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REPRODUCTIVE AUTONOMY: A HUMAN RIGHTS REAPPRAISAL OF MEDICAL TERMINATION OF PREGNANCY LAWS IN THE CONTEMPORARY INTERNATIONAL LEGAL ORDER

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Abstract

The acceptance of women's reproductive autonomy as part and parcel of human rights framework evidence the gradual transition in the contemporary legal discourse pertaining to medical termination of pregnancy. However, it's correctly observed "rights on paper do not always translate into rights in practice", reflecting a significant gap between statutory guarantee and persistent reality. Critical perspective is adopted in order to analyse the effectiveness of the medical termination of pregnancy laws as well as human rights framework in ensuring the reproductive autonomy. Doctrinal and analytical methodology has been adopted to examine how the inequalities intrinsically rooted in the state legislations and societal structure negates the concept of reproductive justice. The present paper comprised of four chapters. First chapter is Introduction which talks about the conceptualization of reproductive autonomy as human rights; Literature Review is dealt in second chapter; third chapter deals with the evolution of legislative enactments pertaining to termination of pregnancy and its limitations; fourth chapter deals with the concluding observations and analyses the barriers in the way of attaining the goal of reproductive justice.

Through the present paper, researcher ensures to highlight the inadequacy in adopting right based approach while enacting medical termination of pregnancy laws. Researcher concludes that, even if human rights play a decisive role behind the legitimization of reproductive autonomy, but its insufficiency exists without including the concepts of inclusivity, intersectional justice and substantive equality.

Keywords - Human rights; women's reproductive autonomy; medical termination of pregnancy laws; intersectional justice; substantive equality.

I. INTRODUCTION

"*There is no freedom, no equality, no full human dignity and personhood possible for women until they assert and demand control over their own bodies and reproductive process. The right to have an abortion is a matter of individual conscience and conscious choice for the women concerned*[1]."

-Betty Friedan.

Above mentioned statement gives the reflection of the emergence of reproductive autonomy as the pivotal concern in the contemporary human rights discourse, recognizing women's autonomy

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[1] Mary R Ziegler, Molly Flash, '*Betty Friedan, Abortion: A Woman's Civil Right (1969), in Siegel and Greenhouse, Before Roe v. Wade H20 Search* casebooks' (April 4, 2026). https://opencasebook.org/casebooks/109-roe-at-50/resources/1.2.2-betty-friedan-abortion-a-womans-civil-right-1969-in-siegel-and-greenhouse-before-roe-v-wade/> .

pertaining to reproductive choices. Definition of reproductive autonomy is intrinsically rooted into individual's accessibility to make an unrestricted decision regarding reproducing off springs, number and spacing of children, availing reproductive healthcare services, etc. Reproductive autonomy is conceptualized as a fundamental human right, categorizing following four factors being decisive while exercising the inherent power of reproductive decision making-

1) Autonomy,
2) Dignity,
3) Equality and
4) Bodily integrity.

Reproductive rights are not designated as a standalone right, rather than it has been originated from the merger of various established rights, namely- "right to health, equality, dignity and freedom from inhuman or degrading treatment". "Right to privacy" is the core value of reproductive rights, as the liberty to make reproductive choice involve an individual's identity and intimate aspects of family life. In the pretext of conceptualisation of reproductive autonomy as basic human rights, there are two dimension of autonomy, i.e. positive and negative[2]. The negative dimension of women's autonomy to make an independent and uninterrupted reproductive choices ensure to safeguard the fair sex from "coercion, forced pregnancy, involuntary medical procedures, forced sterilisation as well as unjustified state interference[3]". While, positive dimension of reproductive autonomy obliges the government and state machinery to guarantee medical, legal, institutional as well as social environment wherein reproductive choices can be made without any socio-medico-legal discrimination. In 1948, Universal Declaration of Human Rights has paved the way of recognising all the rights, attributing to secure the goal of acknowledging reproductive rights. In furtherance of UDHR 1948, significant steps have been taken in International scenario, for safeguarding reproductive autonomy. Following are the conventions which played an important role in recognising as well as establishing granting reproductive rights as means of achieving reproductive justice-

1. "International Covenant on Economic, Social and Cultural Rights (ICESCR)"- Article 12 of the convention ensures right to attain physical and mental health of highest degree. Right conferred under abovementioned provision includes right to reproductive health too. In 2016, "committee on Economic, Social and Cultural Rights" stated that "right to sexual and reproductive health" is part and parcel of article 12 of the covenant.
2. "The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)"- CEDAW comprises few provisions dealing with different facets of reproductive justice, which are- Article 12 (women's healthcare and family planning), Article 16(1) (e) (reproductive decision making), Article 5(a) (social functions of reproduction) and Article 11 (protection of reproduction in employment).
3. "The International Covenant on Civil and Political Rights (ICCPR)"- ICCPR doesn't expressly mention any rights pertaining to reproductive justice. However, human rights

[2] L. Hessini*, 'Global Progress In Abortion Advocacy And Policy: An Assessment of the decade since Icpd, Reproductive Health Matters'* (May 15, 2026, 10.00 am) Https://Doi.Org/10.1016/S0968- 8080(05)25168-6.
[3] J.V.N. JAISWAL, 'LEGAL ASPECTS OF PREGNANCY, DELIVERY AND ABORTION' (Delhi: Eastern Book Company, 2009).

committee had interpreted the provisions (Article 6, 7, 17 & 23) in the line of ensuring global reproductive rights. Article 6 deals with "right to life", which has been interpreted to guarantee safe as well as legal abortion to protect pregnant women's life and health. "Freedom from cruel and inhumane treatment" has been guaranteed under article 7. This provision has been analysed to prohibit forced abortion as well as forced continued pregnancy. Article 17 ensures to confer the most pivotal right i.e., "right to privacy", that has been explained to include the right to exercise autonomy in respect of reproductive health without any kind of interference. "Right to family" is guaranteed under article 23. Human rights committee has analysed it to include the right to have family and to decide for contraception regarding planning family as per the will of woman fraternity.

II. LITERATURE REVIEW

Studies depict that woman's reproductive autonomy and medical termination of pregnancy laws are the two facets of the same coin. As Upendra Baxi enumerated that reproductive rights is integrally associated with the woman's autonomy pertaining to reproductive choices[4]. That's why it is essentially required to ensure the protection of these rights. It has been stressed upon that basic conception of woman empowerment needs to be reconsidered with the woman's reproductive autonomy. National Population Policy of India also elaborately discusses the issue as well as hurdles pertaining to the women's reproductive justice. It's a matter of intense shame that half of the population still struggle, so as to exercise the right to seek termination of pregnancy. There are various reasons hampering the accessibility to safe and legal abortion. The absence of proper judicial mechanism for addressing and redressing the issue pertaining to contraceptive failures is one of the significant hurdles. Reproductive autonomy and medical termination of pregnancy laws are not confined within the ambit of legal or social perspective per se. Rather than, medical termination of pregnancy laws and reproductive autonomy are socio-medico-legal concept.

International legal instruments considered the Medical termination of pregnancy as a complex and multidimensional legal issue. Handbook of the National Human Rights Institutions published jointly by UNFPA (United Nations Population Fund) as well as Danish Institute for Human Rights gives the description of different agenda and programmes that have been launched by United Nation Organisation for the promotion and protection of the reproductive rights[5]. It also gives an account on the Eleventh International Conference that has been conducted in order to promote and protect reproductive rights as human rights. Conference was of International Coordinating Committee of National Institutions which was organized in Amman, Jordan in the month of November (5th to 7th), 2012. By virtue of this conference the Amman Declaration has been adopted in furtherance of which all the national human rights institutions pledged to ensure the promotion and protection of the reproductive rights. The discussion of human rights laws and its violation in the context of inaccessibility to reproductive autonomy makes the declaration more relevant. Therefore, reproductive rights should not only be recognized as an intrinsic value rather than it should be

[4] UPENDRA BAXI, 'GENDER AND REPRODUCTIVE RIGHTS IN INDIA: PROBLEMS AND PROSPECTS FOR THE NEW MILLENNIUM', p. 72, (UNFPA, New Delhi, 2001).

[5] UNFPA, 'REPRODUCTIVE RIGHTS ARE HUMAN RIGHTS', 23, (Human Rights Publications, United Nations Organization, 2014).

understood as the inevitable precursor to the societal and democratic upliftment. "Abortion Law: Global Comparisons[6]" is an article that has been written by women and foreign policy program staff. This piece of literature is published by the Council on foreign relations in 2023. Above mentioned article has been published in the pretext of the judgement rendered by Hon'ble Supreme Court of U.S.A in the case of "Dobbs v. Jackson Women's Health Organization[7]", wherein Apex Court has overturned its judgement given in 1973 in the case of "Roe v. Wade[8]". Author has done the global comparison of abortion laws. Laws relating to termination of pregnancy, prevailing in U.S.A, Ireland, China, have been discussed at length. The approach of WHO (World Health Organisation) in addressing the issue of abortion worldwide has also been discussed significantly. All the data relating to termination of pregnancy have been dealt in the article. In furtherance of assessing the data it has been concluded on the part of author that the rate of termination of pregnancy is much higher in the countries wherein there is total ban on abortion as compared to the countries wherein the laws pertaining to termination of pregnancy is liberal. Author has also highlighted the two most adverse consequences of ban on abortion, which are-

a) High maternal morbidity

b) High maternal mortality.

In the course of doing global comparison of abortion laws, author has discussed the scenario in one of the Scandinavian countries i.e.,- Ireland, wherein the right to abortion has not been in inception until and unless there was the mass upsurge in 2012 due to the death of Savita Halappanavar because of the law imposing the strict ban on abortion[9]. Author has also made an elaborate discussion regarding medical termination of pregnancy laws prevailing in U.S.A as well as the ongoing debate over the shift in U.S judicial discourse which made the abortion laws stricter and narrowed one.

III. GLOBAL REGULATORY APPROACHES PERTAINING TO REPRODUCTIVE AUTONOMY

The necessity of Medical termination of pregnancy Laws is not confined within the territorial boundaries, rather than it is extended beyond that. In order to critically examine the Legislative Initiatives pertaining to Medical termination of pregnancy prevailing globally, researcher has chosen four countries, namely- India, United States of America, Ireland and France. Medical termination of pregnancy Laws prevailing in India (developing nation, currently having most systematic and scientific legislative approach in recognizing reproductive autonomy as one of the paramount human rights), United States of America (developed country, currently witnessing the mass upsurge against the U.S Supreme Court decision pertaining to abortion laws), Ireland (Scandinavian country which has decriminalized the termination of pregnancy after the mass uproar in 2012) and France (first country in the world which has guaranteed the termination of pregnancy as a constitutional right to its citizens in 2024) have been discussed in order to gather comprehensive information regarding currently prevailing Medical termination of pregnancy Laws in the abovementioned jurisdictions.

[6] 'Abortion Law: Global Comparisons' (Feb 8, 206) https://www.cfr.org/article/abortion-law-global-comparisons.
[7] 597 U.S. 215 (2022).
[8] 410 U.S. 113 (1973).
[9] *Id.* at 6.

Indian legal framework on reproductive autonomy

In order to critically examine the Indian Legislative Initiatives pertaining to Medical termination of pregnancy, researcher has critically as well as comparatively analyzed the "Medical Termination of Pregnancy Act, 1971 and Medical Termination of Pregnancy (Amendment) Act, 2021". India, in spite of being a developing nation is currently having most systematic and scientific legislative approach in recognizing reproductive autonomy as one of the paramount human rights.

In 1971, India got the first legislation regulating the issue of abortion. "Medical termination of pregnancy Act, 1971" has acted as a shield to protect women's reproductive autonomy by conferring right to abortion. However, right to abortion is not an unrestricted right, rather than it is contingent upon reasonable restrictions being legally imposed to protect potential life along with securing the ultimate aim of reproductive justice. Hence, following are the conditions which are statutorily recognized to be fulfilled for granting approval of terminating foetus-

i) Grave risk to the life of prospective mother or
ii) Risk of substantial injury to the physical or mental health of pregnant women or
iii) Women conceived the child consequent to rape or sexual offences or
iv) Pregnancy has been caused due to contraception failure, jeopardizing the mental well being of pregnant woman.

Medical Termination of Pregnancy Act 1971 has stipulated twenty weeks time line as maximum gestational limit for allowing the termination of pregnancy. Up to twelve weeks pregnancy, approval of one registered medical practitioner is required. However, for terminating the foetus of twelve to twenty weeks, two registered medical practitioners have to give approval. However, with the passage of time "Medical Termination of Pregnancy Act, 1971" became redundant, as it was far lagging behind ensuring the essence of the objective i.e., universal accessibility to the reproductive health services without any discrimination. In the case of "*Justice K.S. Puttaswamy & Anr. vs. Union of India & Ors*[10]" it has been held that women's right to make reproductive choices has the constitutional safeguard as being the significant part of the personal liberty guaranteed under Article 21 of the Indian Constitution and such right can't be snatched on the ground of marital status. In furtherance of the aforesaid judgement Medical Termination of Pregnancy Act, 1971 amended in 2021. Medical Termination of Pregnancy Amendment Act 2021 has increased the upper cap of gestational limit to twenty four weeks. Pregnancy is even permitted to be terminated beyond twenty four weeks, subject to the medical board's approval. Such permission is granted by the designated board in case of foetal abnormalities. The most significant point of amendment is to ensure personal as well as informational privacy of the women as well as not to discriminate on the marital ground of the pregnant woman to seek permission for abortion.

United States legal framework on reproductive autonomy

In United States, abortion jurisprudence is governed by the U.S Constitution and laws of individual states. There is not a single federal law governing the issue of termination of pregnancy. In United States, legal position has been significantly changed in 2022 by virtue of Supreme Court judgement rendered in *"Dobbs v. Jackson Women's Health Organization*[11]*"*. In the aforesaid case abortion is

[10] 'Justice K.S. Puttaswamy & Anr. v. Union of India & Ors' 2017 INSC 1235.
[11] 597 U.S. 215 (2022).

no longer designated as constitutional right. States are now legally and statutorily empowered to regulate medical termination of pregnancy laws. In *"Dobbs v. Jackson Women's Health Organization*[12]*"*, S.C has overturned its landmark judgement laid down in 1973. In *"Roe v. Wade*[13]*"*, Apex Court of United States had recognized right to abortion as fundamental principle and inseparable part of right to privacy. However, in *"Dobbs v. Jackson Women's Health Organization*[14]*"*, abovementioned judicial precedent has been overruled and it has been held that U.S Constitution does not categorize abortion as constitutionally guaranteed right. Subsequent to the judgement of S.C in the case of *"Dobbs v. Jackson Women's Health Organization*[15]*"*, states are empowered to legislate the laws to govern reproductive healthcare services and abortion claims made by pregnant woman. In furtherance of being so empowered, states have made the laws imposing immense restriction on termination of pregnancy.

Federal laws have also restricted the access to abortion services. *Hyde Amendment*[16] is the prominent example of restrictive approach of federal laws by virtue of which use of certain federal funds have been restricted. Abortion medicine as well as health care services pertaining to termination of pregnancy has also been restrictively governed by the federal government. The judgement rendered in *"Dobbs v. Jackson Women's Health Organization*[17]*"*, has created a prominent rift between reproductive autonomy and government regulations.

Ireland's legal framework on reproductive autonomy

Ireland has witnessed the major shift in abortion laws in 2018 in furtherance of "referendum on repeal of eighth Amendment[18]". Consequent to the aforesaid referendum, "Health (Regulation of Termination of Pregnancy) Act, 2018" has been enacted. On first January 2019, "Health (Regulation of Termination of Pregnancy) Act, 2018" came into force and provided a significant legal framework for governing the issue of abortion in Ireland. According to the 2018 Act, medically induced termination of pregnancy is legally permissible up to twelve weeks. Registered medical practitioner is legally obliged to ascertain that pregnancy has not extended beyond the designated timeline. Three days is stipulated as waiting period between the issuance of certificate by the medical practitioner and termination of pregnancy.

Under "Health (Regulation of Termination of Pregnancy) Act, 2018", abortion is permitted even beyond twelve weeks, subject to the fulfillment of certain conditions, namely-

i) Immense risk to the life of would be mother
ii) Grave risk of physical harm
iii) Foetal abnormalities posing immense possibility of the death of foetus prior to birth or
iv) Foetal abnormalities posing immense possibility of the death of foetus within twenty eight days of birth.

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[12] *Ibid.*
[13] 410 U.S. 113 (1973).
[14] 597 U.S. 215 (2022).
[15] *Ibid.*
[16] 'Abortion Law: Global Comparisons' (Feb 8, 206) https://www.cfr.org/article/abortion-law-global-comparisons.
[17] *Id.*at 15.
[18] *Id.*at 16.

For the purpose of terminating pregnancy beyond twelve weeks on the basis of any of the abovementioned grounds, approval of two medical practitioners is essentially required. Among them, one should be obstetrician and another should be designated medical practitioner. One of the most significant provisions of the enactment is relating to exclusion of the criminal liability of the pregnant woman for committing the abortion of foetus beyond the legal provisions. However, such blanket right is not conferred upon any person other than mother herself.

Hence, by taking into consideration of the Irish law, governing abortion and reproductive healthcare services it can be conclusively submitted that the Scandinavian country has made a scientific and systematic attempt to maintain balance between reproductive autonomy and potential life of unborn child.

France legal framework on reproductive autonomy

In France, term medical termination of pregnancy is not used while addressing or governing the issue of abortion. Rather than, IVG (interruption volontaire de grossesse) is used to refer abortion. On seventeen January 1975, France has witnessed the decriminalization of abortion with the enactment of Veil Law[19]. According to the prevailing laws in France, both adult and minor are equally entitled to access the reproductive healthcare services and make claim for termination of pregnancy without providing any sort of justification behind abortion request. The timeline of medically induced termination of pregnancy is nine weeks from the first day of last menstruation period. While, the timeline of surgical abortion is sixteen weeks from the first day of last menstruation period. Pregnant woman is entitled to take decision to avail either medical termination of pregnancy or surgical abortion after being informed from the designated doctor. In 2022, Amendment took place, consequently the waiting time period in between the information and consent stage has been waived off[20]. Minor need not to be accompanied with their parents, rather than they are entitled to be with any adult of their choice. Prevailing abortion law in France has made the psychosocial consultation to be mandatory for the minors. Another significant provision relating to voluntary abortion law is "conscience clause". According to "conscience clause[21]", medical practitioner can retract himself/herself from doing medical or surgical abortion. In such scenario, that medical practitioner is obliged to inform the patient. So, that patient can choose another doctor for performing termination of foetus.

In the year 2024, France has taken one of the most decisive steps towards constitutionalising the women's right to reproductive autonomy and to secure reproductive justice. Article 34 of the French constitution has been amended to confer the "freedom guaranteed to women to have recourse to a voluntary termination of pregnancy". Hence, France became the first country across the globe to constitutionally safeguard the freedom to obtain an abortion.

French laws governing termination of pregnancy is a milestone in the way of attaining reproductive justice. It tends to strike a balance between right to live with immense dignity and right to life of

[19] L. Hessini*, Global Progress In Abortion Advocacy And Policy: An Assessment of the decade since Icpd, Reproductive Health Matters* (May 15, 2026, 10.00 am) Https://Doi.Org/10.1016/S0968- 8080(05)25168-6.

[20] France, '*Constitutional Law No. 2024-200 of 8 March 2024 relating to the freedom to resort to voluntary termination of pregnancy'*, Journal officiel de la République française*,* No. 0058, March 9. 2024.

[21] *Ibid.*

unborn child. In today's world of legal restrictions pertaining to abortion, constitution of France has remarkably played a pivotal role in ensuring the reproductive sanctity to fair sex.

IV. CONCLUSION

Women's right to reproductive autonomy can't be considered as the sole right in respect of medical termination of pregnancy laws. It should be harmoniously construed with the rights of unborn child by inculcating the jurisprudential concept of balancing of interest. Medical termination of pregnancy laws play a significant role in striking the balance between Right to live and Right to life. Thus, after taking into consideration of all the literature reviewed, it can be concluded that the present research paper titled as "Reproductive Autonomy: A Human Rights Reappraisal of Medical Termination of Pregnancy Laws in the Contemporary International Legal Order", aims to critically analyse the contemporary law pertaining to termination of pregnancy which is the significant subject of discussion in order to safeguard the women's right to reproductive autonomy. The shift in judicial discourse in respect of liberalizing the abortion laws needs to be studied with the help of landmark cases along with the recent judgements. The present research also focuses upon the concept of foetal viability which became the decisive ground for Apex court of India in delivering the judgment in the case of *"X v. Union of India".* The present research paper also highlights the barriers in the way of attaining the prime goal of reproductive justice. There are numerous hurdles due to which fair sex is far lagging behind securing the reproductive rights which is intrinsically part and parcel of their right life with dignity. Following are few of the hurdles identified by the researcher-

Firstly, restrictive laws and policies- one of the most significant hurdles in the way of attaining reproductive justice is "Restrictive laws and policies". Criminalizing the voluntary abortion, narrowing the gestational time line, excessive medical formalities as well as approvals, jeopardize the ultimate goal. *Secondly,* lack of access to abortion healthcare services- In developing and underdeveloped countries the accessibility to sexual and reproductive healthcare services is very restricted. In some countries there is acute shortage of healthcare professionals, ineffective abortion services, inadequate health care facilities, have prevented the claimant to seek medical termination of pregnancy. *Thirdly,* stigma concerning abortion- Issue of abortion is always stigmatized due to religious, societal and cultural reasons. Social, religious and cultural environment of country also play an important role regarding reproductive autonomy. In most of the countries, society considers abortion as a blot. *Fourthly,* discrimination and intersectionality- reproductive autonomy is never considered to be claimed equally by everyone. Minors, unmarried women, differently abled women and other marginalized section of society always remain at the receiving end. *Fifthly,* economic inequality- health care facility is excessively expensive nowadays. Hence, economic inequality is acting as a disability to avail required and timely medical assistance in aborting foetus. Lack of awareness regarding sexual and reproductive health and excessive state interference are another barriers regarding achieving the goal of securing uninterrupted reproductive autonomy as well as ensuring reproductive justice to entire female fraternity.