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THE REFORM OF ABORTION LAW IN INDIA: A CRITIQUE

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Abstract

After six consecutive years of discourse, India has finally passed the amendment to its Medical Termination of Pregnancy (MTP) Act of 1971. This paper addresses the problems that the 2021 Amendment may prove to be inadequate to resolve, considering the existing practical lacunae between the vision of the legislation and the implementation of the law. It analyses and conducts a study on the numerous socio-economic factors that relate to the nuances of unlawful abortions, the extent to which this amendment has been able to address such problems, and how effectively has the Judiciary been able to provide appropriate remedies in accordance with the jurisprudence of the law of abortion. The paper also deliberates on the viability of the prescribed specialised Medical Board in the present infirm medical infrastructure of the country. Furthermore, several crucial elements of the concerned legislation have been left to be addressed by the MTP Rules that are yet to be enacted. This paper discusses and reflects regarding the dimensions of abortion and its potentially discriminatory use and attempts to strike a balance between the right to personal liberty and the right to life of an unborn, relying on a comparative evaluation of the laws on abortion above the gestation period in other jurisdictions. In conclusion, the paper appreciates the gradual progression of abortion law in India while establishing a nexus with the recent relevant legislative developments and the socio-political role of the debate between pro-choice and pro-life in judicial decision-making.

Keywords*: MTP, Unsafe, Abortion, Liberty, Amendment, People-with-Disabilities*

Introduction

India has had a long medical history of the treatment of abortion in ways that are specific to the country's belief in *Ayurveda*. But without delving deep into the discussion of its success rate at the very outset, what can be acknowledged undisputedly is the fact that it was hardly ever regulated by law. This has, therefore, contributed to the stigma of abortion in society not because it takes away a life, but because the mother enables it. Historically, almost every country has had an ignominious outcome when women have attempted to be empowered with a voice and a choice. The struggle to formulate reasonably efficient abortion laws that would effectuate a woman to choose for her is one such example.

India enacted the Medical Termination of Pregnancy Act[1] as early as 1971, two years before the Supreme Court of the USA's decision on *Roe v. Wade*[2], the pioneer landmark case in the jurisprudence of abortion law. However, the changing dynamics of time and society had left the 1971 Act insufficient in today's context. Newer challenges needed better solutions in the face of amendments to the existing Act, a more inclusive study of illegal channels of abortions and the resultant rate of maternal morbidity. An overall change in the socio-legal and political thought revisited the idea of the empowerment of women. This issue has been the hotspot of debates amongst not only the medical fraternity and policymakers but among activists and the general public as well. The educational institutions pan-India have witnessed numerous academic parleys nurturing research papers that too, to an extent, indirectly resulted in aiding the emboldening of women's rights in the face of abortion laws[3]. The evolving jurisprudence on the right to life and personal liberty in light of significant advancements in medical science and technology has ignited concern about the need for change in abortion laws all over the country. This has resulted in the active participation of the judiciary and legislation to such effect. After almost a decade of continuous parliamentary debate and judicial deliberations, India witnessed the introduction of its 2020 Amendment Bill[4] to its Medical Termination of Pregnancy Act 1971[5] (hereinafter referred to as 'MTP Act') which ultimately received the presidential assent on March, 2021and was enacted as the Medical Termination of Pregnancy (Amendment) Act, 2021.[6]

The 2021 Amendment is one step forward towards progressiveness as it eases the formerly more stringent outlook of requiring the advice of two doctors for an abortion that is sought within 12 to 20 weeks[7]. With its evolution, it now provides the mother with the opportunity to abort at any point of time during her pregnancy, subject to the advice of two doctors, if the foetus presents significant abnormalities. This has further widened the debate regarding the status of pregnant women falling under categories other than those carrying abnormal foetus. The opinion of one doctor came to be held as a requisite to avail abortion for an upper gestation limit extended upto 20 weeks and two doctors thereafter. Other proposals[8] include no gestation limit for cases of severe foetal abnormalities. Also, it seeks to constitute Medical Boards with a different composition consisting of the following members: (i) a gynaecologist, (ii) a paediatrician, (iii) a radiologist or sonologist, and (iv) any other

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[1]Medical Termination of Pregnancy Act 1971

[2]*Roe v Wade* [1973] 410 US 113

[3]Asit K. Bose, 'Abortion in India: A Legal Study' (1974) 16 (4) JILI <https://www.jstor.org/stable/43950391> accessed 25 August2022; *see also,*Melissa Stillman and others,*Abortion in India: A Literature Review*(New York:Guttmacher Institute 2014); Ravi Duggal and Vimala Ramachandran, 'The Abortion Assessment Project—India: Key Findings and Recommendations' (2005) 12 (24) IJHRHC <https://www.tandfonline.com/doi/citedby/10.1016/S0968-8080%2804%2924009-5?scroll=top&needAccess=true>;Siddhivinayak S. Hirve, 'Abortion Law Policy and Services in India: A Critical Review' (*T&F Online*, 2004) 12 IJSRHR 114

[4]PRS, 'Medical Termination of Pregnancy Amendment Bill 2020' (*PRS Legislative Research*, 2021) <https://prsindia.org/billtrack/the-medical-termination-of-pregnancy-amendment-bill-2020> accessed 15 April 2022

[5]Medical Termination of Pregnancy Act 1971

[6]Medical Termination of Pregnancy (Amendment) Act 2021

[7] 'The Medical Termination of Pregnancy (Amendment) Bill, 2020' (PRS India 2022). <https://prsindia.org/billtrack/the-medical-termination-of-pregnancy-amendment-bill-2020> accessed 25 August2022

[8]*Ibid*.

number of members, as may be notified by the state government. Therefore, science has made it safer for women to get abortions and as a representative of women's rights in an international scenario, India has passed the amendment in its positive attempt to make the right of abortion more accessible to women. However, it has still a longer way to go to defy the social stigma attached to it.

However, the authors believe that, if the Government carries out an extensive study on the ground levels of specially rural and semi-urban regions of all its 28 States and 8 Union Territories lack of resources and scope in the service base is the main source of concern. The amendment is sufficiently large to allow for revisions as the conversation develops its parameters. Authors argue that legislative framing especially in the field of public health, is very crucial. Determining stakes, who is responsible, and where remedies might be found are all determined by how the provisions have been framed. Gender fairness, healthy reproductive sanitation, maternal health, and a woman's bodily rights are all issues that require special attention because they not only affect the well-being of women but also of the society at large.

If we take a closer look, the realities of public health in India vary greatly between different states. What is standard in Kerala (with respect to governmental reaction in Nipah and COVID) can hardly be claimed for the vast majority of Indian states, since data is sparse[9]. According to the Lancet's first major study on abortions and unplanned pregnancies, one in every three of India's 48.1 million pregnancies ends in an abortion, with 15.6 million occurring in 2015.[10]

Today anything that can be counted can, presumably, be handled. Because data collection is not brought to a definite standard, abortion laws seldom address investments and resources.[11] The majority of Indian women and men seek advice on family planning, including MTP, in state hospitals or medical centres. Since health is a state issue, the enabling features of the amendment, particularly data collection, between New Delhi and the states should not be overlooked.

Millions of women around the world are seeking abortions from a variety of sources, ranging from costly private clinics to unqualified individuals. From menstruation to pregnancy through menopause, they are subjected to unspoken, unwritten and unaccounted discrimination, often with little legal or family protection. A major set of qualms has been resolved as a result of the amendment. A reversal is not conceivable, which is a significant stride for women.

Hindrances in Implementation

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[9]Amrita Nayak Dutta, 'Why Kerala is India's healthiest state' *The Print* (10 February 2018);*see also,* DGHP, 'How Kerala Avoided a Chronic Disease Crisis' (*Centre for Disease Control and Prevention*, 16 May 2019) <https://www.cdc.gov/globalhealth/healthprotection/stories/kerala-avoided-crisis.html> accessed 25 August2022; ShyamaRajagopal, 'Combating post-flood diseases a titanic feat: Minister'*The Hindu* (7 September 2019) < https://www.thehindu.com/news/national/kerala/combating-post-flood-diseases-a-titanic-feat-minister/article24895940.ece> accessed 25 August2022.

[10]Susheela Singh, ChanderShekhar, *et al.*, 'The incidence of abortion and unintended pregnancy in India, 2015' (2018) 6 Lancet Glob Health e-111

[11]ChitraSubramaniam, 'India's new abortion law is progressive and has a human face' (*Observer Research Foundation*, 07 March 2020) <India's new abortion law is progressive and has a human face | ORF (orfonline.org)> accessed 15 April 2022

For the MTP Amendment of 2021 to be claimed as a success, there have to be several realities to address. It presumes a parity in distribution of health care workers and providers throughout India. Only truth could not be any further from this presumption. 50,000-70,000 OB-GYNs work in a country of 1.36 billion people (obstetrician-gynaecologists).[12]There is serious inaccessibility of medical opinions from doctors in rural settings as the majority of doctors have their practice in and around cities. There are several other logistical changes like infrastructural problems, technological incompatibility, inadequate skills and training among the health workers in rural regions etc. that the Amendment fails to consider. The amendment does not strengthen the pregnant person's independence and responsibility or takes a step toward decriminalising abortions for all classes and categories of persons. Changing the phrasing to indicate "pregnant persons" rather than women, would hold the law as trans-inclusive. This paper studies in detail the major gaps that the Amendment may prove to be inadequate to resolve, considering the existing practical lacunae between the vision of the legislation and the implementation of the law.

Unlawful Abortion

As a result of a detailed study of a considerable number of literatures on abortion, the authors have developed an opinion, although debatable, that the root cause and the centre of focus regarding all the deliberation over the world for the past 5-6 decades on the practices, standards, policies, laws and jurisprudence of abortion are the issues of unsafe and unlawful abortions, lack of family planning, and the social and economic consequences attached to it[13]. Unsafe pregnancy terminations remain a leading cause of maternal death and morbidity. According to recent estimates based on various techniques, unsafe termination of pregnancies is responsible for at least 8%[14]of maternal mortality, and potentially as high as 15%.[15]

Worldwide there are States like the Dominican Republic, Malta, Holy Sea, El Salvador, Nicaragua etc. which may not have faced a high number of abortions but have a high number of maternal deaths which indirectly points towards a de facto well-established practice of illegal abortions[16]. According to a study conducted by Lancet Global Health, over 100 traditional methods are used for inducing abortion till date. An estimated 12.7 million (81%) abortions were medication abortions, 2.2

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[12]SeeratChabba, 'Abortion in India: Bridging the gap between progressive legislation and implementation' (*DW*, 18 November 2021) <https://www.dw.com/en/abortion-in-india-bridging-the-gap-between-progressive-legislation-and-implementation/a-59853929> accessed 15 April 2022

[13]WHO, 'Sexual, reproductive, maternal, newborn, child and adolescent health policy survey 2018–2019: report' (World Health Organisation)<https://platform.who.int/docs/default-source/mca-documents/policy-documents/policy-survey-reports/srmncah-policysurvey2018-fullreport-pt-2.pdf?sfvrsn=3a202c28_4> accessed 25 August2022;*See Also,* HLI Staff, 'Why Women Abort' (*Human Life International*, 5 May 2021) <https://www.hli.org/resources/why-women-abort/> accessed 25 August2022.

[14]Lale Say, Doris Chou, *et al.,* 'Global causes of maternal death: a WHO systematic analysis' (2014) 2 Lancet Glob Health 323

[15] Nicholas J Kassebaum, Amelia Bertozzi-Villa, *et al.,* 'Global, regional, and national levels and causes of maternal mortality during 1990–2013: a systematic analysis for the Global Burden of Disease Study 2013' (2014) 384 Lancet Glob Health 980

[16] Vinod Mishra and Victor Gaigbe-Togbe and Julia Ferre, 'Abortion Policies and Reproductive Health around the World' (United Nations, Department of Economic and Social Affairs 2014) <https://www.un.org/en/development/desa/population/publications/pdf/policy/AbortionPoliciesReproductiveHealth.pdf> accessed 25 August2022.

million (14%) abortions were surgical, and 0.8 million (5%) abortions were done through other methods that were potentially unsafe.[17] Unsafe methods today can be divided into several broad classes: oral and injectable medicines, vaginal preparations, intrauterine foreign bodies, and trauma to the abdomen. In addition to detergents, solvents, and bleach, women in developing countries still rely on teas and decoctions made from local plant or animal products, including dung. Foreign bodies inserted into the uterus to disrupt the pregnancy often damage the uterus and internal organs, including bowel. Unsafe abortion procedures may involve insertion of an object or substance (root, twig or catheter or traditional concoction) into the uterus; dilation and curettage performed incorrectly by an unskilled provider; ingestion of harmful substances; and application of external force. In some settings, traditional practitioners vigorously pummelled the woman's lower abdomen to disrupt the pregnancy, which can cause the uterus to rupture, killing the woman.[18]

Unsafe abortion is defined by the World Health Organization (WHO) as a procedure for terminating an unintended pregnancy, carried out either by persons lacking the necessary skills or in an environment that does not conform to minimal medical standards, or both.[19] If the question as to what shall considered to be the principle reason for opting for unsafe and illegal methods of abortion arise, the authors find it prudent to attribute such basis to the factor of mental agony that a woman faces over her course of pregnancy. However, several factors here may be responsible for causing such agony like facing limitations while accessing safe abortion, or confronting legal discrimination due to above discussed legislative misinterpretation. Actual causes of such limitations can be further sub-categorised into problems like illiteracy, economic unsoundness, vague sense of social reputation, domestic violence and strong imposition of toxic patriarchal practices among poor dependent women, inadequacy of equal and standard medical infrastructure in all parts of the country (especially rural areas), etc. Whatever the reason, all of it results in opting for illegal methods which aid in the promotion of backdoor abortions.

India's National Population Policy of year 2000[20] recommended the official expansion of the provision of abortion up to eight weeks' gestation to all public facilities, including primary health centres. Trivial amendments to the relevant laws and regulations were made in 2002[21] and 2003[22] respectively in an effort to streamline registration of private doctors as abortion providers and thereby further expand access to safe abortion services. However, even after a couple of decades later, community health centres continue to be the main providers of abortions in early gestation, and therefore the implementation of progressive provisions at such lower level remains a challenge in absence of regular inspections. That is because a large number of primary health centres are still not regularly staffed with certified

[17]Susheela Singh, ChanderShekhar, *et al.*, 'The incidence of abortion and unintended pregnancy in India, 2015' (2018) 6 Lancet Glob Health e-111

[18]WHO, *Safe Abortion: Technical and Policy Guidance for Health Systems* (2nd ed. 2012)

[19] David A Grimes, Janie Benson, *et al.,* 'Unsafe abortion: the preventable pandemic. The Lancet Sexual and Reproductive Health Series' (2006) 368 Lancet

[20]Department of Family Welfare, Ministry of Health and Family Welfare, *National Population Policy 2000* (Reprint 2002)

[21]Medical Termination of Pregnancy (Amendment) Act 2002

[22]Medical Termination of Pregnancy Regulations 2003

abortion providers.[23]The Indian Parliament on the other hand again could not directly address the problem in its 2021 amendment to the Act of 1971 except for the case of abortion in cases of foetal abnormalities. The legislature barely addressed the problem of backdoor abortion in any of its Bills over the past 6-7 years. Even judicially, in the interpretation of the law regarding the restriction of abortion, it is meant as the restriction of 'legal' abortion and not otherwise. Therefore, the increase in the gestation limit up to 24 weeks could be identified as only partial in providing an exhaustive remedy to the problem of unlawful abortions.

Judicial remedy in abortion after 24 weeks for rape

Pregnancies that reveal a high risk of chromosomal abnormality which in turn can adversely affect the foetus in future put the woman at a high risk of an emotionally untoward situation. This can be said to be caused by their reasonably fearful apprehension of the born child appearing as an entity who would never be able to express or conduct him or herself with full potentiality. At the risk of being politically borderline, the authors do not fear to consider that the knowledge, to some mothers, of bearing a foetus to be affected by a disability, such as Down's syndrome, may also result into a state of mental agony of quite deep and despairing nature. The MTP amendment of 2021 in regard to such line of thought has introduced the provision of no upper limit for abortions of pregnancies with detected foetal abnormalities. However, this has left the option of abortion of pregnancies resulting from rape beyond 24 weeks only through writ petitions. The amendment provides for termination of pregnancy with the requirement of permission of only one doctor in any case where the health of the pregnant woman is in danger. This provision, even though applicable for abortion of rape survivors, shall factor in only to the good of those mothers who would face physical complications during pregnancy and not in any case otherwise, and therefore, fails to consider the aspect of mental agony. It still undermines the importance of the mental agony that a rape victim faces. The amendment has drawn a sharp line of difference in categorising the rape victims undergoing severe mental distress and those under physical danger of health and life by limiting the scope of abortion to writ petitions for the former and waving an upper limit of gestation for the other. This has enabled categorisation of groups in the same homogeneous class of victims and hence, also attracts the attention of Article 14 of the Constitution of India[24].

In the landmark decision of *Chandrakant v. State of Gujarat*[25] ('Chandrakant') significant judicial progress was made. It adopted the victims' "best interest" criteria, forcing the Court to take into consideration medical assessment and socio-economic

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[23]Guttmacher Institute*, Abortion & Unintended Pregnancy In Six Indian States Findings And Implications For Policies And Programs* (Joint-Report, 2018) International Institute for Population Sciences, *Unintended Pregnancy and Abortion in India*.

[24] Article 14 of the Constitution of India provides for both the concepts of 'Equality before Law' and 'Equal protection of Law' by ensuring the supremacy of the law in the governance of the country (i.e. Dicey's Rule of Law) that forms one of the important basis of the fundamental right to life. Article 14 reads "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth". The authors in the present context have referred to the reasonable classification that this article allows. Article 14 forbids class legislation but allows classification of persons, objects, and transactions by the legislature for the purpose of achieving specific ends as long as such classification is not arbitrary, artificial or evasive in nature.

[25]*Chandrakant v State of Gujarat* [1992] 1 GLR 554

factors in favouring the minor and her health, based on the medical board's view that the pregnancy was a “severe threat to life” and “mentally disastrous.”

Despite the fact that subsequent judgments have advanced abortion access for victims based on the Chandrakant test, a unified norm is still a long way off. In *R v. State of Haryana*[26], a minor[27] faces numerous challenges in exercising her right to terminate her 21-week pregnancy. Multiple medical inspections and court hearings in front of medical boards prompted her to extend her gestation to 25 weeks, after which her application was denied. The High Court concluded that the woman's preferences must be balanced with the rights of the “future child” due to the vitality of the pregnancy. Furthermore, by personifying the unborn and declaring “rape and abortion are breaches and infringements of the right to life”, the judgement created a hazardous precedent by using stereotype-laden wording.

On the other hand, numerous writ petitions have been brought before the Apex Court and different High Courts requesting authorization to terminate pregnancies past 20 weeks in the instance of foetal anomalies or those caused by rape suffered by women, according to the amendment’s Objectives and Reasons. Only in circumstances wherein a Medical Board detects significant foetal abnormalities can a pregnancy be terminated after 24 weeks. This means there is hardly any change in the process for aborting foetuses due to rape that have passed the 24-week mark: the only option is to obtain approval via a writ petition.

Even though in some recent exceptional instances of *X v. State of Uttarakhand*[28], *Pratibha Gaur v. Govt. of NCT of Delhi &Ors*[29], or *Niveta Basu v. State of West Bengal*[30], termination of pregnancies from rape were allowed beyond 24 weeks, a former study conducted[31] before the 2021 amendment was passed recorded that courts in India rejected the request of nearly 20% of rape survivors for abortion even beyond 20 weeks of gestation (the then upper limit), despite past instances where decisions interpreted the Medical Termination of Pregnancy (MTP) Act 1971 so that the physical and mental distress caused to a sexually abused woman was regarded as a grave threat to her life. Pratigya Campaign’s legal report titled ‘Assessing the Judiciary’s Role in Access to Safe Abortion- II’ finds that High Courts in India are currently witnessing a substantial increase in abortion cases. It analysed cases seeking permission of termination of pregnancy from the High Courts in India from May 2019 to August 2020 had a total 243 cases filed across 14 High Courts and one appeal before the Supreme Court. In 84% of the cases, permissions were given to terminate the pregnancy. Where, 74% of the total cases, were filed post the 20-week gestation period, 23% of the total cases were filed within the 20-week gestation period and should not have gone to the courts at all. Out of 74% cases (filed after 20 weeks cut off) 29% cases were related to rape/sexual abuse, 42% related to foetal

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[26] *R v State of Haryana* [2016] CWP 6733

[27] ‘Minor’ is a standard legal term used in almost all common law jurisdictions to refer a person who is not adult. In Indian jurisprudence, a minor is a person who is below 18 years of age.

[28] *X v State of Uttarakhand* [2022] WP No. 201 of 2022 (M/S)

[29] *Pratibha Gaur v Govt. of NCT of Delhi &Ors* [2021] WP (C) 14862/2021

[30] *NivetaBasu v State of West Bengal* [2022] WPA 2513 of 2022

[31] International Campaign for Woman’s Rights to Safe Abortion, ‘Pratigya Campaign: Overcoming Access Barrier to Safe Abortion in India’ (*ICWRSA*, 30 March 2020) <https://www.safeabortionwomensright.org/pratigya-campaign-overcoming-access-barriers-to-safe-abortion-in-india/> accessed 15 April 2022

anomalies; and out of 23% cases (filed even before 20 weeks) 18% cases were related to sexual abuse/rape and 6% of foetal anomaly.

However, in recent past instances the courts have seento deny abortion on the ground of the pregnancy crossing the upper gestation limit. One of the landmark examples was of the Nikita Mehta case[32]. In this case, the gestational period had progressed past twenty-five weeks. The petitioners pleaded that the defect in the heart of the unborn child was detected at a late stage. The Mumbai high court held that no categorical opinion of experts had emerged to state that the child would be born with serious handicaps. The court thus denied recourse to medical termination of the pregnancy and an opinion emerged that terminating the life of a viable unborn on grounds of possible handicap is akin to mercy killing.

Commenting on the legal aspect in India and the study findings, Anubha Rastogi, Pratigya Campaign Advisory Group Member said in a press release[33], "The increasing number of cases only indicate to the fact that access to safe and legal abortion services in this country still leaves a lot to be desired. It is imperative that any change in law takes note of these increasing trends and moves towards a rights based, inclusive and accessible legislation on abortion. Any new law/amendment cannot be based on third party authorisation like the medical boards and has to be respectful of a decision that involves the registered service provider and the pregnant person."

In the absence of a mandatory procedure for checking for pregnancy as soon as the rape is discovered, the MTP Act enables a woman to only allege rape to bring her case under Section 3 of the Act, without the need to prove the rape. The authors believe that inherent lacunae like such in a national legislation not only increases the chances for the courts to take conservative views but also increases the chance of misuse of the law. The most prevalent conclusion that can be made rationally when the courts reject a rape victim's plea for an abortion is that they do not consider the potential for severe harm. It must be considered that a person can severely be hurt and yet not be dying. Rape incidents may leave victims highly traumatised for a longer time which may exceed than the generalised limit of gestation period ascertained in the Act. Because a hate crime like rape is individual in nature and the detrimental experience of a victim is particular and exceptional to such person only.

VS Chandrashekar, Pratigya Campaign Advisory Group member said, the fact that even women/girls with gestation below 20 weeks have had to go to courts is distressing. The MTP Act allows termination of a pregnancy upto 20 weeks. A large number of the below 20 weeks cases are of survivors of sexual abuse and this only increases their trauma. He quoted that *"…gestation limit from 20-24 weeks' should be extend to all pregnant persons who need to terminate a pregnancy, instead of being restricted to only to certain categories of women as defined in the MTP Rules. Similarly, the 'no upper gestational limit proposed for foetal anomalies' should be*

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[32]*Nikita Mehta v State of Maharashtra* [2008]
[33]AnubhaRastogi, 'Assessing the Judiciary's Role in Access in Safe Abortion-II' (2020) <https://pratigyacampaign.org/wp-content/uploads/2020/09/assessing-the-role-of-judiciary-in-access-to-safe-abortion-II.pdf> accessed 25 August 2022.

extended to survivors of sexual abuse/rape. Forcing a person to carry a pregnancy out of rape to term is a violation of her right to life and dignity."[34]

The legislation yet to provide adequacy for the rape survivors to exercise their right of personal liberty under Article 21 of the Constitution of India with regard to abortions. If the autonomy of making decisions was left to the women themselves, it would relieve the court from the burden of deciding to incline with either pro-life or pro-choice stances from an emotionally unfamiliar third person perspective. Secondarily, in such situation the cases arising out of the problems relating to abortion could also be expected to significantly drop thereby reducing the contribution in the ever-increasing backlog of pending trials, especially in the constitutional courts.

Overdependence on MTP Rules

There are no specific classes of women who can abort a pregnancy between 20 and 24 weeks. Certain kinds of women are allowed to abort their pregnancies between the ages of 20 and 24 weeks under the bill. These groups will be notified by the federal government. It might be contended that the classes of women who are allowed to abort a pregnancy between the period of 20 and 24 weeks are required to be defined by Parliament rather than left to the discretion of the administration. The amendment provides for the abortion of a pregnancy exceeding 24 weeks if the Medical Board determines that there are significant foetal abnormalities.

In today's society, there is still stigma attached to abortion services. Even the husband, in-laws, and other family members should not be allowed to know about the abortion decision of the pregnant woman without her consent. Mothers used MT tablets without oversight and without following any instructions about dosage, intervals, or adverse effects. They frequently report hospitals as sites for difficult abortions. Lack of contraceptive information and access to contraception are significant impediments to achieving Comprehensive Abortion Care ('CAC') goals, particularly among single and teenage mothers.[35]

Furthermore, under certain instances, the Act allows "pregnant women" to abort their pregnancies. It is worth noting that India's Transgender Persons (Protections and Rights) Act 2019, acknowledges transgender as a separate gender. According to some medical research, people who identify as transgender may conceive after receiving of hormonal treatment to change from female to male, necessitating abortion services. It is uncertain if transgender people will be encompassed by the Bill because the Act only provide for abortion of pregnancies when the seeker is a woman. The social preconceptions regarding gender, womanhood, and motherhood are reflected in the notion that all people who are affected by this law are women. This highlights a bigger issue with inclusion in public policy language. India's policymaking ignores the absence of intersectionality in its discourse, pushing marginalised identities even further to the margins. Linguistics reflects reality and when cis-gender, heterosexual people establish legal systems, institutions and social structures, and the subject of language, inclusion becomes hard to address.

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[34] *Ibid.*
[35] SnehaKumari, Jugal Kishore, 'Medical Termination of Pregnancy (Amendment Bill, 2021): Is it Enough for Indian Women Regarding Comprehensive Abortion Care??' (2021) 46 IJCM 367

In public policy, exclusionary language has become the norm, and although it is not explicitly transphobic or caustic, it results in marginalised categories being denied access to resources and welfare programs. Despite the fact that the 2014 NALSA decision[36] recognises the reality of a “third gender”, little has changed on the grounds for trans-persons who still struggle to find inexpensive medical treatment. The critics of this amendment therefore are not very hopeful about the possibility of enactment of an inclusive MTP Rules by the different states.

The Amendment Act allows for the termination of pregnancy after 24 weeks based on the opinion of the Medical Board in the case of substantial foetal abnormalities. The Act however, does not stipulate a deadline for the Board to make its decision. Abortion of pregnancy is a time-sensitive affair, and deferring of judgement by the Medical Board may lead to further hardships for the pregnant woman as was observed in the case of *R v. State of Haryana (Supra)*. As the amendment shifts a major part of responsibility with regards to abortion from courts to independently functioning Medical Boards with regards to not only the examination of cases of abortion of foetal abnormalities but also taking the final decision to that effect, a proper and exhaustive system of check and balance must be established. Such crucial aspects have also been left to be formulated under the MTP Rules that are to be enacted by the respective State Legislatures.

Furthermore, according to the amendment’s Statement of Objects and Reasons, there remains a need to expand access for women to legal and responsible termination services in order to reduce maternal deaths from unsafe abortions and their squeals. There is a scarcity of certified medical personnel who can perform abortions as only gynaecologists and obstetricians are only allowed to operate. In 2017, 1.8 million registered health graduates served India's populace of 1.33 billion people (including AYUSH Practitioners). As a result, in 2017, there were 1.34 doctors per 1,000 Indian citizens. This means that, even with the most conservative estimations and strict attrition standards, India has already met the WHO standard of 1 doctor per 1000 people. India, on the other hand, is a nation of villages, with 68.8% of the population living in them. As a common trait of the practical economy few doctors desire to work in the areas remote from the metropolitans or the financial/business hubs for that matter. As a result of the lack of skilled abortion services, the rural population has endured a variety of difficulties and consequences[37]. According to the All-India Rural Health Statistics (2018-19), there are 1,351 gynaecologists and obstetricians at public medical centres in rural regions across India, with a 4,002-doctor shortage, or a 75 percent deficiency[38]. Women’s

[36] *National Legal Services Authority v Union of India* [2014] AIR 2014 SC 1863

[37] Raman Kumar and Ranabir Pal, ‘India achieves WHO recommended doctor population ratio: A call for paradigm shift in public health discourse!’ (2018) 7(5) J Family Med Prim Care <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6259525/> accessed 25 August2022.

[38] National Health Mission, ‘Rural Health Statistics 2018-2019’ (Ministry of Health and Family Welfare, Government of India, 2019) <https://ruralindiaonline.org/en/library/resource/rural-health-statistics-2018-19/#:~:text=There%20were%203%2C204%20SCs%3B%203%2C456,increased%20from%203%2C346%20to%205%2C335> accessed 25 August2022.

access to safe abortion procedures may be limited in the future due to a dearth of skilled medical practitioners.[39]

Anubha Rastogi in the abovementioned press release *(Supra)* opined that medical boards should not be constituted and the decision to terminate a pregnancy should be solely between a pregnant person and the provider. The number of specialist doctors to constitute such boards is limited in many districts and smaller towns. She said "constituting Medical boards at all levels would be an operational nightmare. Medical boards will further add to delays and complicate access to abortion, apart from putting unnecessary burden on an already weak health system".

With the advent of the COVID-19 pandemic, India has faced a tremendous challenge with its weak medical infrastructure and shortage of doctors and healthcare professionals. The situation has been so poor in most places that doctors and medical staff were required to serve continuously for over 24 hours on many days, exposing the precarious shortages of doctors and poorly planned health systems. The Act envisages state level medical boards to be formed but such shortages of specialised doctors make it an apparently futile provision.

The division between voices that believe a life begins after fertilisation and the voices that believe it does not is proportionate; hence the innate need for law. They may not always reflect societal values, but in the face of ambiguity, laws must establish a framework within which individuals can navigate, understanding what is and is not legal. This emphasises the notion that while the restrictions may appear to be arbitrary, it is required. It is hardly a representation of what is correct or incorrect. In the instance of abortion, lawmakers have set a time limit for the procedure. Gestation period varies on a wide range among the countries over the world but so does the interpretational severity of their laws. Currently abortion is a conditional right and is available only based on the opinion of the doctor in India. Whereas, 66 countries around the world including Canada, Nepal, Netherlands, Sweden, South Africa and Vietnam allow abortion at will of the pregnant person for up to 12 or more weeks of gestation.[40]

Therefore, the lengthy debate on abortion essentially comes down to two primary questions – i) From when is the life of the foetus qualifies for being protected? ii) When is it justifiable to limit a woman's right to medical termination of pregnancy?

Most liberal thoughts on abortion laws point to the ground-breaking case of *Roe v. Wade (Supra)* in which it was claimed that the Due Process Clause of the Fourteenth Amendment protects a woman's right to choose to have an abortion prior to viability. The Court overturned the Roe trimester framework in favour of a viability analysis, thereby allowing states to implement abortion restrictions that apply during the first trimester of pregnancy. The Court also replaced the strict scrutiny standard of review required by Roe with the undue burden standard, under which abortion restrictions would be unconstitutional when they are enacted for "the purpose or effect of placing

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[39]AnubhaRastogi, 'Assessing the Judiciary's Role in Access in Safe Abortion-II' (2020) <https://pratigyacampaign.org/wp-content/uploads/2020/09/assessing-the-role-of-judiciary-in-access-to-safe-abortion-II.pdf> accessed 25 August2022.

[40]Susheela Singh and others, 'Abortion Worldwide 2017: Uneven Progress and Unequal Access' (*Guttmacher Institute*, March 2018) <https://www.guttmacher.org/report/abortion-worldwide-2017> accessed 25 August2022.

a substantial obstacle in the path of a woman seeking an abortion of a nonviable foetus.”

In India, voluntarily terminating a pregnancy is considered a criminal offence under the Indian Penal Code, 1860[41] (IPC). The Medical Termination of Pregnancy Act 1971 was enacted as an exception to the IPC, to provide for the termination of pregnancies (in certain situations determined by law) by registered medical practitioners. However, the first instance of India’s attempt to bring major reforms in its abortion law was witnessed through the introduction of the 2008 Amendment Bill[42] to the MTP Act. The bill, unlike usual legislative practices of the country, articulated an incident in its statement of objects. It reads as, *“In July 2008 the case of a 31-year-old mother, torn between trauma and ethics, has highlighted the shortcomings in MTP Act in its present form. The young mother, when told in the twenty fourth week of her pregnancy, that her foetus had congenital heart blockage along with transposition of the great vessels and would require a pacemaker to pull through life, had wanted to terminate her pregnancy. Her appeal was rejected by the High Court on the plea that the MTP Act does not allow termination of pregnancy after twenty weeks, although both the paediatricians and the cardiologists had suggested the termination. Today, medical advancement allows detection of congenital health problems which generally surface after 22-24 weeks of pregnancy in unborn children. It should, therefore, be the right of the parents, who alone have to ultimately look after the child born with incurable congenital defects, to decide whether to abort the foetus or not based on sound medical advice.”*

Similar views were kept while introducing and forwarding the several amendment bills to the MTP Act from 2014 to 2019[43]. None of the amendment bills could see the light. Therefore, the enactment of the 2021 amendment was nothing less than a landmark for the country in the evolution of its jurisprudence of abortion law. However, it is almost impossible to call a law perfect. Hence, even after the recent amendment, India continues to struggle to achieve the best legal framework guiding the laws of abortion.

For example, in India, though abortion is legally permissible under a wide range of situations, the doctor has the final say even when abortion is done outside of the upper gestation period as courts to put complete unverified reliance on the opinion of its Medical Board. A woman has to justify that her pregnancy occurred despite her having tried to prevent it or that it had been intended but circumstances changed or made it unwanted later. Possibilities may be that the pregnancy was unwanted from the start, but to justify abortion within the legal framework, the woman may have to provide reasons otherwise.

Another area of potential abuse of women’s reproductive rights is the mandatory reporting of post-abortion contraceptive use required by MTP Regulations (Form 2)[44], which the State, the authors believe, may use to compel abortion providers to

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[41]Indian Penal Code 1860
[42]Medical Termination of Pregnancy Amendment Bill 2008
[43]Medical Termination of Pregnancy Amendment Bill 2014
Medical Termination of Pregnancy Amendment Bill 2016
Medical Termination of Pregnancy Amendment Bill 2017
Women’s Sexual, Reproductive and Menstrual Rights Bill 2018
Medical Termination of Pregnancy Amendment Bill 2019
[44]Medical Termination of Pregnancy (Amendment) Act 2002

achieve family planning targets. Such monitoring often results in a form of coercion of women seeking abortion, especially in the public sector.

It is precedentially evident that the Indian judiciary has been simultaneously instrumental in the process of evolution of laws governing abortion and has even shown activism to a certain proportion by entertaining Public Interest Litigations (PILs)[45] time and again. In *X and ors. v. Union of India and ors.*[46], the Supreme Court was concerned with a pregnancy which had advanced into the 24th week. The Medical Board which was constituted had opined that the condition of the foetus was incompatible with extra uterine life, (i.e., outside the womb) because prolonged absence of amniotic fluid results in pulmonary hypoplasia leading to severe respiratory insufficiency at birth. This was mainly a case where there was substantial risk that if the child was born, it would suffer from such physical or mental abnormalities as to be seriously disabled. Still, the Supreme Court, after referring to the dictum in *Suchita Srivastava v. Chandigarh Administration*[47] - that a woman's right to make reproductive choices is also a dimension of ‘personal liberty’ as understood under Article 21 of the Constitution of India, permitted the pregnant mother to undertake the termination of pregnancy.

Nonetheless, in order to have a balanced debate, it is important to discuss the status of an unborn and develop a basic understanding of the matter in the light of jurisprudential theory in order to determine its legal correctness.

In Common law jurisprudence, it has been doubted whether an infant born alive is entitled to recover from injuries inflicted upon before birth. If the unborn child is accorded little or no legal personality, considerations of maternal autonomy almost invariably trump foetal autonomy. To the extent that the unborn child is accorded substantive legal personality, the road is open to the balancing of foetal and maternal autonomy that may, in concrete circumstances, result in the prioritising of one over the other. For common law jurisdictions, the basic position in relation to the legal status of the unborn child is circumscribed by what is known as the “born alive” rule. This rule ordains that, except if expressly mentioned in a statute, a person cannot be held responsible for injuries inflicted on a foetus *in utero* unless and until it is born alive.[48] For a charge of murder or manslaughter it must be shown that the person killed was one, in being. It is neither a murder nor manslaughter if an unborn child, while still in its mother’s womb, is killed, although it may constitute statutory offences of child destruction or abortion. Therefore, it is apparent that common law has a view that although a foetus is regarded as a separate legal entity from its mother-to-be, the mother which already has an existence is more prominent as a ‘person’ than a foetus whose personhood is a mere legal fiction. On the contrary, a legal fiction of a foetus has sprouted only due to its viability in medical terms.

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[45] The chief instrument through which judicial activism has flourished in India is Public Interest Litigation (PIL) or Social Action Litigation (SAL). Public interest litigation (PIL) refers to litigation undertaken to secure public interest and demonstrates the availability of justice to socially-disadvantaged parties and was introduced by Justice P. N. Bhagwati. It is a relaxation on the traditional rule of *locus standi*.
[46]*X &Ors v Union of India &Ors* [2017]
[47]*Suchita Srivastava & Anr v Chandigarh Administration* [2009]
[48] Attorney General’s Reference No 3 of 1994 Attorney General's Reference No 3 of 1994 [1997] UKHL 31, [1998] 1 Cr App Rep 91, [1997] 3 All ER 936, [1997] 3 WLR 421, [1997] Crim LR 829, [1998] AC 245 (24 July 1997), House of Lords

A ‘person’ is recognised jurisprudentially as an entity having recognized by the law and as a holder of legal rights with a duty to operate legally. It means both- a human being, and a body of persons, corporation or other legal entities that is recognised by law as subjects of rights and duties. Savigny has defined ‘person’ as “the subject or bearer of rights”; but, to Salmond’s understanding, the rights of a person entail duties as well.[49]

Law of status is concerned with the legal characteristics of a man in its quotidian pursuits in a law-abiding civilization. Aside from household affairs, the law of extra domestic status deals with the status of persons such as ‘lunatics’, ‘lower animals’, ‘deceased persons’ etc. Unborn child is one of such persons who do not enjoy the status of a legal person but the society is bound with some duties towards them. Two kinds of persons are recognised by law - natural persons and legal persons. Legal persons are also known as artificial, juristic or fictitious persons. According to Holland, a natural person is “such a human being as is regarded by the law as capable of rights and duties—in the language of Roman law, as having a status.”[50]The first requisite of a moral human being is that he must be recognised as possessing a sufficient status to enable him to possess rights and duties. The second requisite is that he must be born alive. Moreover, he must possess essentially human characteristics. He, who is a natural person, must have the characteristics of independent power of thought, speech and choice.

Relying on the above facts, the authors have developed and attempted to provide a theoretical explanation with a novel approach on the principle of possession in the legal jurisprudence as to strike a balance on whether it an absolute right of the pregnant woman in deciding on the autonomy of bearing the child. The authors argue that –

Law attributes by legal fiction a personality of life existing. A fictitious thing is that which does not exist in fact but which is deemed to be in existence in the eyes of law. There are two components essential to be a legal person – *Corpus* and *Animus*. The *corpus* is the body into which the law infuses the *animus* which is the personality or the will of the person. But if the principle of *corpus animus* is to be applied in the possession of an unborn child, and from the perspective of a ‘to-be mother’, a possibility of construing the dilemma of carrying an unwanted pregnancy arises well. There lies no predicament when a woman, pregnant with a child, voluntarily has the intention of giving birth; because in such cases the component of *corpus possessionis* is express and prominent. The debate surfaces when a pregnant woman, at her free will and non-coerced assent, talks in favour of and is of the opinion not to continue the pregnancy. With the mere presence of the *corpus*, the intention of the woman with regard to such pregnancy should not be assumed. If a woman has no wilful intention to continue a pregnancy up to the birth, the *animus* of such woman in the pregnancy should be considered absent. According to the primordial jurisprudential principle of possession, *animus* is not sufficient without *corpus* and in most cases, vice-versa. Therefore, it is not an unjust claim that a carrying-woman with no intention to continue her pregnancy further, should by any means, be compelled to do the unwanted.

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[49]Prof. S. N. Dhyani, Jurisprudence & Indian Legal Theory, Fourth edition, 2011(reprint), Central Law Agency.
[50]V. D. Mahajan, Jurisprudence and Legal Theory, Fifth edition, 2013, Eastern Book Company.

Furthermore, a pregnant woman, being a natural person in the eyes of law, has the right of privacy and freedom of choice as enshrined in Article 21 of the Constitution of India. In *Justice (retd.) K.S.Puttaswamy v. Union of India*[51], a nine-judge bench of the Supreme Court of India expressly affirmed the centrality of decisional autonomy in any discourse on privacy. The judgement recognised sexual and reproductive autonomy as fundamental choices protected by the right to privacy. It was held that *"Privacy includes at its core the preservation of personal intimacies,…procreation,... Privacy safeguards individual autonomy and recognises the ability of the individual to control vital aspects of his or her life."*

However, authors opine that the civilised reasoning is a juxtaposition of morality and legal sanctity. Hence, when a mother's reason to refuse the chance of a life is frivolous, it might be logical to allow the law of the land to immunise the gentle life, with a standing as *parenspatriae*[52].

Pro-life school of thought argues as to why this becomes important to legally restrict abortion before the third trimester in general cases. The answer lies in the fact that the baby becomes viable at this stage. In other words, the baby is no longer indispensably dependent on its mother's body and stands a chance of survival upon delivery, albeit with suitable aids at this premature stage. As it grows, it becomes more and more capable of independent survival and, from seven months of gestation onwards, the chances of its survival upon birth increase.[53]

Thus, in addition to state interest, the interests of the fully formed unborn child at this stage become noteworthy. The unborn find explicit or implicit protection through many international and national laws. The United Nations Convention on the Rights of the Child recognized the need for special protection of children before and after birth on account of their physical and mental immaturity.

In the 1960s, abortion discourse was influenced largely by medical and demographic concerns.[54] The human and reproductive rights agenda took centre stage post the establishment of International Conference on Population and Development. The National Population Policy of India 2003 encourages the promotion of family planning services to prevent unwanted pregnancies, but also recognises the importance of provision of safe abortion services which are affordable, accessible and acceptable for women who need to terminate an unwanted pregnancy.[55]

Foeticide is a practice prevalent in India for quite few decades now, emerging concurrently with the advent of technological advancements in prenatal sex determination on a large scale. Foetal sex determination and sex-selective abortion by medical professionals has grown into a Rs.1000 crore industry.[56] Despite making pre-natal sex determination a penal offence, numerous clinics offering ultrasound

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

[52]*Parenspatriae* is Latin for "parent of the nation". In law, it refers to the public policy power of the state to intervene against an abusive or negligent parent, legal guardian, or informal caretaker, and to act as the parent of any child, individual or animal who is in need of protection.

[53]See *Roe v Wade* [1973] 410 US 113

[54]Siddhivinayak S. Hirve, 'Abortion Law Policy and Services in India: A Critical Review' (*T&F Online*, 2004) 12 IJSRHR 114

[55]*Ibid*

[56]SugandhaNagpal, 'Sex-selective Abortion in India: Exploring Institutional Dynamics and Responses' (2013) 3 MSR <https://www.mcgill.ca/msr/volume3/article2> accessed 25 August 2022.

scanning facilities have mushroomed throughout the country, rampantly violating this law in exchange for quick money.[57] The demographic crisis will lead to increasing sexual violence and abuse against women and female children, trafficking, increasing number of child marriages, increasing maternal deaths due to abortions and early marriages and increase in practices like polyandry. A paradigm shift is needed for operationalizing reproductive health programs. A change in focus from a population control approach of reducing numbers to a client-based approach of addressing the reproductive health needs of individuals, couples and families, is necessary.

Conclusion

According to the decision in *Roe v. Wade (Supra)*, the expression “liberty” stipulated within the clause which states *“the freedom of choice in the basic decisions of one’s life respecting marriage, divorce, procreation, contraception and the education and upbringing of children.”* John Stuart Mill in his ‘Essay on Liberty’ says *“consists in doing what one desires. But the liberty of the individual must be thus for limited. He must not make himself a nuisance to others.”*[58] Hence, unless the exercise of liberty by a person is creating or aids in the creation of nuisance *in rem* or *in personam*, such liberty is absolute.

Thus, it can be concluded that an unborn foetus in India is not an entity with human rights. The pregnancy takes place within the body of a woman and has profound effects on her health, mental well-being and life. As a result, how she wants to deal with this pregnancy must be a decision she and she alone can make. The right to control their own body, fertility and motherhood choices should be left to the women alone. Let us not lose sight of the basic and the jus-natural claim of women: the right to autonomy and to decide what to do with their own bodies, including whether or not to get pregnant and stay pregnant.

However, let us not forget those who despite being severely disabled have made outstanding contributions to society throughout the history of modern civilisation. For instance, Dr. Stephen Hawking, the world-renowned scientist who suffered from extremely debilitating motor neuron disease; or Ludwig van Beethoven, in spite of his deafness has established himself to be one of the greatest music composers of all times. Had there been mechanisms to detect such disabilities in the foetus then, these people may have never been born. In other words, we cannot completely ignore the possibility of committing grave mistakes by extinguishing potentially great life with our limited understanding of the future and our fear of deformity. Advancement in medical science bestows great power on humanity that must be used for noble causes. Unfettered or arbitrary misuse of such power may lead to grave consequences for the society on multiple fronts.

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[57] *Ibid*

[58] *Allegeyer v Louisiana* [1897] 165 US 578

References

Medical Termination of Pregnancy Act 1971

Roe v Wade [1973] 410 US 113

Asit K. Bose, ‘Abortion in India: A Legal Study’ (1974) 16 (4) JILI <https://www.jstor.org/stable/43950391> accessed 25 August2022

Melissa Stillman and others, *Abortion in India: A Literature Review* (New York: Guttmacher Institute 2014); Ravi Duggal and Vimala Ramachandran, ‘The Abortion Assessment Project—India: Key Findings and Recommendations’ (2005) 12 (24) IJHRHC <https://www.tandfonline.com/doi/citedby/10.1016/S0968-8080%2804%2924009-5?scroll=top&needAccess=true>

Siddhivinayak S. Hirve, ‘Abortion Law Policy and Services in India: A Critical Review’ (*T&F Online*, 2004) 12 IJSRHR 114

PRS, ‘Medical Termination of Pregnancy Amendment Bill 2020’ (*PRS Legislative Research*, 2021) <https://prsindia.org/billtrack/the-medical-termination-of-pregnancy-amendment-bill-2020> accessed 15 April 2022

Medical Termination of Pregnancy (Amendment) Act 2021

‘The Medical Termination of Pregnancy (Amendment) Bill, 2020’ (PRS India 2022). <https://prsindia.org/billtrack/the-medical-termination-of-pregnancy-amendment-bill-2020> accessed 25 August2022

Amrita Nayak Dutta, ‘Why Kerala is India’s healthiest state’ *The Print* (10 February 2018); *see also,* DGHP, ‘How Kerala Avoided a Chronic Disease Crisis’ (*Centre for Disease Control and Prevention*, 16 May 2019) <https://www.cdc.gov/globalhealth/healthprotection/stories/kerala-avoided-crisis.html> accessed 25 August2022

Shyama Rajagopal, ‘Combating post-flood diseases a titanic feat: Minister’ *The Hindu* (7 September 2019) < https://www.thehindu.com/news/national/kerala/combating-post-flood-diseases-a-titanic-feat-minister/article24895940.ece> accessed 25 August2022.

Susheela Singh, ChanderShekhar, *et al.*, ‘The incidence of abortion and unintended pregnancy in

India, 2015’ (2018) 6 Lancet Glob Health e-111

Chitra Subramaniam, ‘India’s new abortion law is progressive and has a human face’ (*Observer Research Foundation*, 07 March 2020) <India’s new abortion law is progressive and has a human face | ORF (orfonline.org)> accessed 15 April 2022

SeeratChabba, ‘Abortion in India: Bridging the gap between progressive legislation and implementation’ (*DW*, 18 November 2021) <https://www.dw.com/en/abortion-in-india-bridging-the-gap-between-progressive-legislation-and-implementation/a-59853929> accessed 15 April 2022

WHO, 'Sexual, reproductive, maternal, newborn, child and adolescent health policy survey 2018–2019: report' (World Health Organisation)<https://platform.who.int/docs/default-source/mca-documents/policy-documents/policy-survey-reports/srmncah-policysurvey2018-fullreport-pt-2.pdf?sfvrsn=3a202c28_4> accessed 25 August2022

HLI Staff, 'Why Women Abort' (*Human Life International*, 5 May 2021) <https://www.hli.org/resources/why-women-abort/> accessed 25 August2022.

Lale Say, Doris Chou, *et al.,* 'Global causes of maternal death: a WHO systematic analysis' (2014) 2 Lancet Glob Health 323

Nicholas J Kassebaum, Amelia Bertozzi-Villa, *et al.,* 'Global, regional, and national levels and causes of maternal mortality during 1990–2013: a systematic analysis for the Global Burden of Disease Study 2013' (2014) 384 Lancet Glob Health 980

Vinod Mishra and Victor Gaigbe-Togbe and Julia Ferre, 'Abortion Policies and Reproductive Health around the World' (United Nations, Department of Economic and Social Affairs 2014) <https://www.un.org/en/development/desa/population/publications/pdf/policy/AbortionPoliciesReproductiveHealth.pdf> accessed 25 August2022.

Susheela Singh, ChanderShekhar, *et al.*, 'The incidence of abortion and unintended pregnancy in

India, 2015' (2018) 6 Lancet Glob Health e-111

WHO, *Safe Abortion: Technical and Policy Guidance for Health Systems* (2nd ed. 2012)

Medical Termination of Pregnancy Amendment Bill 2014

Medical Termination of Pregnancy Amendment Bill 2016

Medical Termination of Pregnancy Amendment Bill 2017

Women's Sexual, Reproductive and Menstrual Rights Bill 2018

Medical Termination of Pregnancy Amendment Bill 2019

Medical Termination of Pregnancy (Amendment) Act 2002

X &Ors v Union of India &Ors [2017]

Suchita Srivastava & Anr v Chandigarh Administration [2009]

Attorney General's Reference No 3 of 1994 Attorney General's Reference No 3 of 1994 [1997] UKHL 31, [1998] 1 Cr App Rep 91, [1997] 3 All ER 936, [1997] 3 WLR 421, [1997] Crim LR 829, [1998] AC 245 (24 July 1997), House of Lords

Prof. S. N. Dhyani, Jurisprudence & Indian Legal Theory, Fourth edition, 2011(reprint), Central Law Agency.

V. D. Mahajan, Jurisprudence and Legal Theory, Fifth edition, 2013, Eastern Book Company.

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

Roe v Wade [1973] 410 US 113

Siddhivinayak S. Hirve, ‘Abortion Law Policy and Services in India: A Critical Review’ (*T&F Online*, 2004) 12 IJSRHR 114

Sugandha Nagpal, ‘Sex-selective Abortion in India: Exploring Institutional Dynamics and Responses’ (2013) 3 MSR <https://www.mcgill.ca/msr/volume3/article2> accessed 25 August 2022.

Allegeyer v Louisiana [1897] 165 US 578