CROSS-BORDER TELEMEDICINE ABORTIONS: RECONCILING REPRODUCTIVE AUTONOMY WITH INDIA'S LEGAL AND REGULATORY FRAMEWORK

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ABSTRACT

This paper examines the collusion of reproductive rights and access to telemedicine and abortion laws within the context of India and Ireland. India's "Medical Termination of Pregnancy (MTP) Act, 1971 (amended in 2021)" is perceived to offer liberal access to abortion, yet the ambiguities of the regulatory framework governing telemedicine and cross-border consultations raises questions around the application of the Act's liberal abortion access provisions. On the other hand, Ireland's Health (Regulation of Termination of Pregnancy) Act, 2018 is the culmination of attempts to digitise abortion services after the constitutionally protected abortion ban (the Eighth Amendment) was removed, exposing the tensions between moral and technological realities. This paper examines the ways in which both jurisdictions deal with cross-border telemedicine abortions in which abortion pills and tele-consultations are offered to women through the internet from jurisdictions with accessible abortion services. Through doctrinal and comparative approaches, it is argued that, while technologies of telemedicine and the internet expand the reproductive rights of women and challenge the traditional jurisdiction of the state, liability and ethics surrounding clinical practice, they also severely test the limits and boundaries of jurisdiction. The paper concludes with the proposition that the divergence between the regulation of reproductive rights and autonomy and the laws governing digital health can be resolved through the interface of technology law, medical ethics, and human rights law.

Keywords: Reproductive rights, abortion law, telemedicine, cross-border healthcare, India, Ireland, reproductive autonomy, digital health regulation.

INTRODUCTION

The COVID-19 pandemic encouraged jurisdictions to adopt telehealth and telemedicine services more quickly than anticipated, including services for early medical abortion. The closed borders, and the digital provision of abortion care, including online consultations and the cross-border provision of abortion pills, presents complex legal and ethical challenges. This paper looks at the question of how to maintain, and even enhance, reproductive autonomy and access, given the complex interplay of national laws and telemedicine regulations.

In India, abortion is permitted under MTP Act, 1971, as amended in 2021. However, telemedicine guidelines under the 2020's Telemedicine Practice Guidelines, exclude telehealth for abortion, leaving a gap in the legal framework. The contrast with Ireland is stark; the country legalized abortion in 2018, removing nearly absolute legal restrictions, which has obviously permitted a massive cultural and legal shift. However, access to telemedicine for abortion remains contentious under EU regulations and Irish data protection laws. This paper examines how India and Ireland manage the telemedicine abortion cross-border convergence, where women can access pills or consultations with providers located overseas.[1]

This paper examines the questions -

- How can India balance Reproductive Autonomy vis-a-vis legislation and regulations on Cross-Border Telemedicine Abortions?
- What can Ireland teach us in this regard after liberalization?

Ireland's case post liberalization would be a valuable reference as the intersection of technology and reproduction has become a matter of law and legislation beyond the geographical and moral frontiers law has primarily employed.[2]

METHODOLOGY

This study employs comparative doctrinal approach involving qualitative analyses of statutes, case law, and international human rights treaties and combines these with other relevant

[1] Shukla, A. (2022). The medical termination of pregnancy (amendment) Act, 2021. *International Journal of Obstetrics and Gynaecological Nursing*, *4*(1), 24–28. https://doi.org/10.33545/26642298.2022.v4.i1a.79

[2] Quinlan, C. (2021). Ireland:. In *Abortion and Mothering* (pp. 117–136). Demeter Press. https://doi.org/10.2307/j.ctv23g7wkb.15

secondary materials such as academic literature, policy papers, and analyses. These documents aid in the contextualization of the legal frameworks of the two jurisdictions. Both India and Ireland's legal frameworks on abortion and telemedicine are compared and contrasted on three tiers - (a) Legal recognition of Reproductive Autonomy (b) Scope and Regulation of Telemedicine (c) Cross Border Healthcare and Regulation.

RESULTS

India's abortion laws were first framed in the MTP Act, 1971 which recognized the balancing of the moral and demographic needs of the country, along with the health needs of women. The MTP Act, 2021, the most recent amendment to the Act, expanded accessibility to MTP, and increased the limit to 24 weeks for certain categories of women. It also permitted termination in the case of fetal anomalies without any time limit. However, the practice remains paternalistic, as mentioned previously, abortion within 20 weeks requires opinion of one registered medical practitioner (RMP), and beyond 20 weeks, consent of 2 RMPs. In addition to this, abortion continues to be permitted only in specific circumstances, for example, the health of the woman, rape, and contraceptive failure (married now to include unmarried) women.[3]

The "Telemedicine Practice Guidelines, 2020", issued by MCI & Ministry of Health, regulate digital healthcare consultations but explicitly exclude abortion services. This exclusion, coupled with "Drugs and Cosmetics Act, 1940" which allows sale of abortion-inducing drugs mifepristone and misoprostol only under certain prescriptions, creates a legal barrier to telemedicine abortions. Many women, especially in rural areas, turn to informal online sources for abortion pills, which raises safety, ethical, and legal issues.[4]

The Indian judiciary has developed right to privacy and bodily integrity as a part of the right to reproductive autonomy under "Article 21 of the Constitution". In "*Suchita Srivastava v. Chandigarh Administration*",[5] the Supreme Court recognized as part of personal liberty the right to make decisions and the autonomy to reproduce. This recognition was further built upon

[3] Dekal, V. (2015). Abortion and MTP Act 1971. In *Exam Preparatory Manual for Undergraduates: Forensic Medicine and Toxicology (Theory and Practical)* (p. 154). Jaypee Brothers Medical Publishers (P) Ltd. https://doi.org/10.5005/jp/books/12565_20

[4] Damodharan, D., Narayana, M., Channaveerachari, N., & Math, S. (2021). Telemedicine practice guidelines of India, 2020: Implications and challenges. *Indian Journal of Psychiatry*, *63*(1), 97. https://doi.org/10.4103/psychiatry.indianjpsychiatry_476_20

[5] (2009) 9 SCC 1.

in "*Justice K.S. Puttaswamy v. Union of India"*,[6] where Court affirmed position of privacy and included the reproductive choice as part of a rights suite. Most recently, in "*X v. Principal Secretary, Health and Family Welfare Department"*,[7] Court liberalized the MTP Act and held that unmarried women are entitled to the right to the same abortion as married women, underlining "principles of equality and dignity".

Though some progressive rulings have been made, India's legal system has yet to develop adequately with regard to the transnational aspects of telemedicine. Foreign online providers, like Women on Web or Aid Access, conduct remote abortion consultations and ship abortion medication to women in India. This activity exists in a grey area of the law. It is outside the jurisdiction of India, yet it directly impacts people within the jurisdiction. Under the "Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021", abortion-related service providers are at risk of being ordered to take down their platforms that host or advertise abortion-related services because it is against "public morality" and "medical safety" norms. This tension illustrates the paradox of digitally enabled reproductive rights and India's legal system confined within geographical borders.

Highlighting a difference with India, Ireland reveals the evolution of its abortion legislation and its effects on society. Ireland's harassment of the Eighth Amendment, 1983 established right to life of unborn and equated it with that of mother. This entrenched prohibition even criminalized abortion in cases of rape and fatal fetal anomalies and forced thousands of women to leave Ireland for termination, primarily to the UK. This scenario changed after the referendum, 2018, with 66.4% of the public voting to repeal Eighth Amendment, & public outrage that followed death of Savita Halappanavar.[8] This public opinion culminated in "Health (Regulation of Termination of Pregnancy) Act, 2018", which made abortion legal in Ireland for up to 12 weeks of pregnancy and in certain cases, beyond that.

Ireland now includes telemedicine as part of its integrated national health services. During the COVID-19 pandemic, the Health Service Executive (HSE) allowed phone and video consultations for early medical abortions as a temporary measure. In 2023, this policy became

[6] (2017) 10 SCC 1.
[7] 2022 SCC OnLine SC 905.
[8] Drążkiewicz, E., Strong, T., Scheper-Hughes, N., Turpin, H., Saris, A. J., Mishtal, J., Wulff, H., French, B., Garvey, P., Miller, D., Murphy, F., Maguire, L., & Mhórdha, M. N. (2020). Repealing Ireland's Eighth Amendment: abortion rights and democracy today. *Social Anthropology*, *28*(3), 561–584. https://doi.org/10.1111/1469-8676.12914

permanent and was an example of Ireland's innovative digital reproductive health. However, Ireland still struggles with cross-border telemedicine abortion issues, particularly with Irish residents ordering pills offered by providers beyond the European Economic Area (EEA). Conflicts arise under EU E-Commerce Directive (2000/31/EC) and General Data Protection Regulations (GDPR) concerning cross-border medical telematics, advice, and privacy of data.[9]

The Irish state, particularly after the "*Attorney General v. X"*[10] & "*A, B, and C v. Ireland"*[11] case before European Court of Human Rights, struggles with constitutional morality and the international human rights obligations. After telemedicine liberalization, the Irish state still grapples with the balance of providing autonomy and safeguarding the medical safety of the telemedicine abortion procedure.

DISCUSSIONS

Reproductive autonomy and the regulation of telemedicine have some similarities and differences in India and Ireland. Like Ireland, India has witnessed major changes in their abortion laws because of feminist movements, judicial action, and international human rights. But, unlike India, Ireland has recently reformulated its health care laws and integrated telemedicine, leaving India more technologically conservatively regulated.

Both India and Ireland have incorporated constitutional and human rights into the discourse on abortion, but not in the same way. In India, judicial pronouncements led to the interpretation of the "right to liberty" under Article 21 to include autonomy over reproduction. In the global context of the "Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)", the Indian Supreme Court has viewed the right of a woman, to make a decision which, to a large degree, encompasses dignity, and is intertwined with her right to privacy, her bodily integrity, and her right to refuse medical treatment as an integrated part of her medical rights. In practice however, the right is tempered by the procedural controls under the MTP Act. The legislature's paternalistic attitude over the agency of women and medical trust is evident in the Act's reliance on discretionary powers.[12]

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[9] Nordhausen, A. (2007). Does harmonisation go far enough? The E-Commerce Directive 2000/31/EC: implementation and sanctions. *International Journal of Liability and Scientific Enquiry*, *1*(1/2), 114. https://doi.org/10.1504/ijlse.2007.014585

[10] [1992] IESC 1.

[11] (2010) 53 EHRR 13.

[12] Women in Law and Development in Africa. (2002). *Convention on the Elimination of All Forms of*

Unlike India, Ireland's move from an abortion regime that was restrictive to one that was rights-based, represents an evolution of the nation's constitution. With the repeal of the "Eighth Amendment, 2018", Ireland replaced moral absolutism with the pragmatic recognition of women's autonomy. The Health (Regulation of Termination of Pregnancy) Act, 2018 was the first of Ireland's legal frameworks that aimed to address the discrepancy between the constitution and international human rights law, particularly the European Convention on Human Rights (ECHR) and the case *A, B and C v. Ireland*.[13] While Ireland constructed and popularized constitutional change, hollowing out the country's courts, India had a court-driven evolution in its reproductive rights jurisdiction. This illustrates unmatched constitutional routes to justice in the two countries.

In contrast to other countries, Ireland integrated telemedicine seamlessly. The HSE telemedicine abortion program implemented at the start of the COVID-19 pandemic allowed medical abortions to be conducted fully remotely for pregnancies of 12 weeks or less. This helped expand access and curb the number of unsafe procedures carried out. After this service was successfully implemented and patient satisfaction surveys indicated approval, the service was retained and integrated remote care into routine reproductive healthcare in Ireland for the first time in 2023. This indicates a degree of rights-based regulatory flexibility that is sorely missing in India.

Although Ireland has to contend with cross-border issues, for instance, citizens ordering medical abortion pills from unregulated external providers, it is addressing these issues with a combination of data protection and medical oversight. This contrasts starkly with India, which has no regulatory flexibility and no telemedicine abortion services, a scenario which leaves women with no choice but to access unregulated and unsafe remote services. This regulatory gap is a direct violation of the reproductive rights that the Indian judiciary has recognized.

Digital globalization impacting the jurisdictional bounds of territorial laws is illustrated by cross-border telemedicine abortions, where women obtain online consultations or abortion pills prescribed by people located outside the relevant jurisdiction. In India, the situation is legally ambiguous. While the immigration of pharmaceutical products and abortion pills is illegal, it is also legally ambiguous. Indian officials have occasionally sought to enforce the online

Discrimination against Women (CEDAW). WiLDAF, Women in Law and Development in Africa.
[13] (2010) 53 EHRR 13.

advertising bans using the "Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954" and the "Information Technology Act, 2000", but the fragmentation of enforcement tends to standard lawsuits, resulting in policing that is disproportionate to the problem.[14]

Jurisdictional issues of this sort are also encountered in Ireland, most notably prior to 2018, when women circumvented pills' domestic clinical prescriptions, and since the abortion reforms, cross-border issues have been managed as per the state's obligations to the EU. Now, there is legislative intent to manage cross-border telemedicine as per the E-Commerce Directive. Ireland is permitted to regulate cross-border telemedicine services in the absence of a compelling public interest. In contrast, India has no such policy approach, and citizens' cross-border reproductive health data and rights have no legal protection. Though both nations recognize reproductive autonomy as a constitutionally protected or human right, Ireland's advancement of legislation harmonizes with its judicial activism while India's interpretative progress remains stalled due to regulatory inertia.

Reproductive autonomy via telemedicine poses unique, fundamental legal and ethical dilemmas. Who is liable when a physician consultation or a prescription crosses a country's border? Where does the state draw the line between ensuring medical safety and infringing on someone's right to digital self-determination and bodily autonomy?

India's state-initiated legal and policy framework protective of autonomy continues to reinforce the regulatory paternalism and discord between autonomy and protective paternalism. The prevailing assumption is that prohibiting telemedicine abortions will ensure safety, but data tell a different story. As for the Guttmacher Institute's findings, over half of India's abortions are performed outside the medical system, at least some of which are via the Internet. The implication of restricting legitimate telemedicine would be to push women to unsafe mechanisms. Lack of telemedicine options also contradicts the absence of regulations on expanded access in the context of the enforcement of the right to autonomy and privacy as articulated in a line of the Supreme Court decisions.

Ireland's experience, on the other hand, illustrates that telemedicine abortion services can not only be safely implemented but can also be helpful. The HSE evaluation found no increase in

[14] Ayyanar, R., Boyanagari, M., & Shankar, M. (2017). Enforcement of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954, in the State of Andhra Pradesh: situational analysis and lessons learnt. *Journal of Pharmaceutical Health Services Research*, *9*(1), 47–52. https://doi.org/10.1111/jphs.12207

health complications and high levels of satisfaction. The state moved from a position of criminalization to one of facilitation, a shift that is consistent with the WHO's Abortion Care Guidelines recommending the use of telemedicine services be incorporated into the national health care systems of various countries.

CONCLUSION

The difference between India and Ireland highlights the need to reassess the governance of reproductive health in the context of digital globalization. Both have expanded the jurisdiction limits of women's rights to abortion, but the use of telemedicine to gain reproductive rights is more advanced in Ireland.

Ireland after 2018 demonstrates a more integrated approach to rights, ethics in medicine, and technology. Ireland integrates telemedicine into public health and, through privacy and safety regulations, offers a model to meet moral pluralism and a rights-based approach in the digital age.

India has a more legal and constitutional progressive but still limited with underdeveloped regulations, poorly drafted old statutes, and overly prudent telemedicine regulations. Poor access to telemedicine and health inequities are exacerbated by the exclusion of abortion in the telemedicine guidelines. For India to align with the rest of the world in human rights and health care, technology legal reforms should be made from a rights-based approach.