CONSTITUTIONALIZING REPRODUCTIVE CHOICE: JUDICIAL ACTIVISM AND THE RIGHT TO ABORTION IN INDIA

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ABSTRACT

Women's reproductive rights are a very important and central aspect of human rights which present the concepts of individual freedom, human dignity and gender equality. [1]It is not only a medical procedure or a matter of moral debate on the question of abortion but is directly related to women's physical autonomy, privacy, equality and their fundamental right to life and personal liberty.[2] The right of a woman to take decisions related to her reproduction highlights the progressiveness of the democratic and constitutional system.[3]

Abortion was considered a crime under the Indian Penal Code for a long time, as a result of which the incidence of unsafe abortion and maternal mortality increased. [4]To solve this problem, the Medical Termination of Pregnancy Act 1971 (MTPA) was passed, the main objective of which is to protect the health of women and provide them complete reproductive autonomy.[5]

This research paper presents a critical study of the historical development of reproductive laws applicable in India, their constitutional basis and judicial interpretations. [6]The research paper argues that although the expansion of access to abortion services has become possible in recent years through the progressive decisions of the Supreme Court and the Medical Termination of Pregnancy (Amendment) Act 2021, [7]yet medical control, socio-economic inequalities and legal limitations continue to hinder women's true

[1] Universal declaration of human rights, 1948, art.1&3.
[2] International covenant on civil and political rights (ICCPR), 1966, art. 6&17.
[3] Convention on the elimination of all forms of discrimination against women (CEDAW),1979,art.12&16.
[4] Indian penal code , section 312 – 316.
[5] Medical termination of pregnancy act , statement of objects and reasons.
[6] Constitution of india , art. 14,15 & 21.
[7] Medical termination of pregnancy (amendment) act.

reproductive freedom.[8]

Keywords: reproductive autonomy, MTP act 2021, constitutional rights, physical autonomy, gender equality.

Introduction

In a cultural and social context like India, where patriarchal mentality is deeply rooted, women's reproductive decisions are often under the control of family, society and tradition. [9]Social expectations related to marriage and motherhood put pressure on women to subordinate their individual desires to collective morality. Apart from this, this pressure takes an even more complex form for unmarried women, economically dependent women and women from marginalized castes and communities. In such a situation, women taking the decision of abortion themselves becomes not only a medical matter but also a question of social acceptance and moral validity. The issue of abortion has been burning and controversial in India for a long time. Because it is seen to be linked to diverse and contradictory discussions like religion, morality, population control and fetal rights. While on one hand the argument for protecting the potential life of the fetus is presented on this subject, on the other hand the healthy life and dignity of the woman is also neglected. Thus, in conversations regarding abortion, the woman is often seen as a medium or instrument rather than an independent decision maker. This approach is contrary to the basic spirit of women's human rights and harms them. Women's right to their own bodies is not just a slogan but it is a practical embodiment of human dignity and personal autonomy enshrined in the principles of human rights. [10]The right to control a woman's body ensures that no woman is forced into pregnancy, childbirth or motherhood against her will. Lack of autonomy in reproductive decisions not only limits women to biological roles, but also hinders their possibilities of social and economic development. In this way, women's right to abortion becomes an important dimension of women's independent identity and decision-making capacity.

The Indian Constitution provides guarantees to protect the reproductive rights of women. [11]The right to life and personal liberty under Article 21 has been interpreted by the judiciary from time to time, under which privacy, dignity and physical liberty and freedom to take decisions

[8] Shah committee, report on abortion laws (1966).
[9] Flavia agnes, law and gender equality: the politics of women's rights in india (1999).
[10] Suchita Srivastava v. chandigarh administration.
[11] Constitution of india , art. 14, 15(1), 15(3), 21.

have been comprehensively included. [12]Similarly, Articles 14 and 15 which provide for the right to equality and prohibit the state from discriminating on the basis of gender, and also allow special protective measures for women.[13]

Despite all the above constitutional provisions, in practice a woman's access to abortion is seen as a 'permission based' procedure and not as an autonomous right for the woman. Indian abortion law is primarily based on medical approval and statutory limits and conditions. [14]Where the final decision about a woman remains under the control of the medical or legal framework rather than the woman. [15]The woman's consent is taken on this matter but it is not considered decisive. [16]As a result, a woman has to seek formal approval for decisions related to her body. [17]In this background the concept of reproductive justice assumes special importance. [18]This concept is not limited only to abortion but also takes into account the entire reproductive life of the woman, social and economic conditions and structural inequalities. [19]The present research paper adopts this approach and analyzes to what extent the abortion law in India embodies the concept of women's decision-making rights and reproductive justice. [20]In this context of the introduction, it can be made clear that the issue of abortion is not just a question of obtaining legal permission but of maintaining the freedom and dignity of women and attaining the right to equal citizenship[21].

Literature Review

Women's reproductive rights and abortion law in India have been widely studied by various scholars, jurists and social scientists.[22] In this regard, the Shantilal Shah Committee report (1966) has been considered the foundation stone of abortion law reform. [23]Which suggested looking at abortion from a public perspective, giving priority to women's health. Jurists like Flavia Agnes, Indira Jaisingh and Upendra Baxi criticized the Medical Termination of Abortion

[12] Justice K.S. puttaswamy (retd.) v. union of india; X v. principal secretary, health and family welfare dept NCT delhi.
[13] Constitution of india, arts. 14, 15(1) & 15(3).
[14] Medical termination of pregnancy act, sec 3 and sec 5.
[15] Indian penal code,$$ 312-316.
[16] Medical termination of pregnancy act, sec 3(4)(consent provision).
[17] X v. principal secretary, health and family welfare dept NCT delhi.
[18] Loretta rose," reproductive justice as intersectional feminist activism" (2017).
[19] Kimberle crenshaw," maping the margins: intersectionality, identity politics, and violence against women of color"(1991).
[20] Centre for reproductive rights, reproductive rights are human rights (2014).
[21] Justice K.S.puttaswamy (retd.) v. union of india.
[22] Flavia agnes, law and gender inequality (1999).
[23] Shantilal shah committee report (1966).

Act (MTP Act, 1971), saying that this Act is based on medical control rather than the autonomy of women.[24]

At the international level, the concept of 'reproductive justice' was developed at a high level by 'Loretta Ross' and 'Kimberley Crenshaw'. In which the interrelationships of class, caste and gender have been underlined. [25]The decisions of the Indian judiciary, especially K.S. Puttaswamy vs. Union of India and X vs. Principal Secretary, Health Department, presented a new idea by linking abortion with privacy and personal liberty. [26]However, the literature shows that legislative reforms still lag behind rights-based approaches.

Research Methodology

This research paper is based on theoretical and analytical research method. In the research study, Indian Constitution, Indian Penal Code, Medical Termination Act 1971 and 2021 Amendment Act and major decisions of the Supreme Court and High Courts have been properly analyzed as primary sources. Whereas in secondary sources, related books, research magazines, government reports, legal articles, international human rights documents have been studied. The objective of the research study is to examine and examine the Indian abortion law in the context of the concept of 'reproductive justice' by making a historical, constitutional and critical evaluation of the Indian abortion law.[27]

Historical development of abortion law in India

1) Colonial period and Indian Penal Code

The historical development of abortion law in India dates back to the penal laws enacted during colonial rule. Because at the same time the British rule classified abortion as a serious crime under the "Indian Penal Code 1860". [28]Sections 312 to 316 of the Code describe in detail the crimes related to abortion and causing harm to the fetus or newborn child.[29] Under these

[24] Upendra baxi, writings on constitutionalism and social justice; see also Indira jaising, articles on women's rights and autonomy.
[25] Loretta ross & kimberle crenshaw, foundational writings on reproductive justice and intersectionality.
[26] Justice K.S. puttaswamy (retd.) v. union of india; X v. principal secretarty, health and family welfare dept NCT delhi.
[27] World health organization, safe abortion: technical and policy guidance for health systems (2nd ed., 2012).
[28] Indian penal code, 1860.
[29] Ibid., sec 312-316.

sections, abortion was generally considered a punishable offence, in which there was a provision for imprisonment and fine.

Under Section 312, if any person intentionally terminates the pregnancy of a pregnant woman, he will be guilty under this section, even if the woman has given her consent. [30]But there was an exception to this, if the abortion was done in good faith to save the life of the woman.[31] Under this section, the woman's physical, mental health, her social circumstances or her personal wishes were not recognized. [32]In this way, woman's autonomy and her decision-making ability were completely controlled by colonial law.

This approach of the Indian Penal Code appeared to be completely inspired by "Victorian values and British morality". [33]Where women were presented as protectors of morality and symbols of motherhood. Abortion was not only considered inappropriate but also a crime against social order. [34]From this point of view, woman did not have any independent rights but was seen only as a fulfiller of social morality and reproductive responsibilities.

The serious practical consequences of these harsh criminal approaches led to complete or near-complete bans on abortion, making 'unsafe abortion' almost widely prevalent in India. [35]Women who belonged to poor and marginalized communities were deprived of safe and legal medical services and due to social shame and fear of legal punishment and lack of health services, various women resorted to unsafe and illegal methods which proved to be extremely risky. [36]Due to these unsafe abortions, maternal mortality rate increased. [37]Additionally, many women had to face serious physical complications, infections, permanent infertility and sometimes death due to abortion. [38]Rather than viewing abortion as a public health crisis, the colonial regime saw it as a moral and punitive issue. [39]The purpose of the law was to "punish crime" rather than give priority to women's health and life with dignity. [40]Additionally, the colonial regimes were completely cut off from the social realities of abortion law. Women's

[30] Ibid., sec-312.
[31] Ibid., (exception: act done in good faith to save the life of the women).
[32] Ratanlal & dhirajlal's the Indian penal code (commentary on sec 312-316).
[33] Victorian values (contextual reference to british model philosophy influencing colonial laws).
[34] Offences against the person act (british law influencing colonial penal provisions on abortion).
[35] World health organization, safe abortion: technical and policy guidance for health system (2nd ed.,2012).
[36] UNFPA, maternal morality in india: causes and consequences (2003).
[37] Government of india, ministry of health and family welfare, report of the Shantilal shah committee (1966).
[38] Amrita pande & nandita Bhatia, " unsafe abortion and women's health in india," economic and political weekly, vol.45, no.14 (2010).
[39] Sivaramayya, B., law of abortion in india (oxfort university press, 1974).
[40] Indian penal code, 1860 sec 312 – 316.

pregnancies resulting from rape, poverty and family pressure, or the mental condition of the woman had no place within the law.[41]

The abortion related framework of the Indian Penal Code was not only contrary to women's rights but also violated the basic spirit of social justice and human rights. [42]Thus, in short, the development of abortion law during the colonial period was based on an almost punitive, moralistic and patriarchal approach, due to which women's autonomy and health were seriously affected. [43]Due to this adverse effect, a need was felt to reform abortion laws in India. Which further paved the way for the Medical Termination of Pregnancy Act, 1971.[44]

2) Shantilal Shah Committee and Medical Termination of Pregnancy Act 1971

Among the major public health problems in India after independence, the extremely high level of maternal mortality was a matter of grave concern. In the 1950s and 1960s, women were dying due to pregnancy-related complications and unsafe abortions. The Indian Penal Code, which dates back to the colonial period, had deprived women of safe medical services, due to which women resorted to illegal and risky methods in case of unintended pregnancy.

To solve this problem, "Shantilal Shah Committee" was formed by the Government of India. The main objective of this committee was to review and study the abortion laws in India. [45]Abortion laws of various countries, public health statistics and Indian social conditions were analyzed in detail by the committee. The committee concluded that a complete ban on abortion is proving ineffective and fatal for the life and health of women.[46]

The Shantilal Shah Committee recommended that abortion should be legalized in certain circumstances. The main view of the committee was that abortion should be seen as a "public health problem" rather than a moral crime. From this perspective, the individual wishes of women were not kept in primary consideration but the main objective was to reduce maternal mortality and provide regular health services.[47]

[41] Flavia agnes.” Abortion laws in india: a critique,”journal of the Indian law institute, vol.34,no.4 (1992).
[42] Lotikar sarkar, women and law (vikas publishing house, 1988).
[43] Upendra baxi,”law, colonialism and patriarchy,”in crises of the Indian legal system (1982).
[44] Medical termination of pregnancy act, 1971, statement of objects and reasons.
[45] Shantilal shah committee on medical termination of pregnancy (1966).
[46] WHO, unsafe abortion : global and regional estimates (2011).
[47] UNFPA, maternal morality and unsafe abortion in india (2003).

On the basis of the recommendations of the committee, the Medical Abortion Act was passed by the Parliament in the year 1971 which came into force in the year 1972. This act legalizes abortion in certain limited and regulated circumstances. Under the MTP Act 1971, abortion can be permitted when there is a threat to the physical and mental health of the pregnant woman, the pregnancy is the result of rape, or in the case of a married woman, there has been contraceptive failure or there is a possibility of serious deformity in the fetus. Initially the limit for abortion was set at a maximum of 20 weeks, for which the opinion of one or two physicians was required.

Although this Act was considered progressive and was very successful in reducing unsafe abortions, its basic objective was to improve the physical and mental health of women. This Act did not provide women with the right to take autonomous decisions but provided medical permission to women to undergo abortion only under certain circumstances. In this way, the final power to take decisions was given to the doctor rather than the woman.

The Medical Termination of Pregnancy Act 1971 did make a significant departure from the complete criminalization of abortion. But this law failed to adopt a rights based approach. But the Act nevertheless proved pivotal in the development of abortion laws in India and became the basis for subsequent 2021 amendments and judicial interpretations.

Medical Termination of Pregnancy (Amendment) Act 2021

This Act has emerged as an important and progressive legislative 'development' effort in the development of abortion law in India. This amendment was made at a time when the constitutional debate regarding women's right to physical autonomy and privacy was continuously emerging in a strong form. Due to the changing structure of the society and rapid progress in medical science, it became clear that the MTP Act of 1971 has not been able to fully meet the contemporary needs.

The main provision of this amendment was to increase the legal limit for abortion which was 20 weeks to 24 weeks. However, this amendment did not provide relief to all categories of women but could provide relief only to certain categories of women like women victims of rape, incest, minors, disabled women and pregnant women in other sensitive situations who could not get the facility of timely abortion due to social and mental trauma. Still, dividing women into categories cannot be considered in accordance with the rights and principles of

equality and freedom.[48]

Another important aspect of this amendment is that unmarried women who have suffered contraceptive failure were provided the right to abortion. Earlier, this right was available only to married women, which was completely against the realities of the society and constitutional principles. This change indicates legal acceptance of women's right to privacy, dignity and changing social relations.[49]

The "privacy" of women is protected by this Act. Revealing a woman's identity or personal information related to abortion has been declared a punishable offence, so that women do not have to face social neglect and stigma.[50] If a woman is more than 24 weeks pregnant, she can undergo abortion only after obtaining the permission of the medical board. Although this was intended as a symbol of medical caution, in practice it could create procedural barriers for women. Taken as a whole, the Medical Termination of Pregnancy (Amendment) Act, 2021 is undoubtedly a progressive legislative reform that has expanded legal access with respect to abortion. And some important concerns of women have also been addressed at a high level. This amendment still does not declare abortion as a woman's fully autonomous right. Under the law, abortion is still subject to medical permission, statutory limits and special circumstances. The 2021 amendment is an important step towards women's right to decide. But it still seems insufficient to actualize the entire concept of reproductive justice.

X v. Principal Secretary, Department of Health (2022): Expanding the Judicial Approach

The decision in "X v. Principal Secretary, Department of Health (2022)" is crucial to Indian abortion law and women's reproductive rights. In this case, the Supreme Court not only provided a clear and progressive definition of the Medical Termination of Pregnancy (Amendment) Act, 2021, but also explicitly linked women's reproductive rights to the right to personal liberty, privacy, and dignity enshrined under Article 21 of the Constitution. This decision challenges the patriarchal view that women's reproductive rights are regulated by marital status or social morality.[51]

[48] Medical termination of pregnancy (amendment) act, 2021; justice k.S.puttaswamy v. union of india (2017)10 SCC 1.
[49] X v. principal secretary , health and family welfare department, (2022) 9 SCC 1
[50] Medical termination of pregnancy (amendment) act, 2021.
[51] X v. principal secretary , health and family welfare department, (2022) 9 SCC 1.

The central question in this case was whether an unmarried woman could be entitled to an abortion on the grounds of contraceptive failure. The government argued that the term "husband" under the MTP Act refers only to married women. Therefore, unmarried women do not fall under this category. The Supreme Court considered this argument narrow and discriminatory and rejected it, holding that such a definition of the law violates Articles 14 and 15 of the Constitution. violates the principles of equality and prohibition of discrimination under the Constitution.[52]

The most significant aspect of this decision was that the Supreme Court declared the decision to have an abortion as an integral part of a woman's personal liberty and bodily autonomy. The Court stated that continuing or terminating a pregnancy is a deeply personal decision concerning a woman's life, health, mental state, and future, in which the state or society should not unnecessarily interfere. Thus, the right to abortion was linked to the "right to privacy" as established in the case of K.S. Puttaswamy v. Union of India.[53]

The Court also determined that if a woman wishes to have an abortion, her consent, rather than the permission of her husband, family, or any other person, is paramount. This statement dismantles a long-standing social perception that relegates women to a secondary role in decisions concerning their bodies. This decision moves a woman toward viewing abortion as a "rights-based" decision, rather than a "consent-based" medical procedure.[54]

This decision brings Indian abortion law closer to constitutional values. While this decision strengthens the rights-based approach, there remains a need for comprehensive legislative reforms to actualize the concept of reproductive justice by recognizing abortion as a woman's sovereign right.

Reproductive Justice: Concept and Importance

The concept of reproductive justice goes beyond the narrow understanding of "reproductive rights" and centers the social, economic, and structural realities of women. Black feminists in the 1990s are credited with developing this concept. Who argued that merely declaring legal rights does not ensure true freedom, but that those rights must be implemented socially and

[52] Ibid.; constitution of india, arts.14 & 15.
[53] K.S.puttaswamy v. union of india, (2017)10 SCC 1.
[54] X. v. principal secretary, (2022) 9 scc 1.

economically. According to this view, abortion cannot be viewed solely from the perspective of "choice," but also whether a woman has the actual capacity to "choose."

The three main pillars of reproductive justice broadly and prominently clarify this concept:

First Pillar – Right to Have a Child: The state and society cannot prevent a woman from conceiving, and forced sterilization in the name of policies like population control is considered a violation of this right.

Second Pillar – Right to Refuse to Have a Child: This right includes the right to refuse to have a child, including access to convenient, safe abortion services. This right cannot be limited to legal permission alone, but also includes safe medical care, social support, and financial assistance.

The third pillar – This includes raising a child in a safe and respectful environment. This pillar recognizes that reproductive decisions are not limited to pregnancy or abortion, but also include ensuring comfortable and safe child rearing after birth. After childbirth, women and families face numerous challenges. Factors such as poverty, malnutrition, lack of health services, lack of education, and social violence significantly impact a woman's freedom regarding motherhood. If a woman decides to give birth, she should also have the right to raise the child in a safe, dignified, and supportive environment.

The concept of reproductive justice recognizes that women do not have equal freedom at all levels; factors such as caste, class, religion, disability, and sexual identity and orientation profoundly influence women's reproductive choices. Indian Abortion Law and the Lack of Reproductive Justice recognizes that women do not have equal freedom at all.[55]

Medical Gatekeeping

Indian abortion law is criticized for still treating abortion as a "medically controlled procedure," not a woman's sovereign right. This provision under the Act was created because a woman is not capable of making decisions about her own body and reproduction and requires medical or institutional oversight.[56]

[55] Dorothy Roberts, killing the black body: race, reproduction, and the meaning of liberty (1997)
[56] Medical termination of pregnancy act, 1971; amended by the MTP (amendment) act, 2021.

In practice, this system creates numerous problems. In many cases, doctors refuse abortion due to social morality, personal beliefs, or legal fears, even when the woman is legally entitled to it. This leaves the woman subject to the control of the doctor's discretion.

The situation is even more dire in rural and smaller urban areas, where the number of registered medical doctors is limited. Consequently, women are forced to travel long distances or resort to illegal or unsafe methods. This makes it clear that medical control is not merely a legal "formality" but a real obstacle.[57]

The principle of reproductive justice clearly demands that abortion be recognized as a woman's "informed choice," not a procedure based on medical "approval."[58]

The Situation of Rural and Marginalized Women – A major and serious flaw of Indian abortion law is its failure to adequately address social and economic inequalities. In practice, poor, Dalit, tribal, backward class, and minority women are deprived of safe abortion services, which contradicts the fundamental spirit of reproductive justice. The lack of healthcare facilities in rural areas, the absence of trained doctors, and severe resource limitations in government hospitals put women at serious risk. Furthermore, social stigma and the concept of "honor" force women to keep abortions secret.[59]

Reproductive justice recognizes that legal permission alone is insufficient unless women have actual access to safe, accessible, and respectful services. Indian abortion law has failed to address this socioeconomic inequality, as evidenced by the fact that the current system does not protect women's reproductive rights.[60]

The POCSO Act and Abortion Laws for Minor Girls

The contradiction between the POCSO Act 2012 and the abortion law for minor girls poses a serious legal and ethical problem. This Act requires mandatory reporting of sexual intercourse with a minor girl, even if she has given consent. This has the direct effect of deterring minor girls from seeking abortion services.

[57] UNFPA, access to safe abortion services in india (2019).
[58] Dorothy Roberts, killing the black body : race, reproduction, and the meaning of liberty (1997).
[59] Centre for reproductive rights, barriers to safe abortion in india (2020)
[60] B. sivaramayya , law of abortion in india (oxfort university press, 1974).

The POCSO Act aims to protect children, but its harsh application of abortion laws contradicts the principles of reproductive justice. The Supreme Court and various High Courts have deeply recognized the need for a sensitive and balanced approach to abortion.

Reproductive justice demands that minor girls be provided with protection, as well as decision-making support and confidentiality.[61]

Critical Assessment

Indian abortion law and judicial approach have certainly seen a significant and progressive transformation in recent years, particularly through Supreme Court decisions.

The judiciary is attempting to develop a rights-based approach to abortion, incorporating a woman's personal freedom, privacy, and dignity. However, the legislature has failed to move beyond the condition-based and medical model, focusing less on a rights-based approach.

Abortion is still viewed as an exception in the law, not a natural and autonomous decision about a woman's life. Medical control, social inequalities, and procedural barriers limit a woman's right to make an autonomous decision about abortion. The concept of reproductive justice clearly demonstrates that true freedom comes not only from the law, but also from equal resources, respect, and social support for women. Therefore, it can be said that while continuous efforts have been made to advance abortion law in India, a better and more objective law regarding reproductive justice is still necessary.[62]

Recommendation:

1. **Recognize abortion as a fundamental right**

In India, abortion is still viewed as a limited, legally permitted right, rather than a fundamental right. While the Supreme Court has broadly interpreted the rights to life, dignity, privacy, and bodily autonomy under Article 21, the legislature has explicitly recognized abortion as a fundamental right in a limited way. This situation makes women's reproductive justice insecure

[61] Independent thought v. union of india, (2017) 10 SCC 800; protection from sexual offences act,2012.
[62] Loretta j. ross & Rickie solinger, reproductive justice: an introduction (university of California press,2017).

and uncertain. Accepting this as a fundamental right would mean that the state would interfere with this right of a woman only under very limited and justifiable circumstances.[63]

This would not treat abortion as an "exception," but as a "natural and autonomous choice" of a woman. This right specifically protects women who, due to social, familial, or economic disadvantage, are unable to make independent decisions.

Furthermore, recognizing abortion as a fundamental right will make judicial review of abortion laws and policies more stringent. Any discriminatory, arbitrary, or overly restrictive provision could be declared unconstitutional. Thus, recognizing abortion as a fundamental right for women would be a decisive and important step towards ensuring their reproductive justice.

2. Simplifying the medical authorization system

Currently, the requirement for medical authorization for abortion under the MTP Act acts as a serious restriction and obstacle to women's autonomy. The purpose of creating this system was to recognize that women are not capable of making decisions related to their own reproduction; they require medical approval.[64]

3. Simplifying the abortion system and making it women

centered will not only reduce delays and psychological stress but also reduce the incidence of unsafe abortions. This reform of the system could also help move towards a "rights-based system" and practically implement the concept of reproductive justice.[65]

4. Expanding Safe Medical Services in Rural Areas

The biggest and most significant failure of Indian abortion law is that safe abortion services are not geographically and socially equitable. The lack of trained doctors, inadequate health infrastructure, and lack of awareness in rural areas force women to resort to unsafe abortion options. This situation completely violates the principles of reproductive justice.[66]

[63] Constitution of india, art.21.
[64] Medical termination of pregnancy act, 1971; amended by MTP (amendment) act, 2021.
[65] Centre for reproductive rights, reforming abortion laws in india (2020).
[66] UNFPA, access to safe abortion services in rural india (2019).

The government should strive to improve safe abortion services in primary health centers, community health centers, and district hospitals. Trained nurses and mid-level health providers should also be legally permitted to provide abortion services to reduce the barriers posed by the shortage of doctors.

In addition, it is essential to ensure free or affordable services for women in rural areas. Additionally, access to health services can be increased through mobile medical units, telemedicine, and public health campaigns. The legal right to abortion will not be realized unless safe abortion services are available.

Harmonization between the POCSO and MTP Acts

The lack of harmonization between the POCSO Act and the MTP Act poses a serious problem for the reproductive rights of minor girls. The mandatory reporting provision under POCSO, while intended for protection, in practice discourages minors from seeking abortion services.

In this situation, it is essential that the law adopts a sensitive and balanced approach. Priority should be given to the privacy, mental health, and safety of minor girls when providing abortion services. Doctors may be given limited discretion in such cases so that criminal proceedings are not automatically initiated in every case.[67]

Additionally, counseling, psychological support, and protection services should be made a mandatory part of the abortion process. This harmonization between the POCSO and MTP Acts will not only ensure a humane interpretation of the law but also strengthen reproductive justice for minor girls.[68]

Social Awareness and Stigma-Alleviation Programs

Social stigma associated with abortion is a major obstacle to women's reproductive freedom in India.

Despite improvements in the law, social morality, shame, and concepts of "honor" prevent women from accessing safe and legal services. Therefore, social awareness and stigma-

[67] Protection of children from sexual offences act,2012; independent thought v. union of india, (2017)10 SCC 800.
[68] Protection of children from sexual offences act, 2012;independent thought v. union of india (2017)10 SCC 800.

alleviation programs are extremely important.

The government, civil society, and educational institutions should jointly launch campaigns that present abortion as a health and rights issue, not a moral offense. It is also essential to promote comprehensive sexuality and reproductive education at the school and college levels. The media, community-based programs, and local leadership are also crucial. Unless society accepts abortion as a legitimate and respectable decision for women, the full benefits of legal reforms will not reach women.[69]

Conclusion

The evolution of abortion laws in India represents a complex and contradictory journey. From the criminalization of abortion during the colonial period to limited legalization in 1971 and the 2021 amendments, it is clear that the law has gradually recognized women's health needs. Recent judicial decisions have developed a more rights-based approach to abortion, linking it to women's privacy, dignity, and personal liberty. Nevertheless, the current legal framework still fails to fully realize the concept of reproductive justice.

Abortion is still confined to medical control, procedural conditions, and social inequalities. Rural, poor, minor, and marginalized women are most affected by this system.

Reproductive justice demands that women receive not only legal permission, but also actual freedom, resources, and respect. True gender justice is impossible until abortion is recognized as a woman's absolute right and socio-economic barriers are removed. This paper concludes that without making abortion laws in India rights-based, inclusive, and women-centered, the dream of true liberation and equality for women will remain unfulfilled.[70]

[69] WHO, safe abortion: technical and policy guidance for health systems (2012).
[70] Centre for reproductive rights, reproductive rights and justice in india (2020).