
ABORTION AS A HUMAN RIGHT: FREEDOM, CHOICE AND JUSTICE

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ABSTRACT

One of the most contentious but essential components of reproductive and human rights is still the availability of safe abortion. It is situated at the nexus of legal justice, gender equality, public health, and bodily autonomy. The conceptual and legal underpinnings of safe abortion as a human right are examined in this study, with a focus on how essential it is, to protect women's health, autonomy, and dignity. The study examines how unsafe abortion is still a leading cause of maternal death and morbidity globally, especially in developing nations where access to safe procedures is hampered by legislative constraints and socio-economic disparities. The significance of international human rights law in acknowledging reproductive rights, including abortion, as a component of the more general right to health and privacy is critically examined in this study. Additionally, it assesses the philosophical and ethical aspects of abortion, emphasising the significance of personal autonomy in making reproductive decisions. The paper also addresses the necessity for a rights-based approach to reproductive healthcare and the effects of restrictive abortion regulations on marginalised groups. The article argues that access to safe abortion is a fundamental human right rather than just a medical treatment by looking at legal frameworks, human rights jurisprudence, and public health factors. In order to provide fair and widespread access to safe abortion services, the study ends by promoting progressive legislative changes, better healthcare facilities, and increased public awareness.

Keywords: Abortion, bodily autonomy, health, human right, privacy, dignity.

1. INTRODUCTION

A medical procedure that is performed to end a pregnancy is called abortion or foeticide. There is healthcare that is critical for millions of women, girls, and pregnant persons. There is an abortion in one in every four pregnancies every year. If an abortion is accessible, legal, and performed without stigma, it is usually performed safely and without any significant risk to the healthcare provider or pregnant person. The criminalization of abortion, the stigma, and the restrictions imposed in many of the countries have driven women to opt for many unsafe abortions. This is the reason for the 25 million unsafe abortions (almost uniformly performed in the developing countries of the world). These unsafe abortions lead to deadly and debilitating outcomes including maternal deaths and complications. The right to an abortion is part of the right to bodily autonomy, and because foeticide is a right, a loss of negative autonomy may be a right.¹ The driving factors are of societal, political, and economic nature which historically effect reproductive autonomy mainly for marginalized persons. The right to be free from a dependence of a cruel and inhumane treatment is a right to be healthy. The ways to protect this and every other right that is spelled out in safeguard treaties, the global right to an abortion, and the various other international treaties to which God and Man signed are healthcare systems. The deaths and disabilities that result from unsafe abortions are almost all preventable. The criminalization of abortion makes it unsafe. It does not curb the number of abortions. Many women, who do not have the financial capacity to go elsewhere to seek a private abortion, will resort to illicit abortion. The unsafe abortions will lead a health care provider to practice unsafe abortions.²

Unsafe abortions are the third leading cause of avoidable maternal mortality worldwide. Many more people suffer disability due to unsafe abortions. This results in a total of 5 million disabilities caused primarily as a result of unsafe abortions. Due to these facts, safe abortion access is a key part of the right to health and a public health imperative. Everyone has the right to be free of state-based discrimination. Many UN treaty bodies have addressed these issues, including the awareness to the rights of the state to report issues of discrimination including the Committee of the Convention of the Elimination

¹ Rosalind P. Petchesky, *Global Prescriptions: Gendering Health and Human Rights* (Zed Books, United Kingdom, 2003).

² *Ibid.*

of All Forms of Discrimination to Women (CEDAW).³ You have the ability and the right to make decisions on behalf of yourself and on behalf of your body. Along the same thread, the concept of reproductive autonomy allows you to make decisions regarding your own reproductive life. Human rights issues arise, including the right to privacy as well as the right to personal safety and physical and reproductive autonomy, if you are compelled to continue with an unwanted pregnancy, or to pursue an unsafe abortion. Those compelled to seek unsafe abortions may be subject to criminal prosecution, imprisonment, and other severe, inhumane, and degrading treatment. These issues are exacerbated by discrimination in the provision of necessary health care services after an abortion. The "Green Wave" is the concept of a movement to recognize a feminist theory in addition to a human rights based rationale for the decriminalization of abortion throughout Latin America.

2. CONCEPT OF REPRODUCTIVE RIGHTS AND SAFE ABORTION

Reproductive rights, which include the freedom of individuals to make decisions about their reproductive health without coercion, discrimination, or violence, are an essential part of human rights. Due to its direct connection to personal autonomy, dignity, and the right to health, access to safe abortion has a vital place among these rights. Women are forced to use risky techniques when safe abortion services are denied, endangering their lives and well-being. Abortion has historically been governed by moral, religious, and legal frameworks that frequently reflect patriarchal beliefs that limit women's autonomy. But as human rights law has developed, abortion has come to be seen as a question of both public health and individual liberty. A more comprehensive view of reproductive justice is indicated by the transition from criminalisation to a rights-based approach. This article examines the legal, ethical, and socio-economic aspects of access to safe abortion as a fundamental component of reproductive and human rights. The idea that people should have the freedom to make decisions about their reproductive lives is the foundation of reproductive rights. Access to safe abortion services, maternal healthcare, and contraception are some of these rights. A safe abortion is a medical procedure carried out by qualified specialists in a hygienic setting with little risk to the

³ The United Nations convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979).

woman's health.

The idea that personal liberty depends on having control over one's body is reflected in the acknowledgement of reproductive rights as human rights. As Rebecca J. Cook said, Reproductive health is inextricably tied to equality and human dignity and any limitations on access to safe abortion compromise these values.⁴ Accessibility, cost, and acceptance of services are all part of the idea of safe abortion. Without adequate healthcare infrastructure and social awareness, legal recognition is insufficient on its own.

Unsafe abortion is still a major public health issue, especially in underdeveloped nations. Due to their lack of access to safe and legal abortion procedures, women frequently turn to risky methods, which can lead to serious problems like bleeding, infection, and infertility. It is commonly known that restrictive abortion regulations are associated with dangerous practices. According to Jonathan Herring, criminalising abortion only drives it underground but not eliminate abortion, putting women's lives at greater risk. Ensuring access to safe abortion services lowers maternal mortality and morbidity from the standpoint of public health. By controlling problems brought on by risky operations, it also lessens the strain on healthcare systems.⁵

3. HUMAN RIGHTS DIMENSIONS OF SAFE ABORTION

3.1 Right to Health

Safe abortion should be addressed as a public health issue and a legal or ethical one. From the global health statistics, 45% of 73 million safe abortions die as a result of unsafe procedures. If safe abortions are denied, and women are placed in situations that provide them with unnecessary health risks, the right to health and access to essential medical services, even reproductive health services, are being violated. Sheila A. M. McLean asserts that patient autonomy and safety, including access to safe abortion, must be given the highest priority.⁶ The right to health is the cornerstone of all rights, and the

⁴ Rebecca J. Cook, Bernard M. Dickens, *et.al.*, *Reproductive Health and Human Rights: Integrating Medicine, Ethics, and Law* 147 (Oxford University Press, New York, 3rd edn., 2003).

⁵ Jonathan Herring, *Medical Law and Ethics* 512 (Oxford University Press, Oxford, 7th edn., 2018).

⁶ Sheila A. M. McLean, *First Do No Harm: Law, Ethics and Healthcare* 233 (Ashgate Publishing, United Kingdom, 2014).

right to health is secured under the Universal Declaration of Human Rights and the International Covenant on Economic, Social, and Cultural Rights. The right to health is secured by the access to safe abort services. According to international organizations, the deaths and injuries that result from unsafe abortions are essentially preventable. Thus, the state violates the obligation to protect and promote the right to health by providing safe abort services. The World Health Organization considers abortion a vital medical service and states that it must be safe, timely, affordable, and available without discrimination.

3.2 Right to Privacy and Bodily Autonomy

The right to privacy protects individual autonomy in the personal and physical realms. The right to liberty is violated by the state's involvement in abortion. Ronald Dworkin contends that moral judgements are personal and should be left to the individual.⁷

An important part of human rights is protecting bodily autonomy, as this allows people to make their own choices about their bodies. In the context of reproduction, this includes the ability to choose to not complete a full term pregnancy. Forcing a woman to complete a pregnancy against her will is a violation of a woman's autonomy, dignity, and her right to privacy, and can have a negative impact on her psychological health. Cross-sectional research across various global settings has found restrictions on a woman's right to make a decision about her pregnancy disproportionately impact women and girls. Overall, the violation of reproductive autonomy supports the claim that a woman has the right to choose any reproductive decision without state, social, or psychological interventions.

3.3 Right to Equality and Non-Discrimination

Restrictive abortion laws have a disproportionately detrimental impact on women, and particularly on marginalized women. Such regulations not only sustain gender discrimination, but worsen and entrench structural inequalities. For this reason, ensuring the right to safe abortion is one of the ways to achieve substantive equality. The right to equality and the right to safe abortion are inextricably linked. Those who

⁷ Ronald Dworkin, *Life's Dominion: An Argument About Abortion, Euthanasia, and Individual Freedom* 156 (Vintage Books, New York, 1994).

are most disproportionately affected by restrictive abortion laws are adolescents, women and girls who live in rural or impoverished settings, and women from marginalized communities who do not have the financial means to access safe abortion services. By denying access to abortion and safe abortion services, restrictive abortion laws are entrenched and structural. The Committee on the Elimination of Discrimination Against Women (CEDAW) and other international human rights bodies have stated that restrictive abortion laws can be deemed discriminatory to women. Hence, to achieve substantive equality and rights for women, access to safe and equitable abortion is required.⁸

4. ETHICAL AND PHILOSOPHICAL PERSPECTIVE

Abortion debates are often dominated by the tension between the rights of women and the interests of the fetus. In this case, the importance of women's rights and their obligations to the fetus should take precedence.

Most modern human rights frameworks prioritize women's autonomy. The liberal view holds that reproductive choices are intertwined with fundamental freedoms. And Baxi focuses on the 'real-life' experiences of individuals when setting human rights guidelines and argues that frameworks should give priority. The beneficence principle stipulates that professionals should act in the best interests of the patient; this principle is compromised. The denial of safe abortion services places women in danger and violates the principle.⁹

5. LEGAL FRAMEWORKS AND DEVELOPMENTS

5.1 International Perspective

The general principles of equality, privacy, health, and bodily autonomy underpin the argument that abortion is a human right. Advocates argue that the availability of safe and legal abortion is essential, particularly for women and others who are at risk of becoming pregnant, to exercise the right to make uncoerced decisions concerning their body, life, and in particular their future. The right to abortion is increasingly recognized,

⁸ *Supra* note 3.

⁹ Upendra Baxi, *The Future of Human Rights* 221 (Oxford University Press, New Delhi, 3rd edn., 2008).

especially in relation to women's human rights, and it is a crucial component in the areas of health, bodily autonomy, and dignity. Various international human rights frameworks and legal principles have recognized the right to safe abortion as a fundamental human right, despite the fact that the word abortion is seldom used in such international instruments. The right to reproductive health and to safe abortion is reinforced by various international human rights instruments. The right to life, liberty, and security of a person under Article 3 and the right to health and well-being, the Universal Declaration of Human Rights lays the groundwork for reproductive rights.¹⁰ Article 3 of the Universal Declaration of Human Rights and the right to health and well-being also supports the right to reproductive health.

In *K.L. v. Peru*, the Human Rights Committee ruled that the denial of an abortion for a woman carrying an anencephalic fetus was a violation of the ICCPR as it pertains to the prohibition of cruel and inhuman treatment.¹¹ Likewise, the Committee found that Ireland's severe abortion legislation was in violation of women's right to privacy, dignity, and freedom from cruel and degrading treatment in the case of *Mellet v. Ireland*.¹² These cases marked critical advancements in the understanding of abortion as a human rights issue. The recognition of reproductive rights is further strengthened by the Convention on the Elimination of All Forms of Discrimination Against Women. The CEDAW Committee has repeatedly urged governments to ensure women's access to safe and legal abortion services, reiterating that restrictive abortion laws are, in and of themselves, discriminatory against women. The Committee has gone so far as to emphasize that women's reproductive rights are essential for the achievement of substantive equality and the elimination of all forms of discrimination against women.

Moreover, the International Conference on Population and Development marked a critical moment in the global advancement of reproductive rights.¹³ The Programme of Action articulated at the Conference recognized reproductive health as a fundamental human right and articulated the right of women to make reproductive choices free from violence, coercion, and discrimination, the right to have access to safe and legal

¹⁰ The UN Universal Declaration of Human Rights, 1948, art. 3, 25.

¹¹ *K.L. v. Peru*, Communication No. 1153/2003, United Nations Human Rights Committee, Views adopted on 24 October 2005, U.N. Doc. CCPR/C/85/D/1153/2003.

¹² *Mellet v. Ireland*, Communication No. 2324/2013, United Nations Human Rights Committee, U.N. Doc. CCPR/C/116/D/2324/2013 (2016).

¹³ International Conference on Population and Development, Programme of Action (1994).

abortion services. The Fourth World Conference on Women also recognized and reiterated the need for countries to repeal laws that criminalize women for having an abortion.¹⁴

The World Health Organization cites that abortion is a necessary element of reproductive healthcare as well as a human right for women; i.e., having a safe abortion is a degree of protection from the health risks associated with an unsafe abortion. International human and reproductive rights instruments establish and recognize that abortion is a human right related to women's health and other rights to privacy and dignity. Consequently, these global legal trends have instigated a myriad of national legal abortion reforms. Starting in 2018, the women's movements, including Amnesty International Argentina, transcended borders and united for the formal decriminalization of and access to safe abortion. Three years later, Argentina, an epicenter of the 'Green Wave' movement, legalized abortion in December 2020 and has since seen a significant reduction of the country's pregnancy-related deaths. Advocacy for liberalized abortion laws continues as safe and legal abortion, in balancing a liberal right and the protection of life, must also comply with the greater liberal and human(rights) obligations.¹⁵ Access to safe abortion is one of the reproductive rights that are increasingly recognised by international human rights standards. Even while abortion was not specifically mentioned in the early treaties, later interpretations have broadened the scope of rights including health, privacy, and dignity. Decriminalisation and the removal of obstacles to safe abortion services have been stressed by human rights organisations. The World Health Organization (WHO), and the United Nations are among the organisations that are increasingly endorsing access to abortion as a human right. According to the United Nations Human Rights, criminalising abortion may violate rights guaranteed by the International Covenant on Civil and Political Rights (ICCPR).¹⁶

5.2 Indian Legal Perspective

India has made a functional ruling on abortion to be a human right by drawing on many of its own Constitutional provisions protecting the equality, dignity, liberty, and

¹⁴Fourth World Conference on Women, Beijing Declaration and Platform for Action (1995).

¹⁵ Available at: <https://pmc.ncbi.nlm.nih.gov> (last visited on March 30, 2026).

¹⁶ United Nations, International Covenant on Civil and Political Rights (ICCPR) (1966).

autonomy of women to make her own Reproductive decisions regarding it. There is no specific directive on it, but there is a strong case to be made for the Constitution of India acknowledging the right to die and its own limitations to be placed on the fundamental right to a full measure of one's Reproductive Right, i.e., to abort a pregnancy. India's Article 21 of the Constitution provides for the right to life, liberty, and security. In a greater view of Article 21, the Supreme Court of India has said the right to privacy, dignity, autonomy, and Reproductive choice is to be necessarily included. The Supreme Court made a ruling on the case of *Suchita Srivastava v. Chandigarh Administration*,¹⁷ and held that a woman has the right to make her own Reproductive decision as a right of her own personal liberty as provided for by Article 21. The Court held reproductive autonomy includes the right to abort and the right to continue carrying a pregnancy to completion. The case has been a monumental ruling on the right to abortion, constitutionally speaking, on the right of a woman to make her own determined right to self on the right of her bodily integrity. This keeps the Court consistent to hold, plain and clear, that the right to Reproductive decisions, including access to an abortion, falls under the Constitutional protections.

The Court has the precedents of holding the right to privacy as a fundamental right under Article 21 in Justice *K. S. Puttaswamy v. Union of India*,¹⁸ and logically holds that the law remains the same for accessing the right to an abortion, a woman's Reproductive decisions of a fundamental right. The case holds the constitutionally supported right to privacy, reproductive decisions, and dignity, as a whole. The Court has determined as the base of all privacy and dignity, the right to Reproductive choices.

In *Meera Santosh Pal v. Union of India*,¹⁹ the Supreme Court sanctioned the abortion of pregnancy breach cases beyond the specified limit as prescribed by the law, citing severe fetal deformity as the reason. The Court was of the view that if the pregnancy was not ended, then the woman's right to life, dignity, and bodily autonomy as guaranteed by Article 21 would be infringed. This case revealed the essence of a reproductive choice and the significance of constitutional protection. Every citizen has the right to equal protection of the law and the right to be treated equally by the law.²⁰

¹⁷ *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1.

¹⁸ (2017) 10 SCC 1.

¹⁹ (2017) 3 SCC 462.

²⁰ The Constitution of India, 1950 art. 14.

The prohibition of safe and legal abortion services results in great harm and compromises the equality of women. In *X v. NCT of Delhi*,²¹ the Court observed that, in the interests of equality and against discrimination, the right to abortion was also extended to women, especially the unmarried. The Court reiterated that irrespective of marital status, all women are entitled to the same level of reproductive autonomy. The State is also permitted to make special provisions for women and children by virtue of Article 15(3) of the Indian Constitution, which also empowers the State to legislate the Medical Termination of Pregnancy Act to protect women's health and dignity and provide access to safe and legal abortion services. Therefore, safe and legal abortion is a fundamental right of a citizen under Articles 14, 15, and 21 of the Indian Constitution. Furthermore, the reproductive autonomy, bodily integrity, and privacy of women are some of the rights that are repeatedly emphasized, thereby supporting safe abortion as a subject of fundamental right and dignity. The Medical Termination of Pregnancy Act, 1971,²² specifically mentioned some instances of abortion of pregnancies. Indira Jaising says change has happened in law to certain extent, but awareness and execution of the law lie in the realm of issues. Judicial pronouncements recognised reproductive rights and reinforced those rights, since they are part of the rights to life and personal liberty and are protected by Article 21 of the Constitution.²³

6. SOCIO-ECONOMIC BARRIERS TO ACCESS

The socio-economic determinants of availability to safe abortion include poverty, education, and availability to safe medical care abortion. Women in rural regions are subject to severe hurdles as they suffer from a shortage in resources as well as trained personnel. As noted by P. Ishwara Bhat, to make legal entitlements effective, the social and economic embeddings are important.²⁴ Unsafe services are sought to be avoided by the women due to culture and prevailing social norms of women. Access to safe abortion services is an important component of achieving the global development goals, in particular:

²¹2022 SCC Online Del 3408.

²² Act 34 of 1971.

²³ Indira Jaising (ed.), *Law Relating to Women and Children* 178 (Universal Law Publishing, New Delhi, 2nd edn., 2013).

²⁴P. Ishwara Bhat, *Law and Social Transformation* 304 (Eastern Book Company, Lucknow, 2009).

SDG 3 (Good Health and Well-being)

SDG 5 (Gender Equality)

Women's empowerment and the reduction in maternal mortality from countries with the highest global maternal mortality rates are attained when women are provided the ability to make the necessary reproductive choices through the reduction of unsafe abortions.

7. NEED FOR RIGHTS BASED APPROACH

The state's duty to uphold, defend, and fulfil reproductive rights is emphasised by a rights-based approach to abortion. This comprises:

- Ensuring that safe services are accessible
- Eliminating legal limitations
- Raising consciousness and knowledge
- Resolving socio-economic disparities

This method acknowledges abortion as an issue of justice rather than a moral one.

8. CONCLUSION

A fundamental component of reproductive and human rights, which include the values of equality, autonomy, dignity, and health, is access to safe abortion. In addition to putting women's lives in jeopardy, denying them access also upholds structural injustices. To guarantee that safe abortion services are available, reasonably priced, and non-discriminatory, a progressive legal and policy framework is necessary. Societies can move towards greater gender equity and human dignity by embracing a rights-based approach.²⁵ States must remove practical and legal obstacles, guarantee the provision of high-quality services, and respect women's autonomy in order to adopt a rights-based approach to abortion. Creating a just, egalitarian, and humane society requires ensuring

²⁵ Available at: <http://www.thelancet.com> (last visited on April 30, 2026).

access to safe abortion. Ultimately, a just and compassionate society must strive to balance ethical considerations while prioritizing individual rights, informed choice, and access to care. Upholding abortion as a human right supports a framework where freedom, respect and justice are not privileges, but guarantees for all.