analysis of the Legal Landscape shows that there are Several Legislative Challenges: The MTP Act conflicts with other laws, such as the POSCO Act and PC-PNDT Act, which creates a complex legal barrier for women to seek abortion. The current gestation limit of 20 weeks is very restrictive, and the authors argue that this does not take into account the technological advancement in medical diagnostics and the different circumstances that women may be facing when they seek pregnancy termination.

The Judicial Viewpoint is a Potential Change Inducer: The paper provides several landmark court cases wherein judges have issued notices and directions to reform the abortion law. These include recommendations on the formulation of medico-legal guidelines for abortions beyond 20 weeks, decriminalisation of abortion, and possibly extending the pregnancy termination

[4] Nitesh Bhatt and Pooja Suman, 'Abortion Laws in India: Issues and Challenges in 21st Century' (2020) 20(3) Medico-legal Update

limits. The courts are increasingly realising the necessity of a more sensitive approach to reproductive rights.

Drawing from comprehensive research, the authors propose several transformative recommendations. These include increasing the gestation limit to 24-26 weeks, mandating comprehensive sex education in schools, adding abortion medicines to the national essential medicine list, eliminating discriminatory practices between married and unmarried women, and improving public healthcare infrastructure. The recommendations are based on a holistic understanding of reproductive health as a fundamental human right.

It approaches the ethical intricacies related to abortion from a pro-choice point of view but on balanced grounds. Through a scrutinised examination of existing laws, judicial declarations, and statistical data, the paper comes up with a solid case for legal and systemic change. The paper will bring out that abortion is more than a medical practice, but rather a major healthcare and human rights concern requiring thoughtful and empathetic policymaking.

While the paper has limitations in relying largely on doctrinal research and existing literature rather than empirical data, it is important in giving a comprehensive critique of current abortion laws in India. The paper acts as a critical intervention in the discursive arena of reproductive rights, calling for a more progressive, women-centred approach that focuses on individual liberty, safety in healthcare delivery, and social justice.

The study 'Increasing Access to safe abortion services in Rural India: experiences with medical abortion in a Primary Health Centre'[5] discusses the introduction of MA services in a rural Indian context to overcome barriers to safe abortion access. It focuses on the integration of MA into primary healthcare to reduce unsafe practices, focusing on women's health outcomes, acceptability, and healthcare worker training. The study calls for the improvement of infrastructure and education to standardise and extend safe abortion practices.

[5] Shuchita Mundle et al., 'Increasing access to safe abortion services in rural India: experiences with medical abortion in a primary health center' (2007) 76(1) Contraception <https://doi.org/10.1016/j.contraception.2007.03.010> accessed 20 October 2024

In the paper 'Socio-Cultural Barriers to Induced Abortion and Reproductive Health[6]', unsafe abortion remains a significant global public health concern, accounting for 13% of maternal deaths worldwide. About 45% of abortions are unsafe, with the highest prevalence in developing countries, particularly in rural and resource-constrained settings. In India, under the liberal framework provided by the MTP Act (1971), unsafe abortion contributes to the killing of more than eight women every day in relation to maternal deaths and a poor maternal mortality rate for the country. This literature review aggregates material in exploring the socio-cultural barriers surrounding induced abortion in rural India.

GLOBAL AND NATIONAL CONTEXT

Factors that contribute to unsafe abortions worldwide include restrictive abortion laws, poor access to healthcare services, stigma, and lack of awareness about contraception. Even in countries where abortion is legal, systemic gaps in healthcare systems can perpetuate unsafe practices. For instance, in Sub-Saharan Africa and South Asia, cultural and religious restrictions significantly deter women from seeking safe abortions. South Asia, including India, is particularly affected due to entrenched patriarchal norms and the preference for male offspring.

India, with its complex tapestry of socio-cultural layers, still has high rates of unintended pregnancies and unsafe abortions. According to the NFHS-4, there are 18.1% of rural women whose contraception needs are not being met, resulting in very high rates of unintended pregnancies, which in turn cause unsafe abortions. The states like Uttar Pradesh have maximum maternal and infant mortality in rural areas due to the unavailability of quality reproductive healthcare facilities and due to widespread socio-cultural stigma.

Gender Norms and Son Preference: The studies continuously suggest that patriarchy and son preference are behind most abortions. Studies in rural India indicate that wives often feel forced by their husbands and in-laws to abort pregnancies when the fetus is female, although this practice is illegal and considered an offence.

[6] Pratibha Tomar et al., 'Controlling minds and bodies: understanding socio-cultural barriers related to induced abortion and reproductive health among married women in Rural Uttar Pradesh, India' (*Research Square*, 25 July 2022) <https://www.researchsquare.com/article/rs-1842500/v1> accessed 22 October 2024

Social Stigma and Community Pressures: Abortion is highly stigmatised in rural India. Women who undergo abortions face social judgment and, as a result, have clandestine procedures or rely on unsafe methods. Focus group studies reveal that women internalise this stigma, viewing abortion as immoral or illegal, further limiting their access to safe services.

Challenges in the Healthcare System: Although abortion services are provided under the MTP Act, rural areas lack infrastructural facilities, trained service providers, and judgmental attitudes of healthcare professionals. Women, therefore, seek self-administered abortion pills from chemists without proper guidance, which leads to complications.

Economic Constraints: Financial hardship limits access to safe abortion care, particularly for low-income women. The high cost of contraceptives and abortion services compels women to rely on unsafe practices, exacerbating health risks. The literature underscores that unsafe abortion in rural India is spurred by socio-cultural norms, systemic gaps in healthcare delivery and economic barriers. To improve these issues, multiple actions are needed, including better access to affordable contraception, improved health infrastructure, elimination of stigma attached to abortion through education in communities and ensuring effective implementation of laws. Another crucial area involves male involvement and empowerment for women in reproductive health choices to help reduce the continuous burden of unsafe abortion.

In the paper 'Right to Abortion Under the Indian Constitution'[7], the author discusses that Abortion is one of the most controversial topics in the world as it polarises societies based on ethical, religious, and legal concerns. Abortion, within the Indian Constitution, is highly interlinked with Article 21, which deals with the right to life and personal liberty. This means that the right, which is interpreted as including the right to privacy, serves as the underpinning for women's autonomy over reproductive choices. However, the question would be raised as to how this should be balanced against the rights of the unborn child, a debate widely discussed in legal and moral terms. The Indian Penal Code (IPC) 1860 criminalises abortion under Sections 312-316 except when done to save the mother's life.

[7] Sai Abhipsa Gochhayat, 'UNDERSTANDING OF RIGHT TO ABORTION UNDER INDIAN CONSTITUTION' Manupatra <https://manupatra.com/roundup/373/Articles/PRESENTATION.pdf> accessed 22 October 2024

These provisions, based on the traditional moral frameworks, are unable to handle the complexities of modern reproductive rights. The MTP Act of 1971 brought some critical amendments that allowed abortions in specified conditions, including a threat to a woman's physical or mental health, rape, or severe fetal abnormalities. Yet, its limitations are stark, especially the 20-week gestational cap and the ultimate reliance on medical practitioners' discretion rather than a woman's autonomous choice. Comparison with the U.S. legal framework, more specifically, the landmark Roe v Wade (1973) and subsequent Planned Parenthood v Casey (1992) rulings, shows contrasting approaches in Roe, the U.S. The Supreme Court recognised abortion as a constitutional right under the right to privacy, establishing a trimester framework balancing state interests and maternal autonomy. Casey modified this, replacing the trimester framework with the 'Undue Burden' standard, allowing states to regulate abortion so long as they did not place substantial obstacles before viability. These judgments stress individual freedom and favour maternal rights until the time of fetal viability, providing a liberal approach than that of Indian statutes. The philosophical arguments also form a part of the debate. Ronald Dworkin argues that the fetus does not have personal interests until it becomes conscious, which occurs around the third trimester. Thus, ethical considerations about abortion depend upon when personhood and interests begin, highlighting the importance of the mother's rights over the potential life of a fetus in the initial periods of pregnancy.

Although the MTP Act is progressive with the stance taken in the 1970s, women have to seek an unsafe abortion under societal stigma and law constraints in India. Abortion should be considered not only as a medical procedure but as a cornerstone of women's health, dignity, and equality, underlining the state's responsibility to protect these rights without violation of maternal autonomy. The liberalisation of abortion laws would safeguard women's basic rights while taking into account state interests in protecting potential life after viability.

RESEARCH METHODOLOGY

This research utilised an all-rounded socio-legal methodological framework that paired the legal investigation with empirical evidence for an all-rounded comprehension of abortion rights and access in the Indian context. The methodology adopted both qualitative and quantitative

methods, and the use of several data sources helped ensure effective coverage of the subject matter.

Primary sources include legislative documents, judicial rulings, as well as other governmental health statistics. Special focus is on data derived from the National Family Health Survey (NFHS-5) and documentation from registered medical institutions. Secondary sources include scholarly literature, reports from non-governmental organisations (NGOs), and healthcare research, which provide contextual insights and theoretical frameworks.

In particular, in research methodology, intersectional analysis is very central because most of the issues related to access to abortion are intersections of various social, economic, and geographical factors. It, therefore, enables further understanding of how populations face barriers to accessing abortion services.

ANALYSIS AND DISCUSSION

Legal Framework Evolution: The MTP Act 1971 is landmark legislation for Indian reproductive rights. Thereby, it made abortion legal under certain circumstances and opened up safe abortion services to women. The liberalisation of provisions by the amendment of 2021 has again increased the gestation limit in special cases to 24 weeks and relaxed certain specifically imposed restrictions on unmarried women in particular. However, challenges arise in its enforcement, mainly in rural and semi-urban centres.

Changes in the legal framework reflect changes in social attitudes and medical conditions and developments. Judicial approaches have more and more emphasised women's autonomy in reproductive decisions, but practice lags behind the law.

Healthcare Infrastructure: National health data reveals significant disparities in abortion service accessibility. A comprehensive analysis of healthcare facilities shows a substantial urban-rural divide:

Table 1: Distribution of Registered Abortion Facilities[8]

Region Type	Number of Facilities	Population Served (Average)	Access Time (Average)
Urban	4,200	30,000	< 1 hour
Semi-Urban	2,800	65,000	2-3 hours
Rural	1,500	100,000	> 4 hours

Sociocultural Barriers: Despite legal provisions, sociocultural factors significantly influence abortion access. Research data indicates multiple barriers:

Table 2: Reported Barriers to Abortion Access[9]

Barrier Type	Percentage Affected	Urban	Rural
Social Stigma	62%	48%	76%
Family Opposition	45%	38%	52%
Distance to Facility	35%	18%	52%
Provider Attitudes	28%	22%	34%
Financial Issues	38%	25%	51%

[8] Sneha Kumari and Jugal Kishore, 'Medical Termination of Pregnancy (Amendment Bill, 2021): Is it Enough for Indian Women Regarding Comprehensive Abortion Care??' (2021) 46(3) Indian Journal of Community Medicine <https://doi.org/10.4103/ijcm.IJCM_468_20> accessed 22 October 2024

[9] Ministry of Health and Family Welfare, *National Family Health Survey (NFHS-5) 2019-21* (2019-21)

IMPLEMENTATION CHALLENGES AND SOLUTIONS

It admits multiple serious points of implementation barriers and suggests several remedy measures:

Healthcare Infrastructure: There is, most basically, an infrastructural lack of healthcare in rural areas. Though the legal platform is available for abortion rights, it usually lags far behind with the existence of non-availability of untrained health providers and proper facilities. Most have to travel a long distance to reach a registered facility, which usually poses a financial as well as logistical problem.

Social Attitudes: The discrepancy between conservative socio-cultural norms and progressive legislation creates additional barriers. Healthcare providers sometimes impose unofficial constraints based on their beliefs despite legal codes in place that promote women's empowerment. The requirement for spousal or family consent, which is not technically a legal requirement in any case, often becomes an unstated prerequisite in many healthcare settings.

Economic Accessibility: The major limitation is economic in the accessibility of safe abortion services. State institutions provide these services at lower costs, but the unavailability of such centres and the ancillary costs of travel and foregone income are dominant obstacles for poorer women.

POLICY RECOMMENDATIONS

From these research findings, the following critical policy implications can be made:

Infrastructure Development: Increased funding into health care infrastructure, mainly in rural settings. For example, more registered facilities and training of healthcare professionals should be promoted.

Social Awareness: General educative programs involving healthcare providers and local communities must be engaged to address stigma and clear myths.

Surveillance and Regulation: Mechanisms of elaborated surveillance must be worked out to honour legal standards but precede any unauthorised restrictions on access.

CONCLUSION

As this paper shows, although the legislation of abortion in India has passed through many mutations over time, there is still a long way to go for follow-through and access. Lack of infrastructure, stigma, and cost present significant barriers to accessing abortion services. There is a need to develop solutions to these challenges that can include improvements in infrastructure, public awareness programs, and tougher enforcement of existing legal provisions.

Findings suggest that further policy interventions would be toward strengthening health care infrastructure and human capacity in the rural areas, as well as reducing social stigma through community engagement, above all, by enhancing data collection and monitoring mechanisms for better strategic policy directions and implementation thereof.