

Legal and Safe Abortion is Women's Human Rights

“Forcing a woman, by threat of criminal sanction, to carry a foetus to term unless she meets certain criteria unrelated to her own priorities and aspirations, is a profound interference with a woman's body and thus a violation of security of the person.”-- Justice Dickson

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DOI: 10.29322/IJSRP.10.04.2020.p100105

<http://dx.doi.org/10.29322/IJSRP.10.04.2020.p100105>

Introduction

Is Abortion women's human rights? Is it a matter of choice? Or is it a matter of family planning policy? Is the current law sufficient to grant the Right of Women to their Sexual and Reproductive rights? If yes, then how? What are the effects of such deprivation on the unmarried females of any age? What type of alternative method can be adopted to reform the present condition? Does the society allow a woman to opt abortion if she became pregnant by unexpected situation? Is the medical system accommodating such woman for abortion? For every query the answer is 'no' women are restricted to abort, they are legally questioned and never allowed, they are blackmailed with family sentiments and hospitalization limited and costly.

Historically, restrictions on abortion were introduced for three main reasons: 1. Abortion was dangerous, and abortionists were killing a lot of women. Hence, the laws had a public health intention to protect women—who nevertheless sought abortions and risked their lives in doing so, as they still do today if they have no other choice. Abortion was considered a sin or a form of transgression of morality, and the laws were intended to punish and act as a deterrent. 3. Abortion was restricted to protect fetal life in some or all circumstances.

There is no doubt that law on abortion undermines women's rights under international law to life, to health, and to be free from cruel, inhumane, or degrading treatment. Yet some contend that moderating the full legalizing abortion would be inconsistent with the country's constitutional recognition of the right to life from conception. The World Health Organization estimates that the average rate of unsafe abortion is “four times higher in countries with more restrictive abortion laws than in countries with less restrictive laws.” Restrictive abortion laws are also associated with higher levels of maternal mortality. Further, criminalizing abortion in extreme circumstances—such as when pregnancy is the result of rape—is an inhumane response that places women's and girls' lives and dignity at risk. For example, a 10-year-old girl became pregnant after she was raped by her known relatives, but authorities denied her request for an abortion. At age 11, the girl gave birth. No one should be forced to continue their pregnancy in such circumstances, even if lawmakers believe that it can help protect life.

The Global status of Abortion is 25 per 1000 for unmarried women establishing it for a fact that unmarried women do incur pregnancies and therefore, need abortions. It is indeed problematic to think that unmarried women cannot be pregnant while it is well known that many girls get pregnant outside or without marriage. There are occasions instead of various contraceptives women became pregnant. This clearly points toward the fact that apart from the usual shame and stigma, the laws and policies are also a reason for the occurrence of 'unsafe abortions' in our society. It is pertinent to note that the 'Right to Terminate' forms a part of the Reproductive Rights of a female. In India, Medical Termination of Pregnancy Act, 1971 governs abortion and policies related to it. The Act was enacted to allow certain pregnancies to be terminated by registered medical practitioners. Abortions under this Act can be performed under limited circumstances & up to 20 weeks only. The list of 'circumstances and special situations' given in the Act is restrictive in nature and excludes the unmarried women from the list thereby, keeping the right of unmarried women to undergo an abortion, in a suspense and confusion. The Act was enacted keeping in mind the problems caused by the increasing population to a newly independent country (India) with limited resources. It is well known that population control has always remained an issue under the laws in India, concerning reproduction and fertility.

Explanation to Section-3 of the Medical Termination of Pregnancy Act, 1971 provides that if a pregnancy occurs due to the failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman. The Act fails to consider or recognise the 'anguish' caused by an unwanted pregnancy to an unmarried woman. It screams of silence when it comes to pregnancies incurred by unmarried women or the termination thereof. The Act also requires the written consent of guardian in case a pregnant woman is below eighteen (18) years of age.

This creates problems for the young girls who are in dire need of an abortion to resort to illegal means and seek different solutions to their problems, the issues of honour, shame and guilt make the situation even more vulnerable for them. It is important to note that illegal abortions are generally unsafe. These 'unsafe abortions' are one of the reasons for maternal deaths in India and worldwide. Majority of these are the abortions that are carried illegally and in hiding despite of having a valid law for over past 40-45 years. According to the World Health Organization (WHO), one woman in the developing nations die in every eight minutes due to complications arising out of unsafe abortions, irony being, that abortion isn't a very difficult procedure in medical terms if done at the right time by a trained person. The history states many incidents of abortions in our society long before the existence of Laws and policies on the topic.

The MTP Act not only limits the Reproductive Rights of females but it also mirrors a patriarchal presumption whereby unmarried women aren't entitled to have consensual sexual relationships. Therefore, these laws also deny women's autonomy in sexuality and their sexual and reproductive rights. Such laws imply that unmarried women are not allowed to enjoy consensual sexual relationships even when they are adults. Moreover, it is implied that the women having sex without marriage must use contraceptives and if they do use contraceptives and still get pregnant, then they have no right to seek a safe solution. The Act very cleverly, just like a typical Indian parent avoids the topic of the pregnancy of the unmarried women and termination of it. It seems to the researcher that any connection between 'unmarried women and abortion' was perceived as immoral by the standards of our society to be put together in the Act. The feminists have been asserting for safe abortion rights for all women regardless of the different situations in which a woman undergo an abortion, it is human rights, moral policing towards such women is violation human rights. They state that a woman must be free from the pressure coming from various quarters such as State, religion, family or societal preferences etc., in order to make a free decision without coercion and control her agency and mind.

Many researches contributed to address the struggle of women in society and gave a multi-disciplinary approach to the policies governing abortions. This chapter tries to address the various issues related to abortions and (unmarried) women and by dealing with the practical and functional aspect of Law and the impact thereof in the context of human rights. It will contribute to the literature presented on the topic and further provide insights to the possibility arguing this as human rights. This tries to find an answer to a legal problem through different dimensions and hopes that this piece of work declares that abortion as human rights.

India legalized abortion in 1971. Despite legalizing abortions, women could not achieve the expected outcomes and majority women still resort to unsafe abortion, contributing largely to maternal morbidity and mortality. Liberal abortion policies and legislations aren't the answer in themselves and aren't adequate. The Abortion Policy in India is consistent with India's Family Planning Policy. For unmarried women law do not allows them. India's abortion policy encourages the promotion of family planning services but at the very same time it recognizes the importance of providing a safe, affordable, accessible and acceptable abortion services to women who need to terminate the unwanted pregnancy.

An estimated number of about 4-6 million abortions take place in India every year (some reports project this number as high as 10 million). India still lack the data on abortions outside the legal framework that is, the illegal abortions which happen to be a reality. There are few studies undertaken in India on why women do who seek abortions being unmarried, tops the charts. The lack of safe and legal abortion facility give rise to 'informal providers', who are untrained, home based providers. They are non-physicians and charge very less as compared to the legal health clinics. They also assert that these informal providers are used because the legal abortion options are very costly and aren't easily accessible especially in cases of unmarried women. The legal abortion service providers do not treat client with dignity as well and this speaks volumes about the failure of public health services in terms of those who need them the most. The numbers of adolescent girls and young women getting pregnant, experiencing birth and abortions is very high and young people are more interested in sex due to several biological reasons- hormones. They experiment and experience and this is an open secret. Reproductive health, especially reproductive health of adolescents is poorly understood in India. Even fewer studies discuss female sexual health than males. This makes the young couples, especially females very vulnerable and prone to situations of pregnancies and abortions. Unmarried Adolescents constitutes a large number of abortion seekers. These factors give rise to several problems to the young girls, especially those who are unmarried. The lack of abortion facilities, the fear of losing their dignity in society, the humiliation they suffer at the health centres and the expensive costs of safe and legal abortion force them to go for cheap and illegal means. Thereby, endangering their health. This could all be done away if we accept the problem and bring a change in our current laws.

Reproductive Rights- Universal Human Rights

Reproduction or procreation is a fundamental concept. In simple words, it is an act through which one gives birth to one's offspring. Reproductive Rights could be understood as the rights of people related to the process of sexual reproduction. They are quoted with the Sexual Rights of human beings and together, these Sexual and Reproductive Rights (SR-HR) form a part of Human Rights. It was the year 1994 when a breakthrough was achieved in the field of reproductive health at the International Conference on Population and Development (ICPD) held at Cairo. It was for the first time when a connection was established and acknowledged between the human rights and health, which was later, associated with the concept of women empowerment. It was at the ICPD 1994 that a woman's right to 'reproductive and sexual health' was considered as one of the most significant rights under the broad causes of woman's health. The reproductive rights are basic and fundamental to all human beings.

These reproductive rights with respect to women's health include-Right to control one's reproductive functions - It means that a woman will have full control on the reproductive functions of her body including the right to have consensual sexual intercourse free from coercion and violence or not to have one at all. Right to make autonomous reproductive decisions - It includes the choices of a woman to reproduce or not to reproduce and attain highest level of reproductive health and is inclusive of access to safe abortion services. Right to have an informed opinion regarding reproductive choices - It includes the right to have information and access to sexual and reproductive education that can help her make informed choices. Right to protection from gender discriminatory practices like FGM. It is protection against gender discriminatory practices and gender-based violence.

World Health Organization (WHO) states that the reproductive rights are based on the basic right that all couples and individuals have to freely and responsibly decide the number, spacing and timing of their kids and the right to attain highest level of sexual and reproductive health; these are also inclusive of the right to make decisions regarding reproduction free from all sorts of force, coercion and discrimination. Abortion is one of the safest medical procedures if done following the World Health Organization's (WHO) guidance. But it is also the cause of at least one in six maternal deaths from complications when it is unsafe. WHO estimates available data from all countries showed that the broader the legal grounds for abortion, the fewer deaths there are from unsafe abortions? In fact, the research found that there are only six main grounds for allowing abortion apply in most countries: ground 1 – risk to life. Ground 2 – rape or sexual abuse. Ground 3 –serious fetal anomaly. Ground 4–risk to physical and sometimes mental health. Ground 5– social and economic reasons. Ground 6– on request

The issue of SR-HR is closely related with gender and social justice. In 1979, the United Nations adopted Convention on Elimination of All Forms of Discrimination Against Women (CEDAW); it marked the treaty of the 'bill of rights' for women. CEDAW has clearly stated that a woman's right to health is inclusive of her sexual and reproductive rights. A woman must have full autonomy in her sexual and reproductive decisions and activities. These reproductive rights are a subset of human rights, which are already recognised as being of universal significance. The Committee on Economic, Social and Cultural Rights have also recognised these rights and the Nation States have obligations to respect, protect and fulfil these rights and are supposed to make legislations doing the same. Under these rights all people have a right to healthy and safe consensual sexual activity and control over their bodies.

The Tehran Proclamation is considered to be the first international document that raised and acknowledged one of the reproductive rights. It stated that, the parents have a basic human right to freely and responsibly determine the number and limit of their children. CEDAW addresses all the sphere of a woman's rights including her civil, political, economic, cultural and social rights. It directs the Nation States who are parties to it to take appropriate measures to eliminate discrimination against women in the field of health care and ensure access to health services on the basis of equality including those of family planning.

CEDAW dealt with multiple aspects of discrimination faced by a woman. Then came the year 1994 when the women groups and activists at the International Conference on Population and Development (ICDP) were able to produce substantial Program of Action thereby recognising women's issues and giving aspirations for a better world for women. ICPD marks an important event in the history of women's rights as it gave affirmation and assertion to the reproductive rights of women. It connected the policy of family planning with reproductive health and defined it (reproductive health) as a state of complete social, physical and mental well-being and stated that people must have liberty to decide if they want kids or not, or their numbers or gap between to them. It asserted the fact that men and women must have an easy access to safe and effective methods of family planning and talked about women's right to safe abortion. Cairo Conference gave a strong message on women's right over their fertility. It brought the concepts of 'autonomy', 'consent' and 'equality' in the ambit of reproductive rights.

In 1995, Fourth World Conference on Women (FWCW) was held in Beijing, China, where a step ahead was taken. This conference invited Governments to consider reviewing their Abortion Laws so that abortions could be decriminalized, and the illegal abortions could be prevented. It recognized a woman's right over her own fertility to control and direct it as key to women empowerment. This treaty is often referred to as International Bill of Women's Right; it significantly addresses the discrimination against women. FWCW broadened the ambit of the definition of reproductive rights and talked about the concept of 'equality' and 'responsibility' in sexual relationships. There are variations in the adoptions of these Conventions by the Nation States, despite the preference to ICPD and CEDAW get, yet there is no common policy that is being universally followed by the countries. Each follows its own policy regardless of these conventions. Abortion forms an integral part of reproductive rights; it is a subset of maternal health as well as a woman's right to form her own choices. It is an important area of birth control and was talked along with the family planning methods for controlling the increasing population. In 1920, it was Soviet Union that became the first Nation to legalize abortions in order to provide access to safe abortion services conducted by trained medical staff instead of traditional and dangerous means.

Later on, United Kingdom followed the example and enacted one of the most liberal laws on Abortion in Europe in the form of Abortion Act of 1967, which legalized abortions for women under various circumstances, and its example was closely followed by Canada, which legalised abortions in 1969. The Abortions in Canada were permitted only when there was a danger to the life of a pregnant woman, which was restrictive in nature and was struck down by the Supreme Court of Canada in R v. Morgentaler (28th January 1988) as it infringed Canadian Charter for Rights and Freedom by infringing the life, liberty and security of the women. Abortion was decriminalized in Canada and was liberalized. United States legalized abortion with Roe V. Wade and a Federal Law was passed to protect the right to abort; the court held that the foetus is not a person protected by the Constitution of US and women could have an abortion until the foetus became viable.

The FWCW in 1995 talked openly about women's equality and her right to have control over her fertility. The women rights groups and activists considered it a huge recognition to their efforts that the issues of 'Inequality' between the genders was discussed and the governments were urged under the Action Plan to form policies addressing the same issues. It recognised inequalities in every field; inequalities of health, decision-making, power sharing, economic, social etc. all were brought at the surface. In September 2016, the UN declared that repealing the 'anti-abortion laws would save the lives of at least, 50,000 women a year. Today, despite the fact that abortion rights are considered to be one of the most important parts of reproductive rights of women, abortion is still illegal and criminalised in many countries of the world, as a result of which women are dying every day, all around the world. The fact is that no international law or treaty can ensure a woman of a safe abortion; it is only the access to these health services that matters and that can bring a change.

Limitation in Indian Reproductive Rights

India is a complex society with vast cultural as well as social differences that impact the phenomenon of reproduction and abortion. The history of reproduction in India lies in its traditions and its history of gender and sexuality as well as that of its colonial past.

Sarah Hodges, in her writing listed the following three phases of history of reproduction in India: the first one is Medicalization of Childbirth- It discusses how the biological issues of maternity and childbirth became expertise of medical field and also discusses the relationship between the reproductive practices and hospitals. Second one is 'Social History of Reproduction in different groups'- It is about the fact that different groups had different practices when it came to reproduction and how these practices contradicted with one another. It also talks about the political and hygienic changes brought in. And the third is 'National Efficiency'- It talks about the phase of national planning policies and how it constituted of maternal and child welfare along with population control and national strength and women's health was solely connected with childbirth.

The reproductive practices in India has seen a great change due to the efforts and impact of the British, from change in the values of hygiene and sanitation to the replacement of dai(s)/midwife with professionals. This somehow also made the dais or midwives more vulnerable and in 19th century began the phase of medicalization or hospitalization of childbirths in India. With 1860 came the Indian Penal Code that penalised causing miscarriages or injuries to the unborn children. Section-312 & 313 form a part of early law on causing termination of a pregnancy. Section-312 punishes 'any' person who 'causes a miscarriage' of a pregnant woman (not done in good faith to save her life) with 3 years of imprisonment and up to 7 years if the woman was quick with child. The Explanation to this section also states that a woman doing this to her shall also be punished under this section. The law clearly bans abortions in all cases except if there is a danger to the life of the mother. Section-313 of IPC punishes anyone who commits a miscarriage on woman without her consent with imprisonment up to 10 years.

These were the only Laws governing the termination (miscarriage/abortion) of pregnancy in India. The British left India in 1947 and as a newly independent country dealing with the remnants and pain of partition & rape of hundreds and thousands of women struggling with unaccounted children, they realised that they needed causes to terminate unwanted pregnancies. Later, the agenda of

population control came up with poverty and scarce resources and widespread illiteracy. As a result of which, they focused on family planning and population control.

In 1971 'Medical Termination of Pregnancy Bill' was passed by Parliament and Medical Termination of Pregnancy Act, 1971 was passed, it was modelled after the UK Abortion Act of 1967 and allowed abortion by a registered medical practitioner up to 20 weeks if the pregnancy was risky to the life of mother or is grave injury to her physical or mental health; or there is a risk of child being born with serious abnormalities. In case of that a pregnancy is a result of rape or failure of a contraceptive device used by married woman/husband; it would be considered that it is an injury to the mental health of the woman. Later on, India saw a rampant increase in sex selective abortions due to the desire to have a son and ultimately in 1994 Pre-Conception and Pre Natal Diagnostic Techniques Act was enacted banning sex selective abortions and making it punitive.

Termination of Pregnancy

The Medical Termination of Pregnancy Act or the MTP Act governs termination of pregnancy in India. The Act was an attempt to legalize certain types of abortions in India and the objective to the Act states that it is to provide for termination of certain pregnancies by registered medical practitioners for matters connected with it. This law directly affects women and their rights and came into being about 24 years after India gained independence. After the propaganda of hygiene and health that took place during the medicalization of childbirth, the concept of birth control and abortion had to be imbibed at policy level, which happened in the form of Medical Termination of Pregnancy Act, 1971.

The issue of population growth and control was talked about in India ever since its first five-year plan. The Central Family Planning Board of Government of India, in the year 1964 recommended a formation of a committee to discuss about all the aspects of abortion and to suggest alteration in laws existing then. The committee so formed submitted its report in the year 1966 in which it had studied abortion scenario in India keeping in mind the International background and later specific questions were developed to seek the opinion of various experts. This committee was of the view that the laws governing termination of pregnancy in India (S.-312 & 313 of IPC) were of restrictive nature and that the termination of pregnancy should be allowed by a registered practitioner in cases of life threat to the woman, risk to her physical and mental health, in case the child suffer serious abnormalities and in cases of rape or mentally ill girl; it recommended a qualified medical practitioner doing it at an approved place with prior written consent of the pregnant woman and parent/guardian in case under.

The committee recommended emphasising on the issue of family planning, health & welfare and on promotion of responsible attitude towards sex, marriage & parenthood. The recommendations were accepted with a few changes by then Minister of Health & Family Planning and a bill was drafted by consulting the Ministry of Law in 1969. The bill was sent to the States for comments or recommendations, as health is a subject under the State List of the Indian Constitution. Many States accepted the recommendations on the said bill and many suggested reforms like considering termination in all cases regardless of rape or marital status of a woman. Afterwards a Joint Committee decided on the said recommendations and the bill was passed in the Parliament as The Medical Termination of Pregnancy Act, 1971.

The Features of MTP Act, 1971

The Act liberalized pre-existing restrictive laws on abortion that criminalised the doctor as well as the women seeking abortions and made India first developing country to legalize abortion. It was a step ahead for India in its aim of a being a Welfare State. The MTP Act, 1971 was in consonance with the Indian Constitution and fitted in our action plan for population control. It came as a pleasant surprise for the women activists.

While it wasn't exactly how they wanted it to be, but it certainly expanded the rights of women and empowered them. It was supposed to make them in charge of their bodies and decisions with respect to that. The Act was propagated as a tool to women's freedom as it ensured freedom from unwanted and undesirable pregnancy. The salient features of the Act are as follows: It decriminalised abortions done in good faith- The Act legalised and liberalised its abortion laws, which were restricted and punitive in nature by allowing the termination of pregnancy of women by medical practitioners in selected circumstances. Shifted Responsibility on Registered Medical Practitioners- the MTP Act allowed termination of pregnancy, to those medical practitioners who are registered and possess necessary qualifications under Sec.-2 of Indian Medical Council Act, 1956 with names entered into State Medical Register and have training/experience of gynaecology & obstetrics as per MTP Act.

The Act also creates a safeguard for such registered medical practitioners from punishment under Indian Penal Code if the pregnancy is terminated under the provisions of this Act. Decided the upper limit of termination - The Act set an upper limit of termination of pregnancy in India at 20 weeks after which the termination is not allowed under any circumstance except by the order of the courts. Consent - The Act deems it mandatory to seek consent of the woman undergoing termination and creates an obligation on

parent/guardian to consent in case the girl is lunatic or under 18 years of age. Decided the place of conducting such termination- The Act states that such termination shall be carried only at the hospitals managed or approved by the government or at any other place approved by the Government.

Power to make rules and regulations- The Act give power to the Central Government to make rules regarding the training of the medical practitioners under this Act or any other matter required under this Act. The State Government can regulate the information given by and required by the medical practitioners before termination of pregnancy. It also regulates the disclosure of such information under the Act with notified reasons. Act done in good faith- The MTP Act, 1971 protects the medical practitioner from any suit or legal proceeding for any damage caused or likely to be caused by an act so done under this Act in good faith.

The liberalization of Abortion Laws came both as a blessing and a curse to Indian soil. This Act was envisioned to achieve effective and planned population growth by granting the right to terminate pregnancies and to improve the health of India’s women and children Little did they imagine that it will be used as tool by the society that favours male child so much that it won’t think twice before eliminating its female children. This liberalizing law on Abortion paved a way towards unregulated and unchecked elimination of the female foetus in its mother’s womb. The Act instead of a tool for a planned pregnancy became a pawn in the hands of the dark side of the society and was more often started being used as a solution of not having a female child. For them, this Act was even better as it allowed them to kill their daughters even before their birth; they did not have to wait for another daughter to be born and then kill her. The discriminatory practices that India as a society (still) practices created a huge imbalance in the sex ratio of our country.

Snap shots depicts the situations and their status of termination under the MTP Act.

Situations for Termination	If Termination of Pregnancy is allowed
The pregnancy is life threatening to a woman and she’ll die unless aborted	Yes, Allows
If continuation of pregnancy is dangerous to her physical or mental health	
In case Pregnancy is a result of Rape/Incest	
Severe physical or mental defects are detected in foetus	
Pregnancy is caused due to failure of a birth control method used by a ‘married woman or her husband’	
Pregnancy of a girl who is under 18 years of age (Married/unmarried)	NO* (unless parent/guardian permits and consents)
Pregnancy of a girl above 18 years of age but lunatic	
Pregnancy of an Unmarried Girl above 18 years of age	
Demanded or requested by ANY pregnant woman without these circumstances	
With any of these cases, if pregnancy exceeds beyond 20 weeks	

There was an increase in the number of females per 1000 males from the year 1971 to 1981, while there were 930 females in 1971, the figure increased up to 934 in the year 1981. It was concluded that perhaps it was due to maternal and child healthcare programme that were giving results and it was believed that the discrimination between male and female children would now decrease but later on, the year 1991 gave a shock. It became very clear that the increasing sex ratio was real and that the girls were going ‘missing’. There were only 927 girls on 1000 boys. Some demographers argued that it was because of the sex selective abortions while others rejected this idea and blamed it on poor management. To curb and eradicate the issue, later in 1994 Pre-Conception and Pre Natal Diagnostic Technique Act was enacted which made it illegal to perform sex selective abortions and banned pre natal sex selection.

Currently, the abortions in India are governed by MTP Act, 1971 and can be conducted in the circumstances listed in it only. Any other abortion including the sex selective abortion is illegal. The social situations in our society have made the rules regarding MTP Act strict in order to ensure that no sex selective abortion takes place on the name of a termination of pregnancy.

Denial of Termination of a Pregnancy A gross violation of human rights

The MTP Act was introduced as a mechanism to control the population. The language used in the Act as well the restrictions make it very clear that the Act was not very motivated by the rights of women to a dignified life or their rights to their bodies and sexuality. The fact that the final decision regarding the termination of the pregnancy doesn’t remain with the woman, rather it is in the hands of

the medical practitioner who has the final say. Thus, it is very clear that the MTP Act does not encompass a fundamental right to abortion and this restrictive liberalisation of Laws creates a lot of problems for the stakeholders as well as the beneficiaries of that law, which happened in the case of MTP Act, 1971.

The Act does not recognise the right to have an abortion on demand regardless of the conditions; in case a woman fails to prove any of the conditions falling into the Act, she will be denied a Legal Abortion; The Act also fails to 'acknowledge' the pregnancies incurred by unmarried women and the termination thereof (barring rape cases). The fact that the cases of unmarried women are not mentioned or discussed indicates towards the 'denial mode' of the Government towards these pregnancies. It is only in the cases of Rape that if an unmarried girl gets pregnant, she can have a legal abortion under this Act. If leave the rape victims then unmarried women seeking an abortion might fall into one of these two categories: Unmarried girls who are 18 years and below, and unmarried women from 18 years and above. The Act incorporates old notions of chastity in its concepts for termination of pregnancy in doing so.

The unmarried girls who are 18 years of age *cannot* have an abortion under this Act without the Permission/Consent of her Guardians/Parent. Now, the stigma attached with the issues of unmarried sexual relations or pregnancy is too much to bear and a girl in such situation might not want to tell or approach her parents or anyone. In an Indian society, a girl would hide the fact of her pregnancy and would want to 'get rid of it' at the very first instance.

Fear is what such girl feels; fear of someone finding it out; fear for her life, fear of shattered dreams etc. Rathika who is a respondent did undergo abortion when she was 18 years old, she could recall every detail of the fear and agony she felt when the secret of her pregnancy was known. "I wasn't as lucky as my classmate. My parents did come to know about my pregnancy. I was so afraid; my life was over. I wanted to die. My parents had a fight and they hit me. My father hit me, I couldn't believe it. They were asking for the boy's name, they wanted to know if I was raped. My brother called me as 'Dhaasi' and my mother suspected me as 'Prostitute'. I thought my life was over" The presumption that 'all' girls in such situations would approach their parents or guardians is unrealistic. This is an issue, which is also related to the 'Age of Consent'. The fact that under the Indian Penal Code, age of consent remains to be 18 and an underage person cannot consent to sexual activities; such a sexual relation will attract the penalty for Rape under IPC. This fact has been well debated in the Indian Parliament, but the age of consent remains 18 for sexual activities.

The issue of pregnancy of an unmarried minor girl further 'attracts' the provisions of Protection of Children from Sexual Offences Act, 2012 (POCSO Act) and binds the Doctor or anyone whom the girl approaches for termination of such pregnancy to mandatorily report this incident (girl's pregnancy) to the police failure to do so would attract penalty and the doctor or person might end in Jail.

POCSO states that whoever commits penetrative sexual assault on a child, which in the case of female child, makes the child pregnant because of sexual assault shall be punishable with imprisonment of not less than 10 years. This puts the person seeking abortion under MTP Act and the person who is providing abortion under a dilemma and conflict of Laws. The Doctors are afraid of these provisions and often hesitate to provide abortion services to underage girls. The respondent say that the doctors rarely terminate pregnancy of underage girls.

Doctors don't take cases of girls under 18 years. They have turned many girls down, on phone and in person. These cases are 'risky' to them, they might get in trouble... This is illegal. There are medicines, sometimes they tell them. That doctors tell them the names of medicines that's it. No written prescription. No ultrasound and no abortion at all in my clinic.

The unmarried women above 18 years of age and in need of termination of pregnancy are not discussed or talked about or acknowledged in the MTP Act, 1971 at all. The 'Legal Status' of abortion of unmarried women above 18 years of age is unclear and ambiguous in India. They are neither allowed nor denied abortions under the MTP Act, 1971. The issue of consensual Pre-Marital Sex becomes too big a taboo to digest and the sexuality of women has been controlled and oppressed by patriarchal society of India and denying her the recognition of her rights is one such tool of oppression and subjugation. Unlike the girls under 18 years of age, the women of this category have right to consent to a sexual relationship and also have a right to undergo a safe and legal abortion. The 'non-cooperative' Law and policies, the pressure to hide, the stigma attached and the moral policing by some doctors (& lack of finances in some cases) forces these women to resort to 'unsafe', 'hidden' and 'dangerous' means which are often illegal.

A recent study from Guttmacher Institute (USA) has revealed that seven out of every 1,000 women aged 15–44 in developing regions were treated for complications resulting from unsafe abortion procedures. The study said that because many women who experience complications do not receive medical care for them, the actual number of women who suffer some complications due to unsafe abortions is high.

The 'social stigma' on unmarried woman's sexual and reproductive rights result in the need to hide the pregnancy and not asking directly for a safe abortion. This need for hidden abortions takes women to 'Quacks' or 'Dr. Google' or make them desperate enough

to buy unregulated and illegal drugs and swallow them without doctor's prescription. It can dangerously lead to consequences like suicide by the young women as a last recourse.

Recently, the High Court of Bombay stated that the women have the right to terminate their pregnancies regardless of any reasons. The court held that, "the right to control their own body and fertility and motherhood choices should be left to the women alone and that the right to autonomy and to decide what to do with their own bodies, including whether or not to get pregnant and stay pregnant is the basic right of women."

In *Ms X v. Union of India*, honourable Supreme Court of India permitted a 23-week pregnant woman of termination her pregnancy; the court went beyond the time period declared by the MTP Act, 1971 (20 weeks). However, the Apex court did not clear the ambiguity regarding the autonomy of a woman on her own body, which the researcher believes to be an issue of great significance and hence, require immediate attention. The honourable Supreme Court (though) has tried to remove the stigma related to unmarried women's pregnancy by recognising their infants as 'legal' and by giving rights of a lawfully wedded wife in cases of 'long cohabitation' with a partner but it is believed that it is the duty of the apex court to expressly grant the basic right of the autonomy of her body to women.

In the case of Bombay High Court, "High Court in its own motion *V. The State of Maharashtra*", the court has provided no justification on the terms "marriage" and "husband and wife" that are used in MTP Act, 1971, however it has clearly declared the fact a man and a woman who are in live-in-relationship, cannot be covered under of MTP Act, 1971 whereas it should be read to mean any couple living together like a married couple. This judgment has also not clearly justified the status of pregnancies incurred by unmarried women who are not per se living with her partner or the cases of unmarried women's pregnancies that are a result of a sexual encounter only.

Apart from these issues, the MTP Act read along with the PcPNDT Act, makes it mandatory for the medical practitioner to obtain necessary information that contains, the name, age, address of the victim and the reason for the termination for pregnancy. The PcPNDT Act mandates the clinic/hospital/registered practitioner to maintain a record for the very same purpose and that record need to be preserved for 2 years. Often the unmarried girls seeking abortions do not reveal their true identities; they fake their names and addresses etc. out of fear and anticipation of complexities in future. This fear, shame and stigmatisation of Abortion make all these women do such activities. The cost of getting a hygienic, legal and confidential abortion done at a private clinic starts from Rupees 10,000, to 50000 the fact that young adults who do not earn are hampered due to financial issues.

Abortions taking place during surrogacy have been reported to be sex-selective in nature and there are factual reports to prove the huge imbalance between the sex ratio of children born through surrogate mothers. This further remained an issue in providing safe abortion services to surrogate mothers and was one of the major factors that India is banning commercial surrogacy

Case laws on MTP Act

The MTP Act, plays an important role in issues of women's reproductive health in India; in an age where a preventable mortality death is considered as a violation of human rights, it becomes all the way more important to focus on the right to health under Article 21 of the Indian Constitution. Recently, In the case of *Laxmi Mandal vs Deen Dayal Hari Nager Hospital & Ors* the court awarded a compensation of Rs 2.4 lakhs to the family of Shanti Devi (passed away during child-birth). The Court found the hospital in violation of the woman's right to life and health as her death was preventable.

In the case of *Parmanand Katra v. Union of India* the court held that every medical practitioner is professionally obligated to treat emergency cases with expertise and cannot refuse to offer treatment to such cases. Hence, the cases where the hospitals reject a young woman for abortion due to any ethical or moral reasons must be criminalised. In *Paschim Banga Khet Mazdoor Samity and Ors., vs. State of West Bengal* the court held that it is the primary duty of a welfare state to ensure that medical facilities are adequate and available to provide treatment.

The right to health of women ensures her a dignified life, hence, the medical, legal and social implications of MTP Act, should be taken in such a view as to maximize women's right of life. The proposed MTP (Amendment) Bill, 2014 is pending in the parliament, and increases the upper limit to get an abortion from 20 to 24 weeks but even then it does not talk about the ambiguity regarding the status of unmarried women. At present, the MTP Act, does not guarantee a woman the right of choice and control over her body and deprives her of right to life under Article-21 of the Constitution.

Abortion- A Human Rights is Pro-Choice, Pro-Life

The debates have been long going on the relationship between abortion and feminism. It brings the whole debate of 'Pro-Choice versus Pro-life' into consideration. Pro- Life and Pro- Choice are two main perspectives and stands taken by people on the issue of

abortion. These debates do not have much relevance in Indian context and are confined primarily to academic context only because abortions are already legally allowed under MTP Act of 1971.

The people believing in Pro-life theory believe that it is wrong to 'terminate pregnancy' and consider it morally, ethically or religiously wrong to conduct or undergo abortions. They believe that the unborn foetus, from the moment of its conception, becomes a full-fledged member of the human community and that it is a person since its conception. For them abortion is inherently a wrong thing just like stealing or killing, regardless of any cultural value. Their arguments revolve around the questions like if foetus have a moral or human right or if abortion is ethically valid and how should a society limit or ban abortions. They argue that, the supporters of abortion should understand that morally the right to choose pertains to oneself and does not extend to another person, in this case, the foetus. This perspective is often connected with religion especially religions like Christianity (Catholic) and Islam consider it wrong and immoral to terminate the pregnancy. The religions like Hinduism, Buddhism, Sikhism etc. have a philosophy of Karma and believe that it is the mother who commits the Karma and the foetus is unable to perform any Karma before its birth and hence, can be terminated; their views are also impacted by their theories of rebirth.

The believers of Pro Choice have a different stance than the former group. Their perspective raises various questions regarding the practices, social status of a woman and termination of her pregnancy. Pro-Choice in simple words, indicates the choice of a woman; the fact that a woman has the right to decide for herself and regarding her body. It is about personal autonomy of a woman, which the 'Pro-choice' believers think will be achieved through maximizing her options and choices. Giving her the option of termination of the pregnancy by the State and the Laws, where by it is the woman who decides whether she wants to choose this option, does this or not, is 'Pro-Choice'.

Pro-Choice does not mean that a woman should terminate her pregnancy or should get an abortion done. It simply means, that if she wants to give birth, she should and in case she wants not to give birth, then she MUST have the option of a safe and legal termination. It is very common for the people to think that 'Pro-Choice' means ANTI-LIFE. Pro-choice believers are entitled to the moral or ethical view of abortion being a wrong practice, some of them hold this view as well; it simply means that even if they think abortion isn't morally or ethically right, they still want to let the woman choose. In other words, they want her to have an option to it and not inherently ban it. Against the popular confusions, 'Pro-Life' is not about 'Saying YES to Abortions' but providing more options and choices to the women. Pro-choice writings also support the conclusion that there needs to be greater discussion about the abortion decision. A debate that should have been seen in the light of 'Free Choice' or the 'Autonomy of a woman' on her bodily decisions, due to lack of information and awareness, is largely seen just as a matter of 'Pro-Abortion and Anti-Abortion', which defeats the whole purpose of the concept of 'Free Choice'.

Feminists Perspective

The general analysis of the human condition has tended to overlook women's conditions and hence, Feminism argues that a critique must begin from the perspective of women. Female sexuality has always been a taboo in the society and so has been the issues related to it like pregnancy and abortion. The feminist and the women rights' movements from time to time have fought for the share of females and for their 'equal' place in society. Abortion or the termination of pregnancy being a controversial topic, has divided the views of 'feminists. The early leaders of the feminist movement viewed abortion as 'child murder' and as a means of exploiting both women and children. As much as they believed in 'equality' of sexes and genders, abortion was still considered a non-feminist and presumed to be 'anti-choice' notion. Abortion along with the statues of marriage and divorce, rape, bigamy etc. was said to be made by men and was considered as "the ultimate exploitation of women.

The popular belief behind their voices and opinion was that women do not want to abort or terminate the pregnancy; it is under the pressure of several circumstances that causes her to opt for such practices. They focussed more on finding solutions to such problems that drove women to abort; they also consider it (abortion) against the core feminist principles of justice, non-violence and non-discrimination.

Contemporary Feminists take into consideration the abortion law and the new reproductive technologies that grant new powers to the medical profession. Their writings question the long-held beliefs and values about birth, life, death, culture, morality and motherhood. The issue of Abortion being represented as 'EQUAL' and 'Non-Discriminated' by a certain group of feminists is considered problematic, since men cannot biologically get pregnant.

Susan Sherwin argues that, a woman knows what's best for her and therefore, it must be her 'choice' while deciding how to deal with the situation she is in. If a woman wants to be free from male dominance then she must take control of her reproductive choices which starts from whether to abort or not; she argues that it is a woman's responsibility and privilege to determine the social status of the foetus since it is the body of a woman where its development and growth takes place and that women aren't pro abortions but they support sexual and reproductive freedom of females.

The different opinions of Feminist give rise to the question that why should we then, include 'feminist perspective' while discussing the issue of abortions? It is because its inclusion will help in fighting against gender discrimination in a much more logical way. The feminist views are necessary to be read and included, as they will bring the desired social transformation.

It is also important to note that, the issue of pregnancy and abortion starts with 'sexual relations' and in traditional patriarchal societies the sexuality of women is not liberated or free; they are responsible for 'not keeping their legs closed' or of not using a proper birth control method. This view is highly responsible for 'Shaming' of women and creating a mental pressure on them to hide and 'get rid of' the problem as soon as possible.

Optional Rights

While the whole 'Pro Choice' argument is based on increasing the availability of options so that a woman can exercise her right to choose in real sense. But the concept of choice here means a choice that is 'informed' and 'freely made' by the woman. The concept of informed choice means that a woman must be educated and informed about the choices available to her. The data collected by the researcher indicates that more than half of the people in New Delhi did not know about the choices or options available to them. The women must be informed by different ways like educating them or by organising awareness drives, so that they know before they can choose. An uninformed choice is dangerous and makes the women vulnerable.

The concept of free choice is that the choice of woman must be free from any coercion or pressure, be it physical or mental. The concept of free choice sounds a myth seeing the Indian society. The researcher found a desire to give the child for adoption after the birth was brought up on more than one occasion by the respondents. "I felt guilty afterwards (abortion). I have a cousin who cannot have kids; I have seen how much she wants them. I felt bad. I wish I could have helped her, giving birth to it secretly somewhere and giving it to my cousin... I think about imaginary situations where I could have pulled it off! I wanted to get rid of it then because I did not have a choice, I was single, unmarried, living in Delhi. I had my career to look forward to. I wish I had a choice. I am okay now, I guess but sometimes... it just happens."- Vandana (27, works in a MNC, 25 when aborted)

Western Case Study

Recently, Canada has pledged up to \$20 million for contraceptives, family planning and comprehensive sexuality education, and access to post-abortion care, making up loss of U.S. international development funding tied to abortion-related projects. Canada has one of the most liberal abortion laws that believes that it is a woman's right to choose and decide. It does not criminalise abortion and provides access to safe abortions.

It was in 1869 that Canada criminalised abortions; later on, contraception and birth control methods were also banned. It was revealed that approximately 4,000 to 6,000 Canadian women died as a result of unsafe abortion or complexities arising out of it, till the year 1947; many people were arrested for giving birth controls or information about them or doing illegal abortions. The estimation of 'abortions' during that time goes up to almost 10,000-12,000 abortions a year. In the year 1969, the Canadian government permitted abortion under limited circumstances and they were to be provided only at a hospital if a group of doctors affirmed that the continued pregnancy would endanger the mother's life; but abortion was not decriminalised by the government.

Women's Movements: This 'limited' Law on abortion did not help the women, especially those who were poor and had no access to hospitals; this was a Law for rich women who had access to the hospitals. Moreover, at times women couldn't find a group of doctors to certify for their needs of abortion the different doctors interpreted the situation differently. Dr. Henry Morgentaler argued that women have basic right to choose and to abort if they want and hence, they must be given the choice. He started providing women with safe abortion services against the Law. Having done 5,000 abortions illegally, he was arrested multiple times and was let off.

In 1970's a movement to raise awareness regarding the right of a woman to choose for her began with 'Abortion Caravan' where thousands of women marched on the streets and protested in front of the people and the Parliament against the restrictive laws on abortion. It helped in politicizing and activating the women throughout Canada and the protesters were successful in creating a public opinion on the women's rights to choose.

Later on, in 1974 the Canadian Alliance to Repeal the Abortion Law, (CARAL) was formed later became the Canadian Abortion Rights Action League worked in favour of women's right to have safe abortion. The organization along with Dr. Morgentaler and other women's groups spent the next 15 years opening and running abortion clinics across Canada, violating the law; the doctors working there were arrested on the charge of 'conspiracy to procure a miscarriage' and a jury trial began in 1984 which was later quashed and restarted. Dr. Morgentaler appealed to the Canadian Supreme Court in 1988 and the court repealing the abortion law in practice, entirely, pronounced the historical judgment for R v. Morgentaler.

It was held that the abortion law in practice was unconstitutional and violated a woman's right to 'life, liberty and security of person' under Section-7 of Charter of Rights and Freedom, 1982. It was declared by the court that it is a profound interference with a woman's body and a violation of her 'security of the person' to force her by threat of a criminal sanction and deny her a right to control her own body, unless she meets a 'criteria' so decided by others which is not related to her priorities and aspirations.

This was a historic decision for women in Canada, they were now free to choose for themselves and abortion became just like any other medical service where they could just ask for it. It was governed by provincial medical regulations. Canada brought 'abortion care' in line with its Canada Health Act and has approved the use of Mifepristone as an abortion method in 2015, though 'accessibility' to the health centers remains a concern in Canada but due to its liberal laws, it is committed to provide women with their right to safe choice.

Unlike rest of the United Kingdom, abortions are largely banned in the Ireland (in north as well as in south). The Abortion Act, 1967 that governs abortion in UK does not apply to the (North) Ireland. It is the "Offences against the Person Act 1861", as well as the Criminal Justice Act (Northern Ireland), 1945" that applies to the Ireland (North). Ireland has a restrictive policy on abortion and allows it only if the life of pregnant woman is threatened due to her pregnancy; there also exist a lot of confusion among the society in Ireland regarding its policy on abortion.

Under the Protection of Life during Pregnancy Act, 2013, the department of Health in Ireland has issued guidelines and allows for abortions only if a woman's life is immediately threatened. The age of consent in Ireland is 17 years as per its law; this does not sync with the restrictive laws on abortion. The laws are proving to be harmful for young women who have the freedom and right to have consensual sex from the age of seventeen but in case they get pregnant, as a result of a sexual activity then they have no legal right to terminate the pregnancy unless the pregnancy causes an immediate threat to their life. The Irish laws currently penalise buying or selling of abortion medicines or pills as well, as a result of which it becomes almost impossible for young pregnant women to have a safe abortion.

According to Amnesty International, women in Ireland can undergo as long as a 14 years long imprisonment in case of illegal abortions; it reports Ireland to have one of the strictest laws on abortion in the whole Europe.

But this does not stop women in Ireland to have an abortion. They travel to other parts of UK, preferably to England and Wales to avail a safe abortion service. Almost 15,500 women travelled to England or Wales for the procedure. In the cases, these women cannot afford to travel to have an abortion they use the services of online non-profit organisations to get the abortion pills delivered to them. Almost around 5,600 women in Ireland tried to buy abortion pills online over period of five years but this does not guarantee them their right to have access to safe abortion service, as there is always a possibility of being penalised for the same and prosecuted.

Section-22 of Protection of Life during Pregnancy Act, 2013 (Ireland) states that it is an offence to intentionally destroy unborn human life and that any person who is guilty of this shall be liable to a fine or imprisonment for a term not exceeding 14 years, or both. Hence, the women obtaining abortion pills or engaging in any method of induced abortion are always under the scrutiny of the law enforcement department of Ireland.

It was the death of Dr. Savita Halappanavar (an Indian living in Republic of Ireland) due to refusal of abortion service by the hospital at Galway University that made the whole world question Ireland's abortion policy. Dr. Halappanavar was 17 weeks pregnant and did miscarry but she was denied an abortion, this happened not only because of the failure of medical staff to recognise the danger but also because of the fact that the doctors did not want any criminal liability for an induced abortion on themselves.

The midwife manager of the hospital gave the statement that Ireland being a catholic country does not permit abortion and on October 22, 2012, Sarita died after a week's struggle. This case has brought the state of confusion, which exists in the Irish society, on the surface, where not even the doctors are clear about the status of abortion in the country and remain in a moral as well legal dilemma regarding providing an abortion service to the women. Since then, there have been demands from the world community (including India) to Irish government, to liberalise the abortion laws; but the same old provisions govern abortions in Ireland today. India should learn from both the countries and liberalise its laws on abortion in order to give its women a right to dignified life.

Human Rights Instruments on safe and legal abortion to Woman

Women's Right to Life Multiple human rights instruments protect the right to life. In 21st Century, in elaborating States' obligations in reporting on their compliance with the right to life enshrined in the International Covenant on Civil and Political Rights (ICCPR), the Human Rights Committee called upon States to inform it of "any measures taken by the State to help women prevent unwanted pregnancies, and to ensure that they do not have to undergo life-threatening clandestine abortions." Forcing a woman to undergo a life-threatening unsafe abortion threatens her right to life. It is widely acknowledged that in countries in which abortion is restricted by law, women seek abortions clandestinely, often under conditions that are medically unsafe and therefore life-threatening.

According to the World Health Organization (WHO), about 21.6 million women had unsafe abortions in 2008, in 2018 it is 23.7 million women. These unsafe abortions were responsible for the deaths of nearly 47,000 women in a year. In India it is around 10000 women die out of unsafe abortion. The incidence of unsafe abortion is closely associated with high maternal mortality rates. Therefore, laws that force women to resort to unsafe procedures infringe upon women’s right to life.

Protective provision in Human rights Instruments

Human Rights Protected	International Legal Instruments						Regional Legal Instruments				Conference resolution		
	Universal Declaration of Human Rights	Civil and Political Rights Covenant	Economic, Social and Cultural Rights Covenant	Women’s Convention	Children’s Convention	Disability Convention	American Convention on Human Rights	Banjul Charter	Maputo Protocol	European Convention on Human Rights	Vienna	Caro	Beijing
The right to life, liberty & security	Art. 3	Art. 6.1 Art. 9.1			Art. 6 Art. 37(b) Art. 37(c) Art. 37(d)	Art. 10 Art. 14	Art. 4.1 Art. 7.1	Art. 4 Art. 6	Art. 4	Art. 2.1 Art. 5.1		Prin. 1 Para. 8.3 4	Para. 106 Para. 216
The right to be free from cruel, inhuman or degrading treatment	Art. 5	Art. 7			Art. 37(a)	Art. 15	Art. 5.2	Art. 5	Art. 4	Art. 3	Para. 56	Para. 4.1 0	
The right to equality & to be free from gender discrimination	Art. 2	Art. 2.1 Art. 3	Art. 2.2 Art. 3	Art. 1 Art. 2 Art. 3	Art. 2	Art. 3(b) Art. 3(g) Art. 5 Art. 6	Art. 1	Art. 2 Art. 3 Art. 18.3	Art. 2	Art. 14	Para. 18	Prin. 1 Prin. 4	Para. 214 Para. 216 Para. 232
The right to modify customs that discriminate				Art. 2 Art. 3 Art. 5	Art. 24.3				Art. 2(2)		Para. 18 Para. 38 Para.	Para. 4.4 Para. 5.5 Para.	Para. 107 Para. 224 Para.

against women											49	9.2	230
The right to health, reproductive health, & family planning	Art. 25		Art. 12	Art 11.1(f) Art. 11.3 Art. 12 Art. 14.2(b)	Art. 24	Art. 25		Art. 16	Art. 14		Para. 18 Para. 24 Para. 31 Para. 41	Pri n. 8 Para. 7.2 Para. 7.3 Para. 7.5	Para. 89 Para. 92 Para. 106 Para. 223
The right to privacy	Art. 12	Art. 17			Art. 16	Art. 3(a) Art. 22	Art. 11			Art. 8		Para. 7.2	Para. 106 Para. 107
The right to determine number & spacing of one's children				Art. 16.1(e)		Art. 23(b)			Art. 14(1) (b)			Pri n. 8 Para. 7.3	Para. 223
The right to the enjoyment of the benefits of scientific progress	Art. 27	Art. 15(b)										Para. 7.3	

Several United Nations (UN) human rights bodies have framed maternal deaths due to unsafe abortion as a violation of women’s right to life.⁶ As a result, they have called on States to review restrictive laws that criminalize abortion⁷ and increase access to family planning and sexual and reproductive health information, in order to reduce the number of unsafe abortions.

While the phrase “right to life” has been associated with the campaigns of those who oppose abortion, it has not been interpreted in any international setting to require restrictions on abortion. Most recently, the European Court of Human Rights, in the case *Vo v. France*, ruled that “it is neither desirable, nor even possible as matters stand, to answer in the abstract the question whether the unborn child is a person for the purpose of Article 2 of the Convention ...” (providing that [e]veryone’s right to life shall be protected by law) The court therefore refused to adopt a ruling that would have called into question the validity of laws permitting abortion in 39 member states of the Council of Europe.

Estimated number of unsafe abortions per 1000 women aged 15–44 years,

S.no	1990	2008	2016
Latin America and Caribbean	45	31	30/1000

Africa	28	28	26/1000
Asia	14	12	35/1000
Europe	12	2	NA

Women's Right to Health

International law guarantees women the right to the highest attainable standard of physical and mental health. The right to health requires governments to provide health care and to work toward creating conditions conducive to the enjoyment of good health. In 2000, the Committee on Economic, Social and Cultural Rights recognized that the right to health includes the right to control one's health and body, including sexual and reproductive freedom, and the right to be free from interference. Furthermore, the right to health requires the removal of all barriers interfering with access to health services, education and information, including in the area of sexual and reproductive health.

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) explicitly recognizes that the right to health includes access to safe and legal abortion, at a minimum, in certain circumstances. It requires States Parties to "ensure that the right to health of women, including sexual and reproductive health is respected and promoted by taking appropriate measures to authorize abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus.

Safe abortion services protect women's right to health.

The right to health can be interpreted to require governments to take appropriate measures to ensure that women have the necessary information and the ability to make crucial decisions about their reproductive lives, such as determining whether or not to continue a pregnancy, and to guarantee that women are not exposed to the risks of unsafe abortion, which can have devastating effects on their health, leading to long-term disabilities, such as uterine perforation, chronic pelvic pain or pelvic inflammatory disease. Such measures include removing barriers that interfere with women's access to health services, such as legal restrictions on abortion, and ensuring access to high-quality abortion information and services.

Several UN human rights bodies have recognized the deleterious impact of restrictive abortion laws on women's health¹⁶ and have consistently raised general concerns about the inaccessibility of safe abortion services. The Programme of Action adopted at the International Conference on Population and Development (ICPD) in 1994 called upon governments to consider the consequences of unsafe abortion on women's health. It states that governments should "deal with the health impact of unsafe abortion as a major public health concern.

At the 1995 Fourth World Conference on Women, the international community reiterated this language and urged governments to "consider reviewing laws containing punitive measures against women who have undergone illegal abortions. In addition, in a paragraph addressing research on women's health, the Platform for Action adopted at this conference urges governments "to understand and better address the determinants and consequences of unsafe abortion. In 1999, at the five-year review of the ICPD, governments recognized the need for greater safety and availability of abortion services. They affirmed that in circumstances where abortion is not against the law, health systems should train and equip health-service providers and should take other measures to ensure that such abortion is safe and accessible. Additional measures should be taken to safeguard women's health.

Women's Right to Equality and Non-Discrimination

The right to gender equality is a fundamental principle of human rights law. All major human rights instruments require freedom from discrimination in the enjoyment of protected human rights. According to the Convention on the Elimination of All Forms of Discrimination against Women, "discrimination against women" includes laws that have either the "effect" or the "purpose" of preventing a woman from exercising any of her human rights or fundamental freedoms on a basis of equality with men.

In 1999, the Committee on the Elimination of Discrimination against Women (CEDAW Committee) recognized "laws that criminalize medical procedures only needed by women and that punish women who undergo those procedures" as a barrier to women's access to appropriate health care.

Denying women access to abortion is a form of gender discrimination.

Laws that restrict abortion have the effect and purpose of preventing a woman from exercising any of her human rights or fundamental freedoms on a basis of equality with men. Restricting abortion has the effect of denying women access to a procedure

that may be necessary for their equal enjoyment of the right to health. Only women must live with the physical consequences of unwanted pregnancy. Some women suffer maternity-related injuries, such as hemorrhage or obstructed labor. Women are consequently exposed to health risks not experienced by men.

Laws that deny access to abortion, whatever their stated objectives, have the discriminatory purpose of both denigrating and undermining women's capacity to make responsible decisions about their bodies and their lives. Indeed, it is not surprising that unwillingness to allow women to make decisions about their own bodies often coincides with the tendency to deny women decision-making roles in the areas of political, economic, social, and cultural affairs.

The CEDAW Committee has consistently expressed concern about restrictive laws that criminalize abortion. Furthermore, the Human Rights Committee has recognized that criminalizing abortion, even in cases of rape, is incompatible with the States' obligation to ensure the equal right of men and women to the civil and political rights set forth in the ICCPR. Additionally, it has indicated that the problem of maternal mortality due to unsafe abortion is evidence of discrimination against women.

Women's Right to Reproductive Self-Determination

Human rights instruments provide the basis for the right of women to make decisions regarding their own bodies. They require the right to freedom in decision-making about private matters. Such provisions include protections of the right to physical integrity, the right to decide freely and responsibly the number and spacing of one's children and the right to privacy. Women have the right to decide whether to bring a pregnancy to term.

When a pregnancy is unwanted, its continuation can take a heavy toll on a woman's physical and emotional well-being. Decisions one makes about one's body, particularly one's reproductive capacity, lie squarely in the domain of private decision-making. A pregnant woman may seek advice from others, but only she knows whether she is ready to have a child, and governments should play no role in making that decision for her. The Human Rights Committee has recognized that denying women access to legal abortion services is an arbitrary interference in their private lives.

The European Court of Human Rights has underscored the connection between pregnancy and a woman's private life, which includes her physical and psychological integrity. It has recognized that States have a positive obligation to effectively secure the physical integrity of pregnant women. This obligation requires them to establish procedural safeguards to ensure that women can make an informed decision about whether to terminate a pregnancy³⁰ and access safe and legal abortion services in a timely manner.

Woman's Right to be Free from Cruel, Inhuman, or Degrading Treatment

International law recognizes that women have a right to be free from cruel, inhuman, or degrading treatment. The Human Rights Committee has stated that cruel, inhuman, or degrading treatment is not restricted to acts that cause physical pain, but also applies to mental suffering, which often accompanies denials of access to abortion services. Forcing women to carry pregnancies to term causes physical and mental suffering. As a result of restrictive abortion laws and policies, many women experiencing complications of pregnancy and needing therapeutic abortion are forced to suffer from painful, frightening and life-threatening conditions. Human rights bodies have recognized that restrictive abortion laws can lead to violations of the right to be free from cruel, inhuman and degrading treatment. The Committee against Torture has recognized the impact of restrictive laws, which force women to carry unwanted pregnancies to term or to undergo illegal abortions that often place their health and lives in danger, and noted that the failure of States to take steps to prevent these acts constitutes cruel and inhuman treatment.³³ Specifically, it has indicated that a total prohibition on abortion, which forces a woman to carry a pregnancy resulting from a crime of gender based violence, such as rape, "entails constant exposure to the violation committed against her and causes serious traumatic stress and a risk of long-lasting psychological problems such as anxiety and depression. The Human Rights Committee has stated that criminalizing abortion is incompatible with the right to be free from cruel, inhuman or degrading treatment.

Women may also undergo severe suffering and anguish when legal abortion services are inaccessible. In many countries, healthcare personnel refuse to provide legal abortion services because of their own objection or discriminatory attitudes towards abortions. In the case of *L.M.R. v. Argentina*, the Human Rights Committee found that the State's failure to ensure a woman's access to abortion services to which she was legally entitled, caused her physical and mental suffering, which constituted cruel, inhuman or degrading treatment.

Additionally, in the case of *R.R. v. Poland*, the European Court of Human Rights established a violation of the right to be free from inhumane and degrading treatment because of the suffering experienced by R.R., due to the knowledge that she could not terminate her pregnancy even though the fetus had an incurable deformity and she was entitled to have an abortion under the Polish law. The Court stated that "[s]he suffered acute anguish through having to think about how she and her family would be able to ensure the

child's welfare, happiness and appropriate long-term medical care.”³⁸ Furthermore, the denial of access to abortion services in certain circumstances, regardless of the legality of the procedure, constitutes cruel, inhuman or degrading treatment.

In the landmark decision of *K.L. v. Peru*, the Human Rights Committee found that the depression and emotional distress experienced by a 17-year old girl were foreseeable consequences of the State's failure to enable her to benefit from a therapeutic abortion, and constituted a violation of her fundamental right to be free from cruel, inhuman, or degrading treatment.³⁹ Notably, this ruling did not depend on the legality of abortion.

Women's Right to the Enjoyment of the Benefits of Scientific Progress- The Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights enshrine the right to enjoy the benefits of scientific progress. Women have the right to access the full range of abortion technologies. As the medical and scientific communities make advances in abortion technologies, this right entitles women to access the full range of technologies for the safest abortion care.

The right to the benefits of scientific progress is particularly salient in the context of abortion because numerous safe, effective and low-cost health interventions, such as medical abortions, can substantially improve women's access to safe abortion services, thereby reducing the incidence of unsafe abortion, and decreasing the attendant maternal morbidity and mortality rates. Medical abortion is an alternative to surgical abortion that generally uses two medicines to end a pregnancy. The most common regimen calls for an oral dose of Mifepristone, followed by a dose of Misoprostol up to 48 hours later. This regimen, which can be initiated as soon as pregnancy is confirmed, is approximately 95% effective. In 2005, the WHO added Mifepristone and Misoprostol to its Model List of Essential Medicines, a list intended to guide governments in their prioritization of necessary drugs for budgetary allocations and procurement in their national health systems.

Permitting medical abortion can significantly improve women's overall access to safe abortion because it can be provided in a broad range of settings, such as in practitioner's offices, and can be offered by non-physicians, which helps to expand the pool of providers available to perform safe abortions. Additionally, reducing reliance on physicians can reduce costs and help make abortion more available and accessible to women. By approving medical abortion protocols, training providers and removing barriers to the regimen, governments can ensure that women have access to medical abortion in a safe setting, which allows them to enjoy their right to the benefits of scientific progress.

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