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ABORTION LAWS IN INDIA: CRITICAL ANALYSIS AND WAY FORWARD

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Abstract

Although abortion is commonly practised throughout most of the world and has been practised since long before the beginning of recorded history, it is a subject that arouses passion and controversy. Abortion raises fundamental questions about human existence, such as when life begins and what it is that makes us human. Abortion is at the heart of such contentious issues as the right of women to control their own bodies, the nature of the State's duty to protect the unborn, the tension between secular and religious views of human life and the individual and society, the rights of spouses and parents to be involved in the abortion decision, and the conflicting rights of the mother and the foetus. Also central to the subject of abortion is one of the most highly controversial social issues of all, sexuality. Any discussion of abortion almost inevitably leads to a consideration of how a pregnancy came about and ways that the pregnancy could have been prevented by the use of contraceptive methods. As the new century begins, these questions and issues continue to occupy a significant place in public discourse around the world.

This study does not attempt to answer any of these questions or resolve these controversies. Rather, it aims at providing objective information about the nature of laws and policies relating to abortion at the end of the twentieth century.

I. ABORTION LAWS IN INDIA

Abortion is the cessation of a pregnancy, whether it occurs spontaneously, with medical assistance, or artificially, before the fetus becomes viable or able to be born. The word "abortion" came from the Latin word "abortus," that is "failure to be born." The term "preterm delivery" refers to giving birth before the pregnancy reaches full term, typically between the fourth and seventh month of pregnancy. While the terms abortion, miscarriage, and premature delivery all refer to the termination of a pregnancy, they occur at different stages of gestation.

The term "preterm delivery" refers to the process of parturition to a child before the pregnancy has reached its full term. Preterm delivery is the delivery of the foetus between the 4th and 7th month of pregnancy, while abortion is defined as the ejection of the foetus within the first three months of pregnancy. Abortion is defined as the removal of the egg within the first three months of pregnancy. Preterm delivery is defined as the delivery of the foetus between the fourth and seventh month of pregnancy. Abortion, miscarriage, and premature delivery are all terms that refer to the termination of a pregnancy at any stage before fertilisation. These terms are now officially recognized as synonyms for one another. It is common practice to use the terms "abortion," "illegal abortion," "medical pregnancy termination," "foeticide," "female foeticide," "foetal loss," and "female foetal loss" interchangeably, which can lead to confusion. To create a level playing field, the fundamental concepts related with the subject need to be specified.

The following are the primary classifications of abortions:

1. An abortion that occurs as a consequence of an accident, such as colliding with another component, a fall from an automobile that is moving, or a tumble from an elevated object is referred to as an accidental abortion.

2. Abortion that is caused purposely, such as when it is carried out by a surgeon, is referred to as an artificial abortion. Abortions that are caused intentionally are also known as therapeutic abortions.

3. Full abortion: This type of abortion refers to the elimination of every aspect of conception and is also known as a total abortion. When an abortion is over, the woman will no longer experience any agony and the bleeding will cease.

4. Abortion that leaves the uterus intact as part of the outcome of the pregnancy is referred to as a incomplete abortion, as its name suggests.

5. Abortion that does not leave the uterus intact as part of the outcome of the conception. In this particular instance, the bleeding of the patient does not cease, and on occasion, it even gets worse.

6. Abortion that is performed against the mother's will is considered a criminal act and falls under the category of criminal abortion.

7. Abortion that is performed on a frequent basis is referred to as a habitual abortion. An abortion that is performed on a daily basis can be dangerous. It is a sort of pregnancy that wasn't

in the plans, and it can take place as many as three times in a row.

8. Abortion that is unavoidable because to the low likelihood of a successful outcome for the pregnancy in question this type of abortion cannot be avoided. The uterine contractions during this form of abortion are uncomfortable, and the blood that occurs during the procedure is significant.

9. In this type of abortion, the deceased foetus remains in the uterus for a period of at least 4 months after it has passed away.In this scenario, the future mother will most likely exhibit early pregnancy symptoms such as nausea and the development of breast tissue, among other things.

10. Septic abortion occurs when both the foetus and the interior wall of the uterus become infected. After a spontaneous abortion, there is a risk of developing an infection. In the event that an abortion attempt fails, the uterus is at risk of being infected.

11. Abortion that occurs for no apparent reason is referred to as a spontaneous abortion. This type of abortion is considered to be the most common type of abortion.

12. When a pregnancy poses a threat to a woman's physical and mental health, a medical procedure called induced abortion, also known as therapeutic abortion, may be performed to preserve her well-being.

13. Abortion is considered to be threatened when there is only light vaginal bleeding, in addition to or in the absence of brief episodes of discomfort. It is possible that the pregnancy will continue even if an abortion is not performed, depending on whether or not the fetus is viable. The majority of medical professionals feel that the most effective form of treatment involves taking medicine as well as remaining completely immobile in bed for seven days after the cessation of bleeding.

The topic of abortion has generated a great deal of heated debate and discussion all around the world. MTP Act of 1971 gives the lawful basis for abortion in India. This act permits for the termination of a pregnancy up to 20 weeks into the gestational period. Abortion is legal in India. The execution of the law, on the other hand, has been hampered by a number of obstacles, such as a lack of awareness, societal stigma,and poor hospital infrastructure.

II. History of the Abortion laws in India

After the British established the Indian Medical Service in 1763, which used to be referred to as the Bengal Medical Service, abortion became illegal and was eventually criminalized.This was made unlawful in 1860 under the IPC, and it continues to be banned today under the set of moral principles or values that was established in 1956 by the IMC.

In 1964, the Ministry of Health and Family Welfare appointed members of the Shanti Lal Shah Committee[1] to investigate the factors that contributed to the dramatic hyped up in the number of reported abortions. After that, in the year 1970, this Committee put forward the MTP Bill, which would later become the MTP Act when it ultimately passed into law in August of 1971.

With the passing of the MTP Act in 1971, India became one of the first countries in the world to decriminalize abortion. Before that, abortion was deemed a criminal violation and was punishable by up to three years in prison under Section 312[2] of the IPC[3]. This law had been in effect since 1973. The MTP Act took the place of the provision in the IPC and made it possible to terminate a pregnancy under certain circumstances. These circumstances included threats to the mother's physical or mental health, the possibility that the child would be born exhibiting physical or mental impairments, and pregnancies that were the result of rape or the inability to use contraception. Additionally, the statute permitted the termination of a pregnancy after the first 20 weeks if the doctor determined that the pregnancy was a risk to the mother's life.

The MTP Act was revised in 2002 to make it possible for a woman to terminate her pregnancy up to 20 weeks into the gestational period if she so desires, provided that a licensed healthcare provider attests to the necessity of the termination. Additionally, the amendment acknowledged the right to abortion as a fundamental right to reproductive health, together with the right to privacy and the autonomy of one's own body.

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[1] Sarosh Framroze Jalnawalla, "Medical Termination of Pregnancy Act: A Preliminary Report of the First Twenty Months of Implementation", Journal of Obstetrics and Gynaecology of India, 1974.

[2] Section 312 IPC defines miscarriage as "Whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage is not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman is quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine".

[3] Act No 45 of 1860

During the year 2020, the Indian government proposed amendments to the MTP Act, originally passed in 1971, with the aim of expanding the availability of safe and lawful abortion services to women. The amendments were presented for consideration and received affirmative votes in both the Lok Sabha (the lower house of Parliament) and the Rajya Sabha (the upper house of Parliament).

Guaranteeing women's right to privacy, which includes the freedom to choose when and how many

children to have, may be the primary purpose of the legislation, in addition to putting an end to the widespread practice of illegal abortion, which may also be a secondary objective of the legislation. Another important aspect of the Act is that it enables married women to terminate an unwanted pregnancy on the grounds that a method of contraception had failed. This is done with the intention of reducing the rate at which the world's population is growing.The MTP(Amendment) Bill, which will become law in the year 2020.

III. Important Components of the MTP (AMENDMENT) ACT, 2021[4]

1.Increase in the Upper Limit for Abortions: The most significant change made to the MTP Act is the proliferation in the maximum gestation period for abortions from 20 weeks to 24 weeks. This change is the most significant change made to the MTP Act. In 1971, in light of medicine & technology that was available at the time, a restriction of 20 weeks was established for pregnancies. However, as a result of advancements in both medical science and technology, it is now feasible to discover fetal anomalies and difficulties after the 20th week of pregnancy has passed. A woman would have more time to gather the necessary information before making a decision regarding her pregnancy if the maximum age for having an abortion was raised.

2.Medical Boards: A woman is permitted, in accordance with the amendment, to get an abortion up to 24 weeks into her pregnancy with the approval of a single licensed medical practitioner. If the woman's pregnancy is more than 24 weeks along, she will be required to obtain authorization from the medical board before having an abortion. The board would have three members: a government medical officer, two medical professionals, one of whom would be a gynecologist or obstetrician, and a medical practitioner who works for a private practice.

3.Enabling certain Categories of Healthcare Providers to Carry Out Abortions: This is an additional amendment that would enable particular categories of healthcare providers, such as nurses and midwives, to carry out abortions. This would solve the problem of a lack of educated medical practitioners in certain regions of the country and increase access to abortion services that are both safe and legal.

In order for a healthcare provider to be authorized to perform abortions, the amendment requires that they must receive training and certification from a qualified medical practitioner. The certification would remain active for a period of five years, after which the healthcare provider would be required to re-certify themselves by completing additional training and passing an exam.

[4] The Medical Termination of Pregnancy (Amendment)Act, 2021 no. 8 acts of parliament, 2021(India)

4.Protection of Women's Right to Privacy and Confidentiality: The amendment also includes safeguards to preserve the privacy and confidentiality of pregnant women who are seeking abortions. The amendment makes it illegal to reveal a woman's identify without first obtaining her permission to do so and mandates that all healthcare providers keep the identities of women considering abortions private and discreet. Disclosure of the identify of a woman who has had an abortion is likewise made illegal under this provision of the bill.

In addition, the amendment suggests doing away with the requirement that the woman must explain the circumstances that led her to seek an abortion. The Medical Treatment and Procedures Act (MTP Act) as it is today compels a woman to provide reasons for obtaining an abortion, which can be both intrusive and stigmatizing.

Women in India currently have limited access to abortion options that are both safe and legal; the proposed revisions to the MTP Act aim to rectify this situation. The stress placed on medical practitioners would be alleviated thanks to a rise in the permissible number of abortions as well as the inclusion of specific categories of healthcare professionals. This would result in an greater availability of abortion care. Women would be able to receive abortion services without fear of being discriminated against or stigmatized if they were guaranteed their right to privacy and confidentiality was protected. The proposed change will also respect women's autonomy and decision-making capacity by abolishing the need that women must disclose the reasons why they are seeking an abortion. This provision is now in place.

IV. An Analysis of the most important part of the Bill

1.The Medical Board will only make termination decisions under certain conditions - According to the Bill's Statements of Objects and Reasons, a large number of Writ Petitions have been submitted to the Supreme Court and several High Courts requesting approval for the cessation of pregnancies after 20 weeks in cases of foetal anomalies or pregnancies brought on by rape against women. The Supreme Court and several High Courts have been asked to rule on these petitions.[Explanation of the Purposes and Reasons Behind the Medication Termination of Pregnancy (Amendment) Bill, 2020] The termination of a pregnancy is only permitted after the first 24 weeks of gestation if a Medical Board has determined that there are serious foetal abnormalities in the pregnancy. This would imply that the process for terminating rape-related pregnancies that have advanced beyond the 24-week mark has not changed; the only alternative

is to get authorization through a Writ Petition.

2.Unspecified time frame for the Medical Board's determination - The Bill permits ending a pregnancy beyond 24 weeks if a Medical Board advises it, particularly in cases of significant fetal abnormalities. However, the Board's recommendation lacks a specific timeline. Given that pregnancy termination is time- critical, the Medical Board's decision-making process must be expedited to reduce further complications for the expectant mother.

3.Issue of Transgenders - It is uncertain whether the Bill will provide any protection for transgender individuals. Although both the Act and the Bill allow "pregnant women" to end their pregnancies, it is unclear whether transgender people will be included. The Transgender Persons (Protection and Rights) Act, 2019, acknowledges transgender people as a distinct gender in India. Despite undergoing hormone therapy to transition from female to male, some transgender individuals may still conceive and require abortion services. However, the Bill only permits pregnancy termination when the mother is a woman, leaving it unclear if transgender individuals will be covered.

5.A lack of access to qualified medical staff in order to terminate the pregnancy - The necessity to increase women's access to safe and legal abortion services is emphasized in the bill's Statement of Objects and Reasons in order to reduce maternal mortality and morbidity brought on by unsafe abortions and the complications that can arise from them. Reduced rates of maternal morbidity and mortality as well as are the ultimate objective. According to the All-India Rural Health Statistics (2018-19), there are now 1,351 gynecologists and Obstetricians who work in healthcare facilities in rural India. However, there is a need for 4,002 more of these competent medical professionals. This represents a shortage of 75% of qualified medical experts. It's possible that a lack of trained medical professionals is making it more difficult for women to access safe abortion services in their area. According to the National Health and Family Survey (2015–16), licensed medical professionals perform only 53% of all abortions. The remaining 47% of abortions are performed by nurses, auxiliary nurse midwives, and other healthcare providers.

Obstacles Encountered in the Process of Putting Abortion Laws Into Effect In spite of India's relatively liberal abortion legislation, the MTP Act has been difficult to put into practice due to a number of obstacles. One of the most significant obstacles is the widespread ignorance among women with regard to the reproductive rights they are entitled to and the laws and regulations that exist for abortion. This frequently results in a delay in seeking medical treatment, which can have significant repercussions for the individual's health as well as their well-being.

In addition to the MTP Act, many states in India have enacted their very own rules and regulations concerning abortion. These pieces of state legislation could result in the addition of new abortion restrictions or perhaps a complete ban on the procedure. As an instance, the state of Maharashtra passed the Maharashtra Medical Termination of Pregnancy Rules, 2001, in 2001, which establishes standards for the licensure of abortion facilities, the training of doctors who execute the procedure, and the retention of abortion-related data. These requirements were enacted in order to ensure thesafety of women seeking abortions in Maharashtra.

In addition, certain governments have specific regulations that control the termination of pregnancies in cases where there are anomalies in the foetus or problems with the health of the mother. For example, the state of Bihar allows abortions in cases when the conception was spurred on by incest or sexual assault, while the state of Madhya

Pradesh has a clause that authorizes abortions if the foetus has major deformities after 20 weeks of pregnancy. Both of these states have similar laws.

A substantial obstacle to the enforcement of abortion legislation is also the stigma that is attached to women who seek abortions and the prejudice that they face as a result. Women who seek abortions are frequently targeted for moral assessment and ridicule by their families and communities, which can lead to psychological anguish and other health problems. Abortion is a legal procedure in the United States.

Another difficulty is from the insufficient infrastructure of healthcare facilities, particularly in more rural locations. Many women living in rural locations may not have access to licensed medical professionals who can perform abortions in a manner that is both safe and compliant with the law. Because of this, many women end up seeking abortions that are both dangerous and illegal, which can lead to a number of complications or even death.

The MTP Act was a big step forward in terms of women's reproductive rights in India since it gave women the legal framework they needed to seek abortions in a safe and legal manner. The application of the law, on the other hand, has been delayed by a number of obstacles, such as a lack of information, societal stigma, and poor healthcare infrastructure. It is necessary for there to be a higher consciousness and education on reproductive rights, as well as a destigmatization of abortion and funding for healthcare infrastructure, in order to guarantee that women will have access to abortions that are both safe and legal. Only at that point will women's right to reproductive autonomy be able to be completely fulfilled, and they will be able to make educated decisions regarding their own bodies and the health of their bodies.

In addition, there is an urgent requirement to address the problem of gender bias and discrimination, which lies at the root of many of the obstacles that women who seek abortions must overcome. Women who seek abortions are frequently stigmatized and judged for their decisions, yet males who impregnate women do not suffer any consequences for their actions. This underlines the necessity for a more gender- equitable approach to reproductive healthcare, one in which both men and women are

held responsible for the reproductive choices they make.

In conclusion, despite the fact that India's abortion laws have gone a long way since the passing of the MTP Act, there is still a great deal of work to be done to ensure that women have access to abortions that are both safe and legal. In order to overcome the problems that impede the implementation of the law and to increase knowledge and education on women's reproductive rights, this requires a coordinated effort on the part of politicians, healthcare professionals, and members of civil society. If India takes these steps, it will be possible for the country to take another step toward achieving reproductive justice and gender equality. In such a society, women would have the freedom and agency to make decisions regarding their own bodies and lives. Additionally, the COVID-19 pandemic has made the difficulties that women have while trying to obtain abortions much more difficult. Women have had a more difficult time gaining access to healthcare services, particularly abortion procedures, as a result of the lockdowns and movement restrictions. There is currently a dearth of resources for reproductive healthcare services as a result of the fact that numerous medical facilities have been repurposed to treat individuals with COVID-19. In addition, the pandemic has resulted in an increase in gender-based abuse and sexual assault, which has led to an increased need for abortions that are both safe and legal.

As a response to the epidemic, the Indian government has created regulations to make sure that reproductive medical care, including abortion services, are categorized as vital services and are accessible to women during the lockdowns. These recommendations were issued in order to prevent women from being denied access to these services. In addition, telemedicine services have been made available so that women can obtain healthcare treatments even when they are not physically present. However, the application of these policies has been inconsistent, and a significant number of women continue to have trouble gaining access to reproductive healthcare services.

V. The Protection of Children from Sexual Offences Act, 2012[5]

The POCSO Act is yet another significant piece of legislation that, in relation to abortion, offers recommendations. POCSO Act is a piece of legislation that was passed in India in 2012 with the intention of safeguarding young people from sexual assault and exploitation. The act lays out requirements for custody and safety of child victims and witnesses and provides for the penalty of sexual offenses done against children. It also provides for the prosecution of sexual offenses perpetrated against children.

Although the POCSO Act is primarily concerned with sexual offenses committed against minors, it also has bearings on the regulation of abortion services in some contexts due to the nature of its subject matter. According to Section 3 of the POCSO Act, the term "child" refers to any individual who has not yet reached the age of 18 years. Child victims and witnesses are afforded care and protection under the terms of Section 19 of the Act, which stipulates not only the provision of

medical assistancebut also of counseling services.

When a minor is the victim of sexual assault, the POCSO Act's Section 39 permits the termination of a pregnancy in certain circumstances if the pregnancy is the direct outcome of the assault. According to the provisions of this section, if a woman becomes pregnant as a consequence of committing an offense under the act, and if she so chooses, the pregnancy may be terminated in accordance with the Medical Termination of Pregnancy Act, 1971 (MTP Act), as long as she has the option to do so. The MTP Act outlines the requirements and processes that must be followed in order to terminate a pregnancy. A pregnancy may be terminated up to 12 weeks of gestation under the MTP Act, and in certain cases up to 20 weeks of gestation, provided that the conditions listed in the act are met. In certain instances, an abortion may be performed up to 20 weeks of gestation.

The POCSO Act provides for the cessation of pregnancies in circumstances when the pregnancy is the consequence of sexual assault committed on a child. This is the case even if the gestation time exceeds the restrictions that are stated in the MTP Act. According to Section 39 of the POCSO Act, an abortion may be undertaken at any time during a woman's pregnancy if the procedure is immediately essential to

[5] The Protection Of Children From Sexual Offences Act, 2012 [No. 32 of 2012]

preserve the pregnant woman's life or to prevent grave impairment to her mental or physical well-being. This provision applies only in extreme circumstances.

The rules laid down in the POCSO Act related to the termination of pregnancy only apply in situations where the pregnancy is a result of a crime under the act. This is an important point to keep in mind since it is crucial to note that the POCSO Act provisions related to the termination of pregnancy. In all other circumstances, the terms and procedures laid out in the MTP Act would be obligatory to follow.

In a nutshell, the POCSO Act permits the termination of a pregnancy in specific situations if it can be proven that the pregnancy is a consequence of a sexual crime committed against a minor. According to Section 39 of the Act, an abortion may be performed at any time throughout the span of the pregnancy if it is urgently required to preserve the life of the pregnant woman or to prevent significant impairment to her physical or mental health. Exceptions to this rule include situations in which the pregnant woman is in imminent danger of miscarrying the baby. The MTP Act lays out the requirements and processes that must be followed in order to terminate a pregnancy in these circumstances.

VI. Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994[6]

Another significant piece of legislation that does not directly address abortion law but does in some way or another have an effect on the abortion laws contained in the PCPNDT Act. The Pre-Conception and Pre-Netal Diagnostic procedures (PCPNDT) Act is a piece of legislation that was created in India in 1994 with the intention of preventing sex-selective abortions as well as the misuse of pre-conception and pre- natal diagnostic procedures for the purpose of knowing the gender of the child in the womb. This piece of legislation is also known as the "PCPNDT Act."

Provisions for the regulation of genetic counseling centers, genetic laboratories, and ultrasonography clinics are included in the PCPNDT Act. This act also regulates genetic testing facilities. Additionally, the legislation includes standards for the registration and certification of these institutions, as well as the preservation of records and the reporting of reports to the relevant authorities.

Additionally, the act contains measures pertaining to the control and regulation of abortion services. No person shall employ the utilization of pre-natal diagnostic technology for the purpose of determining the sex of the fetus or for the performance of a sex-selective abortion, as stipulated by Section 4(3) of the PCPNDT Act. This provision applies to both the United States and Canada. According to Section 23 of the Act, any individual who violates this provision is subject to a possible sentence of imprisonment as well as a fine.

In accordance with the mandates outlined in Section 5 of the PCPNDT Act, all genetic counseling centers, genetic laboratories, and ultrasound clinics are required to be registered with the relevant authority. In addition, the act stipulates that no genetic counseling center, genetic laboratory, or ultrasound clinic may perform any pre- conception or pre-natal diagnostic technique without first obtaining the written approval of the pregnant woman or her legal guardian. This consent must be provided before the procedure may be carried out.

In the act, Section 6 specifies the criteria that must be followed by registered facilities for the keeping of records and the submitting of reports. According to the provisions of the section, every registered facility is required to keep a record of all pre-natal

[6] Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994.No. 57, Acts of Parliament,1994 (India)

diagnostic procedures that it performs and to report these procedures to the relevant authority on a regular basis.

The PCPNDT Act also has ramifications for how abortions are regulated in the United States. Any individual who utilizes any pre-natal diagnostic procedure for any purpose other than the detection of genetic or metabolic problems, or for the detection of chromosomal anomalies, shall be punished with

imprisonment and/or a fine, as stated in Section 4(4) of the Act.

According to the terms of Section 5(2) of the Act, no one may perform any pre-natal diagnostic treatment or any other medical process with the intention of choosing the gender of the child to be born. Section 4(5) of the Act allows for the termination of a pregnancy, but with certain limitations. The procedure must be performed by a registered medical practitioner in a registered hospital or clinic and only if it is essential to save the life of the pregnant woman or prevent severe harm to her physical or mental health. Moreover, the abortion must be carried out in a hospital or clinic that has a valid license.

The PCPNDT Act allows for the termination of a pregnancy if and only if a woman desires to do so and if the procedure is performed by a registered medical practitioner in a registered clinic or hospital. However, the act specifies that termination is permissible only if it is necessary to preserve the life of the pregnant woman or to prevent significant harm to her physical or mental health. In essence, the PCPNDT Act permits the cessation of a pregnancy only in specific circumstances.

It is essential to keep in mind that the PCPNDT Act does not expressly deal with abortion laws but rather with the regulation of pre-conception and pre-natal diagnostic procedures. This is a key distinction to make. The act does, however, have ramifications for the regulation of abortions, in particular in situations in which the pregnancy is being terminated due to defects in the fetus.

In a nutshell, the purpose of the Preconception and Prenatal Diagnosis and Treatment Act (PCPNDT Act) is to put an end to sex-selective abortions and the inappropriate use of pre-conception and pre-natal diagnostic procedures. Before carrying out any kind of prenatal diagnostic test, the legislation mandates that a pregnant woman's written agreement be obtained first. The act also establishes criteria for the regulation of genetic counseling centers, genetic laboratories, and ultrasound clinics. Under some conditions, the act authorizes the termination of pregnancies, however this provision is subject to the restrictions that are outlined in the act itself.

VII. The Constitution of India and the Subject of Abortion

The framers of our Constitution approached the construction of our democratic system with great care, and they instilled the idea that citizens must be protected against the abuse of power by both the government and the representatives of that government. As a direct consequence of this, Article III of the Constitution contains protections for basic civil liberties. Article 21 of the Indian Constitution protects not just the right to privacy but also the right to a life free from arbitrary deprivation. The right to one's own life and to personal liberty is the most sacred, valuable, inviolable, and fundamental of all of the fundamental rights that are guaranteed to all citizens. This undertaking imposes limits on the government and is engrained in the cultural and social consciousness of the Indian population. A woman's inherent right to life, liberty, and the pursuit of happiness supports her claim that she has the right to havean abortion.

Women have the ability to reproduce as well as the right to make decisions regarding their sexual

health and reproductive choices for themselves. In order to defend women's human rights and make progress toward global development, the international community acknowledged that a woman has the right to have an abortion.

In order to be in compliance with the universal mandate, legislatures from all over the world have taken the recognition and accreditation of women's reproductive rights to unprecedented heights. In order for the government to realize this goal, the formalization of policies and legislation that are crucial markers in the advancement of reproductive rights was required. As a result, it is possible to reiterate that every woman, no matter where she lives in the globe, possesses the unrestricted right to regulate her own body.

VIII. REPRODUCTIVE AND ABORTIONRIGHTS

The concept of reproductive rights is based on the fundamental principle of respecting individuals' right to make choices regarding their own sexual and reproductive health. These rights ensure that everyone, regardless of gender, age, or social status, has the freedom to make informed decisions about whether to have children, when to have them, and how many to have. Moreover, reproductive rights encompass the right to access information and resources that enable individuals to make informed choices and obtain necessary healthcare services to achieve optimal sexual and reproductive health.

In essence, reproductive rights acknowledge that every person has the right to control their own body and make decisions based on their own values, beliefs, and circumstances. These rights also recognize that individuals should have access to comprehensive sexuality education and family planning methods that can help them make informed decisions about their reproductive health.

Reproductive rights are critical for promoting gender equality and advancing human development. By empowering individuals to make choices about their reproductive health, we can help break down barriers that prevent women from reaching their full potential and improve overall health outcomes for communities. Therefore, it is crucial to continue to advocate for and uphold reproductive rights as fundamental human rights.

Despite the significant progress that has been made in recognizing and protecting reproductive rights worldwide, many individuals, particularly women, still face significant barriers in accessing the full range of reproductive healthcare services and resources. For example, many individuals lack access to affordable and effective contraception, and may also face social and cultural barriers to accessing these services.

International treaties and agreements have been developed over several decades to address these issues and provide a legal framework for protecting and promoting reproductive rights. These agreements require governments to take measures to prevent discrimination and ensure equal legal protections for men and women.

Several important international documents have been developed to support gender equality and women's rights, including the Vienna Declaration and Programme of Action, the Programme of Action of the ICPD, and the Platform for Action adopted at the FWCW. The Beijing Declaration and Platform for Action is another important example of these consensus documents.

Reproductive rights, which are considered an essential part of human rights, were first recognized during the 1968 United Nations international conference on human rights. Since then, the recognition of these rights has played a significant role in promoting gender equality and ensuring that individuals, irrespective of their gender or other personal characteristics, have the autonomy to make informed decisions regarding their sexual and reproductive health. However, the realization of these rights has been hindered by numerous obstacles.

Nevertheless, it is vital to continue advocating for the promotion and protection of reproductive rights in the pursuit of social justice and human rights advancement. In India, there is a commitment to upholding the principles of informed free choice, which are fundamental to the success of family planning services. This implies that individuals and couples should have access to comprehensive and accurate information that empowers them to make fully informed decisions about their sexual and reproductive health, and be free from coercion or any other form of pressure. Overall, upholding reproductive rights is crucial to the overall well-being of individuals and communities.

Reproductive rights are considered a fundamental aspect of human rights, as recognized by the World Health Organization (WHO). These rights guarantee individuals and couples the freedom to choose the number, spacing, and timing of their children, as well as to access information and services that support their reproductive health. They also encompass the right to access contraception, and to make decisions about their reproductive health without any form of violence, coercion,or discrimination.

Reproductive rights are closely intertwined with other basic human rights, including the right to health, life, privacy, and information. Access to comprehensive sexual and reproductive health information and services is crucial for women and girls to achieve positive reproductive health outcomes. This includes lower rates of unsafe abortion and maternal mortality, as well as the ability to make fully informed decisions about their sexuality and reproduction.

Governments have a responsibility to protect reproductive rights as human rights, and to ensure that women and girls have access to comprehensive reproductive health information and services. The violation of reproductive rights disproportionately affects women and girls due to their potential to become pregnant. Therefore, it is critical to protect these rights to promote gender justice and equality for women.

In India, significant challenges remain in ensuring access to comprehensive reproductive health information and services. These challenges can arise from cultural and social stigma, lack of information and education, financial constraints, and legal restrictions. However, by promoting and protecting reproductive rights, India can help ensure that all individuals have access to the resources they need to make informed decisions about their sexual and reproductive health. This would also lead

to a higher level of health and wellbeing, not only for individuals and couples but also for society as a whole.

In the Indian Constitution, many of these rights are recognized as being essential rights, including but not limited to:

1. The government has a responsibility to protect some rights, including the right to equality and nondiscrimination (Articles 14 and 15), as well as the right to life (Articles 21), which, according to the law, encompasses other rights as well, such as the right to health, dignity, freedom from torture and other cruel treatments, and privacy.

2. In addition, India has ratified a number of international agreements that uphold reproductive rights. These agreements include the CEDAW, ICCPR, ICESCR, and the CRC. All of these conventions were created to protect the rights of women and children.

3. The courts have affirmed that the Indian government has a constitutional obligation to fulfill its responsibilities under international law and treaties, which is also stated in Article 51(c) of the Indian Constitution.

4.The Indian government is required to ensure that people who violate fundamental rights and human rights have the opportunity to seek judicial recourse in accordance with the country's constitution. In order to ensure that "the potential for justice cannot be denied to any citizen by reason of monetary or other disabilities," as stated in Article 39(a), the government is required to encourage equal access to justice as well as free legal aid.

The debate over and the prospects for the expansion of reproductive freedom for women in India -

India was among the earliest nations in the world to establish the legal structure and policies necessary to prioritize the protection of women's reproductive rights. Despite the fact that there are number of instances in which we are in a position to bring attention to the violation of the reproductive rights of women. At initially, the rules concerning a woman's reproductive wellness were disregarded since the authorities were more concerned with accomplishing demographic goals such as population control. In addition, India has not implemented a policy that is centered on the protection of women's rights; as a result, the state undermines women's reproductive autonomy by enforcing discriminatory regulations,

such as the mandate that spouses provide permission before their partners can get reproductive health care. In spite of the fact that women in India are legally permitted to exercise their rights, this society persistently works to undermine their capacity to do so.Even though there are some women who are able to fight for their rights, the laws and customs of this society always repress the women who come from conservative households or are members of the lower castes. This is the case regardless of how many women are able to fight for their rights. The reason for this is that the percentage of females in India who are literate is appallingly low. In addition, despite the fact that being married before the age of 18 is against the law in India, more children are getting married there, according to the data. This is happening despite the fact that the law prohibits it. The majority of women and girls living in rural areas of India experience significant challenges when it comes to properly exercising their access to contraception. These challenges include a lack of adequate health care as well as constraints on their capacity to make their own decisions.

According to data compiled by UNICEF and the World Bank, India has one of the highest maternal mortality rates globally, indicating the number of maternal deaths per 100,000 live births, despite efforts to reduce it in recent years. Each year, there are 45,000 deaths among pregnant women in India. The primary reasons for these upheavals include unsafe abortion, restricted access to medical facilities that can perform safe abortions, and a variety of other circumstances.

As a consequence of this finding, we are able to draw the conclusion that women's sexual and reproductive rights in India are not yet fully realized and continue to be severely restricted. In India, a woman's reproductive rights are only protected in limited circumstances, including but not limited to child marriage, female feticide, sexdiscrimination, and issues around menstruation health and hygiene.

The Indian government's National Population Policy ensures that women will have unrestricted access to all methods of birth control. Additionally, the state governments implement a variety of programs designed to promote the sterilization of females. In addition, India's judicial system plays an important part in protecting the constitutional and human rights provisions for women's reproductive rights.

The current situation in India regarding reproductive rights of women

Historically, laws and policies related to reproductive health in India have not effectively promoted women's rights. Rather, their focus has been on achieving demographic targets such as population control, resulting in provisions that undermine women's reproductive autonomy, including discriminatory clauses likemandating spousal consent for accessing reproductive health services.

India is responsible for a sizeable proportion of all child marriages that take place around the world, in spite of having a law that states it is illegal for girls under the age of 18 to get married, as well as other laws and programs that ensure women have access to maternal healthcare. The region has the highest rate of child marriages and accounts for 20% of maternal deaths globally. Despite India's National

Population Policy guaranteeing women's access to the full range of contraceptive methods, state governments continue to promote female sterilization through initiatives that include targets, leading to coerced and substandard procedures, and denial of access to non- permanent methods. Even though the MTP Act allows abortion for various reasons until 20 weeks of pregnancy and beyond when necessary to save the pregnant woman's life, an estimated 56% of the 6.4 million abortions performed annually in India are unsafe and contribute to 9% of all maternal deaths.

The issue of women's reproductive rights in India has been a concern for many years, with various human rights experts and organizations highlighting the violations of these rights. Maternal morbidity and mortality, unsafe abortion practices, and poor quality care following the procedure, limited access to a full range of contraceptive methods, and forced and unacceptable female sterilization are among the reproductive rights issues that have been raised. Furthermore, early and forced marriages of children and the lack of education and awareness regarding reproductive and sexual health also pose significant challenges to women's reproductive rights.

The United Nations human rights experts have raised these concerns with the Indian government, expressing doubts about violations of human rights in relation to women's reproductive health. They have emphasized the need for India to address these abuses of human rights and the inequalities in access to reproductive healthcare. Unsafe abortion practices and poor-quality post-abortion care have also been pointed out as critical areas that need to be addressed.

The responsibility of enforcing the constitutional and human rights safeguards available to women in regards to their reproductive rights falls primarily on the judicial system in India. The courts have the responsibility of ensuring that the government and other stakeholders protect women's reproductive rights and guarantee access to quality reproductive healthcare services. It is essential for India to prioritize these issues and take necessary actions to ensure that women can fully exercise their reproductive rights and have access to the information and services they need to make informed decisions about their health and wellbeing.

Cases That Were Involved -

In recent judgements that have been handed down, the SC of India as well as other state high courts have identified the denial of reproductive rights as a violation of the fundamental and human rights of women and girls. The aforementioned provisions not only provide women with legal rights to access reproductive healthcare and autonomy, but they also increase the government's accountability for the violation of awoman's rights.

There have been several cases that have resulted in decisions that have an impact on the sexual and reproductive rights of a woman. According to these judgements, women have the legal right to an abortion that is performed in a sterile environment, which is an essential component of their equality, right to bodily integrity, and right to life. As a result of this, it required some form of protection. Among these are just a few examples, which are as follows:

The SC of India decriminalized adultery and homosexuality in a historic ruling in ***Navtej Singh Johar and Others v. Union of India***[7] and solidified that a woman has the whole right to her sexual autonomy, which is a vital component of their right to personal liberty.

In the instances involving Puttaswamy, the court recognized a woman's fundamental right to freely select among her reproductive alternatives, as guaranteed by Article 21 of the Indian Constitution.

In the case of ***Independent Thought v. Union of India***, which dealt with the reproductive rights of women, the Supreme Court of India handed down its decision. In this particular case, the court came to the conclusion that a girl's human rights, regardless of whether or not she is married, have a great deal of weight and ought tobe recognized and accepted.

According to the judgment handed down by the Supreme Court in the matter of ***Suchita Srivastava and Others vs. Chandigarh Admiration***[8]***,*** "reproductive autonomy is a key component of personal liberty." As a result of these investigations, it was concluded that it is of the utmost importance to acknowledge the fact that choices pertaining to reproduction can be made in order to either proliferate or avoid reproduction. In addition, it was stated that there should not be any violations of a person's right to have their privacy, dignity, and bodily integrity respected. In addition, women have complete autonomy over the various methods of birth control available to them, including the option of undergoing sterilisation surgery.

The Delhi High Court rendered its decisions in each of these matters concurrently. The petition that was presented in this instance primarily focused on two incontestable survival rights that are components of the rights to life and health. These rights were the primary subjects of the petition that was presented. In this particular situation, it was decided that no woman should be denied access to medical care according to her financial status. This was a decision that was made.

The Madhya Pradesh HC, in the case of ***Sandesh Bansal v. Union of India,*** recalled the verdict that had been made in 2012 by the Delhi HC. In this particular situation, a public interest litigation (PIL) petition was submitted in order to seek accountability for maternal deaths. This was done in recognition of the fact that a woman's incapacity to thrive during pregnancy and childbirth infringes upon her fundamental right to life, which is guaranteed by Article 21 of the Indian Constitution. In addition, it is the obligation of the government to guarantee that every pregnant woman and the woman delivering her baby survive the entirety of their pregnancies and childbirths. As a result, we are able to draw the conclusion that the Indian court system plays an essential role in ensuring that a woman whose rights to reproduction have been violated receives justice. This provides women with the opportunity to exercise their right to procreate free of any constraints, which allows them entire independence. Because of this decision, women and girls will no longer be restricted in their ability to direct their own lives as they see suitable.

[7] Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.
[8] Suchita Srivastava and Others v. Chandigarh Administration, (2009) 9 SCC 1.

RECENT LANDMARK CASE WHICH SERVES AS THE RAY OF HOPE OF ALL THE WOMEN IN INDIA -

X VS. THE PRINCIPAL SECRETARY, HEALTH AND FAMILY WELFARE DEPARTMENT

Facts -

I. The petitioner is an unmarried lady who had a harmonious relationship that ended.
II. On July 5, 2022, the petitioner learned that she was pregnant at 22 weeks.
III. The petitioner had submitted a writ to the Delhi High Court, requesting that thecourt:
a) allow her to end the pregnancy; and
b) prevent the respondent from employing any force against her

IV. Request the respondent to include unmarried women in the MTP Act of 1971's Section 3(2).
V. The petitioner had requested termination from the court owing to her precarious financial circumstances and social stigma, but the High Court only granted Prayer C while ignoring Prayers A and B.
VI. As a result, SLP was submitted to the Honourable Supreme Court.

The three-judge bench draws the following conclusions from Section 3(2) of the MTPAct, 1971:

1. It acknowledges changes made to the MTP Rules, 2003 by the MTP(amendment) rules, 2021 with reference to the deadline and process for ending the pregnancy through medical procedure. Before, the legal position was that in order to obtain a permit to abort the unborn after 22 weeks of pregnancy and up until 24 weeks, one must submit a writ with the relevant high courts. This was a drawn-out, arduous process that was unhelpful for the petitioners because it was neither timely nor easily accessible. However, as of right present, one can abort a pregnancy up to 24 weeks gestation without a judge being involved with the decision if two doctors agree.

2. Instead of using a rigid restricted reading, the court has chosen a purposeful interpretation. Thus, the court has determined that under the scope of Section 3(2), women also includes unmarried women through the use of purposive interpretation. Without any justification, excluding unmarried women from the scope of this Act would deny them the access to a safe abortion.
3. The court also makes reference to explanation 1 of this Act and observes that the term "partner" has been used in place of "husband," indicating that the law is intended to be read more broadly to cover all women. The Act's goal isn't to be overly restricted and deny unmarried women, women in live-in partnerships, and women in other types of nontraditional relationships access to and the right to a safe abortion. The court comes to the conclusion that unmarried women should be included in the interpretation, and as a result, the court was correct to grant the Petition the right to a safe abortion. Thus, the SC's position is very different from that of the Delhi High Court, which issued opposite views.
4. The court went further on to interpret the section in light of explanation 1, emphasising the importance of the mental health component. The court is instructed to interpret the section in a way that ensures the protection of women's mental health.
5. According to Section 5 of the Maternity Benefit Act of 1961, every woman (including unmarried women) is entitled to receive maternity compensation. The court affirmed this interpretation in the Civil Appeal resulting from the Special Leave Petition. To ensure that all mothers are covered, the Act should be read in conjunction with the Maternity Benefits Act.
6. In interpreting Section 3(B) of the MTP Rules, 2003, the court deems "marital rape" to fall under the definition of "rape."

WAY FORWARD -

1. To deliver CAC, it is crucial to increase the number of certified healthcare professionals in remote, tribal, and hard-to-reach communities. In this context, the MTP Act was updated in 2014 with the goal of increasing the number of providers. Two Indian studies that found that nurse practitioners and AYUSH practitioners may safely and successfully offer abortion treatment back up these suggestions.
2. Additionally, it is imperative that ASHAs and AWWs are knowledgeable about the dosage, frequency, and potential negative effects of MT Pills.
3. Always provide MT pills with a prescription from a RMP.
4. Quacks, ojha-gunis, and babas are examples of unregistered medical practitioners who ought to be avoided and might be replaced by licenced medical professionals.
5. To lower the prevalence of unsafe abortions, awareness of the many CAC components is crucial.

The following points should be the main emphasis of awareness campaigns:

i. Government regulations regarding abortion, such as the MTP Act of 1971 and its revisions in 2002, 2013, 2014 and 2021 as well as the services they provide

ii. Choosing to get an abortion is a personal decision, not a social stigma. Each mother has the right of a woman to choose whether or not to continue her pregnancy.

iii. It is important to inform people in remote and rural locations about several contraceptive methods, including MT tablets, their suitability, adverse effects, and risks.

iv. The significance of post-abortion care should be made known to all women.

v. ASHA employees should receive incentives for completing the CAC for any women.

vi. The adolescents (10–19 years old) should receive guidance on early pregnancy testing with urine pregnancy tests and CAC, emphasising how easy and accessible it is.