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# Laws Relating to Abortion in India: Comparatively is Progressive and Humane

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## ABSTRACT

*Abortion Laws rely essentially on deciding when life begins and Societies will always debate upon. An important piece of Legislation speaking to India about half of India has gone largely unapplauded. In late January 2020, the Union Cabinet amended the 1971 Medical Termination of Pregnancy (MTP) Act allowing women to seek abortions as part of Reproductive rights and Gender Justice. The Amendment also places India in the top league of Countries serving women who wish to make individual choices from their perspectives and predicaments.*

*The Amendment has raised the upper limit of MTP from 20 to 24 weeks for women including rape survivors, victims of incest, differently abled women and minors. Failure of contraception is also acknowledged and MTP is now available to "any woman or her partner" replacing the old provision for "only married woman or her husband." The New Law is forward looking, empathetic and looks at a very sensitive issue with a human face.*

*India's move comes at a time when the landmark Roe v. Wade in the Supreme Court of the United States (US) is under scrutiny. "India will now stand amongst Nations with a highly progressive law which allows Legal Abortions on a broad range of Therapeutic, Humanitarian and Social grounds. It is a milestone which will further empower women, especially those who are vulnerable and victims of rape," That 1973 judgment protects a pregnant woman's liberty to decide whether or not to have an abortion without needless Government restrictions. A Historic piece of Legislation, it served as a beacon of hope for women around the World.*

*The MTP Act of 1971 was enacted at a time when most Countries lacked comparable Legislation. As a result of the preference for male foetuses over female foetuses in India, female foeticide and pre-natal determination of sex were criminal offences at the time, making it a significant breakthrough. Regarding abortion, the paper examines the extent and rationale for State intervention as parens patriae to protect the health and well being of both the Mother and the Embryo at the National and International level. The Global situation appears to be dire. According to a UN Report, 98% of Countries permit abortion to save a woman's life. This is a very encouraging statistic. In actuality, a woman's existence in the Twenty - First Century is limited to her limbs and body. This is supported by the fact*

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*that only 34% of Countries permit abortion solely on the request of the woman in cases of unintended pregnancy. This Article will sum up the current Indian Laws and the need for all Nations to move towards upholding womanhood and the autonomy of her Privacy, Rights, and Decisions.*

***Keywords**: Women's Right, Indian Legislation, Global Laws, Women's Health and Progressive Legislation.*

## I. Introduction

Abortion Laws rely essentially on deciding when life begins and Societies will always debate upon. An important piece of Legislation speaking to India about half of India has gone largely unapplauded. In late January 2020, the Union Cabinet amended the 1971 Medical Termination of Pregnancy (MTP) Act allowing women to seek abortions as part of Reproductive rights and Gender Justice. The Amendment also places India in the top league of Countries serving women who wish to make individual choices from their perspectives and predicaments.

The Amendment has raised the upper limit of MTP from 20 to 24 weeks for women including rape survivors, victims of incest, differently abled women and minors. Failure of contraception is also acknowledged and MTP is now available to "any woman or her partner" replacing the old provision for "only married woman or her husband." The New Law is forward looking, empathetic and looks at a very sensitive issue with a human face.

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limited to her limbs and body. This is supported by the fact that only 34% of Countries permit abortion solely on the request of the woman in cases of unintended pregnancy. This Article will sum up the current Indian Laws and the need for all Nations to move towards upholding womanhood and the autonomy of her Privacy, Rights, and Decisions.

Abortion Laws rely essentially on deciding when life begins and Societies will always debate this. At what point does the foetus' life become worthy of protection? After how many months is it justified to restrict a woman's right to MTP? There is no one answer and proponents of Anti Abortion Laws, who believe that life starts at fertilisation, have just strong an argument as people who believe it does not. That is why there need to be Laws. They do not always reflect values of a Society but in the presence of uncertainty, Laws have to provide a frame within which people can navigate knowing with certainty what is legal and what is not. This makes the point that the limit can be seen as arbitrary but it is necessary. This is not a reflection of what is right and what is wrong. In the case of abortion, Legislators have decided on a certain time frame. For some Countries it is 12 weeks, for other like India, it is now 24 weeks.

Millions of Women around the World rely on a range of solutions to abortions, ranging from expensive private clinics to quacks. Unwritten and unsaid prejudices follow them from menstruation through pregnancies to menopause, in most cases without any legal or family support. The amendment has ended one set of uncertainties. A roll back is not possible and that is a major step for women. **Unwritten and unsaid prejudices follow women from menstruation through pregnancies to menopause, in most cases without any legal or family support. The amendment has ended one set of uncertainties.**

How does the World compare with India? It depends on what is being compared. While Law are not in competition between Countries, they are indicators of where rights, especially women's rights stand. Currently, 26 countries in the World do not permit abortions and 39 allow it only when the mother's life is at risk.

### (A) United States (US)

Roe v. Wade is almost synonymous with the US and abortion laws. According to it medical judgement may be exercised in the light of all factors, physical, emotional, psychological and familial, allowing the attending physician the room he needs for making the best medical judgement. Gestational limits vary between eight to twelve weeks. Twenty two states have banned the use of procedure anywhere between 13 and 25 weeks. Some states like Alabama do not allow termination throughout the pregnancy period.

Many states restrict access through means ranging from regulations targeting abortion providers

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and mandatory delays. Some states are passing increasingly restrictive bans, including pre-viability bans, which are the subject of ongoing litigation. Many are in court. If Roe v. Wade is weakened, abortion rights would be protected in less than half of the US states and none of the US territories.

- Eight States have trigger bans meaning abortion could be outlawed if Roe is overturned.

In 2019, Nine States passed bans on abortion at various points in pregnancy including Arkansas, Georgia, Louisiana, Kentucky, Mississippi, Missouri, Ohio, Utah, and Alabama (which passed a total abortion ban). None of these laws are in effect, and the Center for Reproductive Rights and its partners are fighting to keep it that way**.**

(B) **Germany**

Medical Termination of pregnancy is available on request. The gestational limit is 14 weeks, calculated from the first day of the last menstrual period.

(C) **Brazil**

Legal abortions are permitted in case of rape and if there is no other way to save the life of pregnant women. Women and girls who terminate pregnancies under any other circumstances face up to three years in prison. Media reports say more than 300 abortion related cases against women were registered by the courts in 2017, many of them reported by health professionals from whom women were seeking MTP's outside the system.

(D) **France**

The gestational limit is 12 weeks from conception or 14 weeks from first day of the last menstrual period, and MTP is available on request. During this period the intervention can be performed any time if two physicians, members of a multidisciplinary team, certify, that continuance of the pregnancy seriously endangers the health of the woman or there exists a strong probability that the unborn child is suffering from a disorder of particular seriousness recognised as incurable at the moment of diagnosis.

(E) **Canada**

Abortion is permitted on request and gestational limits vary depending on strict regulatory mechanisms.

(F) **Sri Lanka**

Abortion is legally permitted to save a woman's life. Punishment for causing a miscarriage is a fine that could include up to three years imprisonment. Despite these laws the number of

abortions in the island nation remain high with the Ministry of Health reporting in 2016 that 658 abortions per day. In Sri Lanka, 12.5% of all maternal deaths are due to illegal abortions, making it the third most common cause of maternal mortality.

## II. New trends in abortion

The rate of safe abortions dropped between 1995 and 2003 from 20 to 15 per 1,000 women aged 15 to 44, while the unsafe abortion rate declined hardly at all from 15 to 14 per 1,000. The overall abortion rate declined from 35 to 29 per 1,000 in 2020.

It is discussed how the current sub classification of pregnancies in Indian abortion laws, which is a selective privilege, conflicts with the autonomy of individuals over their own bodies. The MTP Act of 1971 was enacted at a time when most Countries lacked comparable Legislation. As a result of the preference for male foetuses over female foetuses in India, female foeticide and pre natal determination of sex were criminal offences at the time, making it a significant breakthrough. Regarding abortion, the paper examines the extent and rationale for State intervention as parens patriae to protect the health and wellbeing of both the mother and the embryo at the national and international level. The Global situation appears to be dire.

According to a UN Report, 98% of countries permit abortion to save a woman's life. This is a very encouraging statistic. In actuality, a woman's existence in the twenty - first century is limited to her limbs and body. This is supported by the fact that only 34% of countries permit abortion solely on the request of the woman in cases of unintended pregnancy. In the context of Eugenic model versus Woman's Autonomy, the recent issue of Poland, where a predominantly archaic Catholic mindset was conceptualised in actuality and where the most recent court ruling held that abortions for foetal abnormalities violate its Constitution, has been discussed. The paper examines European jurisprudence on abortion laws and the effect of COVID - 19 on women's access to healthcare in India's rural and urban areas. The suggestions have been summed up in the current Indian laws and the need for all nations to move towards upholding womanhood and the autonomy of her privacy, rights, and decisions.

THE MEDICAL TERMINATION OF PREGNANCY ACT, 1970: STATUS OF LEGAL SURGICAL ABORTIONS IN INDIA RELATING TO THE MEDICAL TERMINATION (AMENDMENT) BILL, 2020

In its current form, the right to have an abortion in India is considered to be a Selective Right. This is because the Medical Termination of Pregnancy (Amendment) Bill, 2020 (which will be referred to simply as the Bill from this point forward). It is based on a classification based on the number of weeks of gestation that have gone, deeming equivalency to the number of

physicians necessary without any additional insight as to how accessibility is to be assured because we lack enough medical staff as well a s facilities. The classification is based on the number of weeks of gestation that have passed. In light of the regulations, a pregnancy must be less than 12 weeks along for the woman to be eligible for an abortion with the approval of a single physician. When the pregnancy has gone beyond 12 weeks but is still within 20 weeks, it is required that the patient have the opinions of two different medical professionals. In either scenario, the medical professional or professionals in question should reach the conclusion that the continuation of the pregnancy poses a danger to the woman's life or her bodily or mental health, or that there is a significant possibility that the baby would be born with a mental or physical defect.

In addition, there is a very specific definition of what exactly is meant by the term "mental anguish." It is mental pain in the case that there is a failure of contraception confined to situations of married women only; but, practically speaking, the Bill of 2020 has taken care of this problem so that it now applies to any woman, regardless of whether or not she is married. In some situations, a woman may also terminate her pregnancy regardless of the number of weeks she has been carrying the child. This is in contrast to situations involving significant foetal abnormalities, in which a woman may have an abortion regardless of how far along she is in her pregnancy.

Aside from that, notwithstanding the modification, the scope of mental pain may be said to be limited in the sense that it is obligatorily imputed in situations of rape since it employs the word 'shall,' however in cases of failure of contraceptive no obligatory inference of mental suffering is made. This is because the word 'shall' is used in the provision. Even with the amendment, Section 2 of the Act is geared more towards physicians and less towards women. Due to the fact that it establishes a dichotomous division, this right has also been called a selective one. Even after landmark instances such as NALSA v. Union of India and Navtej Singh Johar, the right under the Act does not extend to third parties, transgender or non - binary individuals who are victims of unwanted pregnancy. This is the case notwithstanding proposed amendments to the Act. According to what has been mentioned, the legislation in its current form, prior to the amendment bill of 2020, gives the right to terminate a pregnancy if two requirements are satisfied:

**1.** The opinion of the medical practitioner or practitioners, as the case may be, confirming that the pregnancy satisfies the requirements that are provided in Section 3 of the Act

**2.** The pregnancy is the result of or involves any of the elements that are laid down under the conditions of Section 3, the conditions are as follows:

i) Continuation of pregnancy would involve a risk to the life of the pregnant woman or

ii) Its continuation would cause grave injury to her health (mental or physical), or

iii) Substantial risk of such child being born handicapped due to abnormalities (mental or physical), or

iv) The pregnancy is the result of rape on woman, or

v) Failure of contraception to prevent pregnancy or

vi) The pregnancy One of the reasons for this is that the change has been recommended in the aforementioned Act in order to fulfil the need and fulfil the desire for an enhanced gestational limit under "certain specified conditions," as well as to safeguard the safety and well - being of women. It also notes that due to advancements in science and technology, the possibility of extending the current gestational length of 20 weeks might be increased.

This is especially true in the case of fragile women and pregnancies with significant foetal defects that are identified late in pregnancy. As a direct result of this, the standard gestational period of twenty weeks has been increased to twenty - four weeks in the case of susceptible women, and it has been increased to no limit in the event of the latter scenario, which is when significant foetal abnormalities are found later in time. Nevertheless, the phrase "Vulnerable Women" has been restricted to the binary distinguishing characteristic that the person enduring any of the circumstances given forth in Section 3 cannot be a transgender or a non binary person.

This restriction has been made to ensure that the term accurately describes those who are in need of protection. In addition, the aforementioned group of vulnerable women is designated once more as a group that the legislature states will be defined later. As of right present, it consists of rape victims and survivors, incest victims and survivors, people with disabilities and juveniles. It is not clear whether other women, such as internally displaced people, migrant workers, or transgender women, would be considered or not because of the newly amended section. The section states that where the length of the pregnancy exceeds twenty weeks but does not exceed twenty - four weeks in case of such category of woman as may be prescribed by rules made under this Act, it is thus not clear whether other women would be considered or not. It is also said that various writs were filed in High Courts and the Supreme Court in order to abort pregnancies beyond the limit of 20 weeks in situations of foetal abnormalities or pregnancies induced by rape. This was done in order to abort pregnancies beyond the limit of

20 weeks. In practise, the objective of the law is to change the current policy by establishing a Medical Board for the purpose of detecting anomalies in foetuses that can enable abortion even beyond 24 weeks of pregnancy. Now, the irregularity with the amendment is that what remedy a pregnant rape survivor would have if the gestational period is longer than the time restriction of 24 weeks. This is a problem because the amendment does not address this issue.

The Bill does not change the position, and it is all the more traumatic for a rape survivor to endure unwanted sexual intercourse that results in pregnancy, and then to attend laborious trials to establish her desperate need to get the baby killed. This is because the Bill does not change the position, and since it is all the more painful, it makes the situation even worse. It is possible that the court, despite the lengthy wait, will reject the abortion because it will be doing so in good faith and will be taking into consideration the danger of mortality to both the woman and the child caused by a delay of more than 24 weeks due to procedural failures. In addition, it is nearly impossible for a woman in this situation to petition either the High Court or the Supreme Court. In a recent judgement, the Bombay High Court stated that in the event that there is a danger to the woman's life, then and only then can a registered doctor terminate such a pregnancy without first receiving permission from the Court. In its report, the Parliamentary panel on unsafe abortions in India stated, "The Judicial process is so slow that the victim's pregnancy more often than not crosses the legal limit and she is unable to get the abortion done, thus pushing her further to the shoddy and shabby dealings of quacks in both rural and urban areas of our Country."

This statement was made in light of the fact that there is an under - representation of rape cases due to societal stigma, particularly in rural areas. POCSO proceedings can also involve situations in which the minor finds out about the pregnancy too late, the guardian does not have the necessary information or resources, or the minor's guardian simply chooses not to contact the court. Therefore, the scope might be broadened so as not to leave out of consideration the peculiarities of the situations that are currently in place. It is not possible to ascribe all incidents of underage drinking to a simple lack of awareness, pregnancy, or missing the 'deadline' for the 24 hour restriction. Taking into account the specifics of the Indian setting, the decision should be amended to include the possibility of evaluating a woman's request for an abortion based on the particular facts and conditions of her situation. In addition, lengthy procedural lapses may arise in the event that the victim of the rape is uninformed of the existence of the court remedy, is mislead about its availability, or is simply threatened to not make use of it, which results in the victim missing the deadline of twenty four weeks.

A cursory reading of the opening paragraph of the Bill's Statement of Objects and Reasons

reveals that "it has been enacted to provide for the termination of certain pregnancies by registered medical practitioners and for matters connected therewith or incidental thereto." This is the primary reason why the Bill was created in the first place. The phrase places a greater emphasis on the practitioners than it does on the rights of the woman to control herself and her body. Its interpretation demonstrates to emphasise that the Act is inclined more towards increasing the act of terminating pregnancies by registered medical practitioners rather than to empower women to choose whether or not to have a pregnancy and offspring. This is because the reading reveals that the Act is more likely to strengthen the act of terminating pregnancies by registered medical practitioners. Despite this, several practical efforts have been done in this regard, one of which being the amendment of Explanation 1 to Section 3. Other actions have been taken as well. It has been changed so that the term 'woman' now appears in lieu of the phrase 'married woman' who is dealing with an unplanned pregnancy. In today's modern times, when live - in relationships and living independently is an integral component of freedom of choice and liberty, recognising the right of a woman to choose whether or not to continue with pregnancy, even if she is not married, is unquestionably a ground breaking act. In the case of Khushboo v. Kanniammal, the right of a woman to be in a live in relationship has been affirmed, and it may be claimed that this decision is in agreement with the contemporary understanding of feminism.

The proposed legislation provides that the length of the pregnancy shall not apply to the termination of pregnancy in situations where such termination is warranted by the diagnosis of any of the major foetal abnormalities determined by a Medical Board. This provision is included in the proposed legislation because it indicates that the length of the pregnancy shall not apply to the termination of pregnancy. While the second paragraph of the Statement of Object and Reasons draws attention to the fact that there is also a need for expanding women's access to abortion services that are both legal and safe, the first paragraph of the Statement of Object and Reasons focuses on the fact that there is a problem. However, despite the provisions of the Bill to form and receive the approval of a Medical Board for the purpose of abortion being obligatory in case of foetal abnormalities, nowhere does it explain how the unequal ratio of unavailability of specialised doctor in rural and semi - urban regions would be dealt with.

Despite the provisions of the Bill to seek the approval of the Medical Board for the purpose of abortion being mandatory in case of foetal abnormalities. Dr. Chitra Setya, MD, Head of the Obstetrics and Gynaecology Department at Apollo Hospitals in Noida, told me during a conversation said that, “she agreed with the statement "It is justifiable that the opinion of 2 gynaecologists should be taken." She warns, quite correctly, about the hazards that are involved,

which are what justifies the necessity". "It (abortion) should not be made mandatory for all because there are more risks involved in the procedure, and it should not be easily available to all because of lack of attention or just because they have delayed the procedure," she also said. "The balancing argument therefore lies in establishing and taking on board a greater number of qualified experts into the ambit to ensure safe and accessible abortions." The position regarding the number of medical practitioners whose permission is necessary has been retained varied for different gestation periods following the modification. This is consistent with the requirements that were previously in place. At this time, the advice of one medical practitioner is required in the event that a pregnancy is terminated between the ages of 12 and 20 weeks. In the event that the duration of the pregnancy is greater than 20 weeks but less than 24 weeks, the opinion of two different medical professionals is required. However, once more, in this particular scenario, pregnant women need to be one of the identified groups in accordance with the requirements that are given therein, which have not been addressed up until this point.

In the event that the pregnancy lasts longer than 24 weeks, the Medical Board will step in to take control of the situation; however, this will only occur if there is a substantial foetal abnormality present. Aside from the strict categorization, if there is an inherent risk and the life of the pregnant lady is in danger, it is fortunate that the consent of one doctor is sufficient, and the case would be excluded from the scope of Section 312. Therefore, harm, whether mental or bodily, is adequate in the first three scenarios, but it must have occurred within the allotted amount of time. Nevertheless, if the Medical Board is persuaded that there are significant defects in the baby, the gestational age restriction will not be a factor in the decision. On the other hand, if a woman suffers harm because her method of birth control did not work, she cannot delay exercising her right to have an abortion for longer than the allotted amount of time. It seems to me that the whole idea of categorising different stages of pregnancy and placing them in distinct boxes is analogous to defining freedom in terms of a number, which is something that cannot serve as a foundation for a welfare state.

One other contentious point is whether or not it encourages the practise of eugenics and whether or not it interferes with a woman's right to exercise autonomy in her own realm. Since the State enables Termination of Pregnancy to an endless time 'only' if serious foetal abnormalities are identified the fact that an indefinite duration might not be considered in the case of a failure of conception is one component that, in my view, encourages arbitrary differentiation. Not only that, but the fact that there is no provision for an automatic right to abortion during the first 24 weeks of a pregnancy falls squarely into the realm of arbitrary decision making as well. More so, there have been situations in which the State or the court assumes charge to determine that

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the kid should be born despite the fact that it is not hazardous for either the mother or the child to have the child born. This is because the State or the Court accepts charge to decide that the child should be born. An HIV positive rape victim who requested permission to terminate her 26 week old pregnancy in 2017 was denied permission for an abortion on the grounds that the High Court considered that it is the "Court's responsibility to keep alive the child." This was the basis for the High Court's decision. Even the Supreme Court turned down the victim's request to review the case. Those who argue against excessive meddling are of the opinion that the decision to ban abortion should not be left to the sole discretion of the judicial system. When a Woman's Autonomy is usurped by another person, the whole definition of what it is to be a woman is undermined.

It should be her right to seek an abortion whenever she thinks it is appropriate, of course, demanding that it is in the best interest of her health, and only to that degree should third party authorizations (like the Court) take precedence. It is believed that denying a woman the right to have an abortion and compelling her to carry on with her pregnancy despite the abnormality of the foetus not only robs her of the joy of being a mother but also undermines the quality of life that is guaranteed by Article 21 of the constitution. This is because the current laws, which were written before the proposed amendment, set a limit on the amount of time that can pass before a disability is considered to have been discovered within the first 20 weeks of pregnancy.

In this manner, the monetary stress that the family is required to endure is reduced, which is an additional benefit. "The quality of life of such new borns and the mental trauma to the parents must be considered before turning down a case completely citing the law as the reason," says Dr. Ajoy Raj Malpe, Group Medical Director at BR Life. "This must be done before turning down a case completely." As has been demonstrated on several occasions, the purpose of the Legislative Branch and the Judicial Branch has been to preserve the right to life. In one particular case, the Court took things a step further by denying an HIV positive rape victim's request for an abortion based on extraneous considerations, so undermining the fundamental concept of femininity as well as her ability to choose her own reproductive choices. The longer the gestation time that has passed, the bigger the number of physicians that are necessary since there are a lot of procedural hazards linked with the procedure. It is common knowledge that there are dangers associated with the procedure. In addition, the circumstances in India have been distinctive, including the practise of sex selective abortions, female feticide, and consequently the determination of a person's prenatal gender. However, does the categorization in fact accomplish what it set out to do? It is not a secret that some women seek out unapproved methods in order to terminate their pregnancies; in fact, out of the approximately 15.6 million

abortions that are performed annually in India, an astounding 12.5 million of them take place outside of licenced Public or Private Healthcare Institutions.

The Second thing that comes to mind is whether or if this is because there is a shortage of trained physicians; after all, it is difficult even for an average woman to have access to the necessary panel. Or, could it be because of the time limit of twenty weeks that has been in place heretofore under the current legislation when read in conjunction with the other parts of the Act that has not been amended? It seems to me that the answer lies in a blend of the two. While the revised Act is working towards the achievement of a larger good, a great deal more work has to be done to ensure that women have access to abortion procedures that are both safe and convenient.

As part of a Woman's Reproductive Rights, she should have the authority to decide for herself if and when she need an abortion. The goal that is being pursued is unreasonable because it does not recognise the Fundamental Right to avoid becoming pregnant in the first place. This is due to the fact that even during pregnancy up to the first trimester, or up to 12 weeks, an unnecessary burden has been placed on women to obtain the opinion of a medical practitioner in order to make a case that falls under the subsections of Section 3. The goal that is being pursued is unreasonable because it does not recognise the fundamental right to avoid becoming pregnant in the first place.

The inspection of Article 14 is something that, in my opinion, the bill cannot sustain. One of the reasons for this is that mental health has been defined based on spurious distinctions. It is possible to deduce this from the language that is used by the legislature, which states that anything "may be presumed" in the first explanation to Section 3. It states that the anguish that a woman experiences as a result of pregnancy is the result of the failure of any device or method used by any woman or her partner for the purpose of limiting the number of children or preventing pregnancy by treating the grave injury "may be presumed," but on the other hand, mental injury in cases of rape "shall be presumed." The sorrow that one endures as a consequence of an unplanned pregnancy is, in and of itself, incredibly tough; yet, the grief that a rape survivor experiences is without comparison. In addition, if the legislature had a genuine desire to look out for the interests of rape victims, it would not have maintained the top limit of 24 weeks for the period of time during which compensation might be paid. Even if she has the ability to use a writ to convince the court to extend the time limit, this would be counterproductive to the goal hat Explanation 2 is trying to accomplish by placing such a restriction on the amount of time that may be spent on the case. Other factors such as unaffordability to raise a child, such family being a refugee, previous experience, such victim being a victim of repeated sexual violence, or victim of previous assaults such as acid attack,

stalking, or rape are kept out of domain in a country like ours, where basic needs to make ends meet is itself a challenge for the majority. In our country, meeting basic needs is itself a challenge for the majority.

## III. The stake in the globe

The Legal Regulations for having an abortion for either Economic or Social reasons or on request vary greatly from area to region. As of 2017, eighty percent of nations in Europe and Northern America legalised abortion for either social or economic reasons, and eighty percent of those Countries also allowed women to request abortions. On the other hand, Oceania had the lowest number of nations that authorised abortion for economic or social reasons or on request, with just 6% of the countries in the region doing so. This was followed by sub - Saharan Africa, with 10% of the countries in the region doing so, and Latin America and the Caribbean, with 18% and 12%, respectively. According to research, "banning abortion does not stop it from happening; all it does is drive it underground." [Citation needed] According to the World Health Organisation (WHO), unsafe abortions result in the deaths of a total of 23,000 people annually, with thousands more enduring major health problems. Legal limits on abortion do not lead to a reduction in the number of abortions performed; rather, they force women to seek abortion treatment that puts their lives and health in jeopardy by going to unregulated clinics.

The predicament of women who live in rural areas and who are members of underrepresented groups is overlooked. They are the ones who usually end up suffering the most since, in contrast to their counterparts who are better situated financially, they do not have the option to go to another country where abortion is legal in order to be able to exercise her right to have an abortion. Therefore, reproductive rights are not yet considered a universally acknowledged human right, even in the 21st century. Before the year 2005, not even International mechanisms acknowledged abortion as a fundamental human right.

The International Covenant on Civil and Political Rights (ICCPR) was declared to have been violated by Ireland in the year 2016 when the United Nations Human Rights Council ruled that abortion was illegal in Ireland even in situations of fatal foetal abnormalities. It is merely the 'legal' abortions that halt owing to limits on abortion regulations, but the impact of this does not go away. Before a married woman in Taiwan to obtain permission to have an abortion, Article 9 of the Genetic Health Act of Taiwan must be satisfied. This requirement must be met in addition to the approval of the woman's spouse. The situation is the same in 10 other nations, including Japan. In our nation, the court authorisation in the case of rape survivors beyond the time limit of twenty - four weeks, in my opinion, stands terrible in law. This is despite the fact

that spouses have no part in our legal system.

The Committee on the Elimination of Discrimination Against Women (CEDAW) stated in its final findings in Bolivia in 2016 that it is not inclined to need consent from a third party.Countries like Bolivia and Rwanda have lately abolished judicial authorisation in the event that a pregnant woman survives rape or incest, and the same goes for adult women in their respective countries. The World Health Organisation (WHO) provides a crystal clear explanation that in interpreting legislation connected to abortion on grounds of health, all member nations to the WHO recognise the concept of health as entrenched in the Constitution of the WHO. This is stated in the WHO’s official statement. According to the definition provided in that passage, health does not just refer to the absence of a particular disease but also encompasses a person's mental, physical, and social wellbeing.

In order to properly evaluate the dangers to one's health that are posed by maintaining a pregnancy for a longer period of time, one must first take into account the larger societal context. According to the World Health Organisation (WHO), policies on abortion care should have as their primary objective to "promote and protect the health of women," which the WHO defines as "a state of complete physical, mental, and social well-being."

## IV. Eugenic practises vs. Woman’s autonomy: the case of Poland

According to the United Nations Convention on the Rights of the Child, a child has specific protection and care requirements because of their lack of physical and intellectual development, and these needs must be supported by "appropriate legal protection." This means that these needs must be met either after birth or even before birth. In light of this fact and the fact that there is no legislation governing abortion in European law, the Constitutional Court of Poland recently knocked down provisions on the grounds that it enables eugenic abortion. The Court justified its decision by pointing out that there is no law governing abortion in European Law. Two very difficult problems have arisen as a result of this precedent setting judgement. Can the ruling in Poland be regarded to be unduly meddling in creating total autonomy of woman's over her body, her life, and her rights? This question arises despite the fact that it is essential to cultivate an environment that puts an end to discrimination against people with varying degrees of ability.

In spite of this, the intention is to serve the greater benefit of society by fostering an environment that is more accepting of people who have unique requirements and does not view them as being socially expendable and doing so even before they are born, by preventing them from being born in the first place. Even more so, when one considers that early Catholic philosophers

conceded that the precise moment at which ensoulment may be said to occur is not quite obvious. It is stated that, "And probabilism may not be used where the life of a human person may be involved, (this is because killing a living being is a sin, and abortion can be consider ed to be killing a living being), and so the human being must be treated as a person from the moment of conception." According to the data provided by Poland's Ministry of Health, 98 percent of the legal abortions that take place each year in Poland are related to fatal flaws in foetuses.

This indicates that the latest verdict is a near full ban on abortions in the conservative Country of Poland. Does the imposition of a ban actually prevent abortions? And even if the state believes it does, it would not allow a woman to live a dignified life and would force her to live a life that is not of her choosing but rather the decision of the Church. In an essay published in Jacobin, the writers claim that the solution lies in not only allowing women "freedom to choose" in a limited sense confined to the choice of abortion, but rather in an expanded one in which she has right over her body, her pleasures, and her sexual wants. This is because the authors believe that offering women "freedom to choose" in a restricted meaning limited to the decision of abortion is insufficient. Their viewpoint, which I share, is that there is a requirement for "feminist internationalism," which ought to be present in every aspect of reproductive life. I concur with this assessment. A woman has the right to choose whether or not to have an abortion. What determines whether or not a life is liberated is whether or not it provides opportunities for care, housing, social, and wage fairness. This is necessary to guarantee that no nation imposes its national character on another nation in order to force women's bodies to conform to the nation's ideas and beliefs in order to just "maintain the dignity and honour as defined by such nation."

## V. The essential versus non - essential disaster that was caused by COVID

The provision of Maternal Healthcare, which includes everything from making the appropriate sort of nourishment available to postpartum and post abortion treatments, is frequently disregarded. It was astonishing to see that the United States, which is widely regarded as one of the most industrialised nations, halted or postponed abortion during the epidemic and classified it as an elective right or even as "non - essential." The abortion procedures of both medical and surgical types, as well as surgical abortions alone in some states, were banned by governors. At the time when the pandemic began, it was a prevalent line of thought that therapeutic abortions should be prioritised over elective ones and that abortion should be seen as a "outside" Health

Care Service.

This line of thinking was based on the concept of abortion exceptionalism, which States that therapeutic abortions should take precedence over elective ones. On the other hand, as was stated previously, it is preferable to leave it up to the internal qualities and the call of the mother, rather than leaving it up to the Politicians, the State, and the Third party. In India, even 'elective' procedures were affected by the lockdown that was triggered by the pandemic. Dr. Setya asserts that during the time of the lockdown, both the right to healthcare and accessibility to maternity healthcare were severely compromised, which resulted in a significant number of incorrect diagnoses. In my opinion, the Government ought to put healthcare and reproductive rights at the top of its list of priorities. She goes on to say that the period of lockdown resulted in a lack of diagnosis, which in turn led to fatalities as well as complications for mothers. "A significant number of abnormal foetuses were not identified, and even if they had been, the allotted time for abortions had already passed."

Despite the fact that hospitals and clinics were open for business, the vast majority of them only provided 'basic' services. This is one component of a woman's right to life that was infringed, but it was kept quiet since it was not seen as a crucial component. According to what has been seen, the fact that the time restriction is twenty weeks, as it is in the current rules, must have led to irreparable psychological and emotional agony in cases where malformed foetuses were diagnosed but abortions were not permitted. There must have been an exceptional provision in place to cope with the situation that arose.

According to one estimation, there might be as many as 1.85 million abortions in India that are "Compromised" by Covid - 19. That may entail women having to endure a surgical operation as a result of a delayed medical abortion or it could mean that unwanted pregnancies force women to select abortion methods that are risky. The woman is the one who should make the call about whether or not to carry the pregnancy to term. The decision to have an abortion should be made solely by the woman and her attending physician, with only a limited role for third parties to play in the process. Therefore, coordinated effort is necessary so that all nation states, rather than thinking abortion a "Sin," a "Taboo," or merely "Non - essential," realise the significance of a woman's right to womanhood and stop treating it as though it is unimportant.

## VI. A CONCLUSION AND SOME SUGGESTIONS: A MARCH FOR GLOBAL EQUITY CONCERNING REPRODUCTIVE RIGHTS

**1.** The Government's role in the abortion process should be limited to the strictest minimum required to ensure the procedure is carried out in a secure and uncomplicated manner. This is

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due to the fact that abortion is sought after and is regarded necessary even in contexts where it is either completely prohibited or tightly limited so as to allow it only in circumstances where it will save the life of a woman or preserve her health. On the other hand prevalence of unwanted pregnancy is lowest in Countries that do not criminalise abortion.

**2.** If we take a look at Developing Nations, As much as 93 percent of these Countries have Laws that are restrictive. It is imperative that we step up our efforts to establish sexual and reproductive health equity on a worldwide scale if we want to prevent the practise of mothers aborting their children through illegal means. This necessitated an on going commitment to action and investment in order to provide complete access to the entire spectrum of sexual and reproductive rights. The Guttmacher Lancet Commission advises that a full package of critical sexual and reproductive health services, including contraception and safe abortion care, be included in national health systems in order to eradicate the stigma that is associated with abortion. This recommendation was made in order to end the taboo that is connected with abortion. The same report shows that since the great majority of abortions are caused by unwanted pregnancies, the nations that have access to effective contemporary methods of contraception have seen the sharpest reduction in their abortion rates.

**3.** The route to safe and equal abortion laws for anyone who goes through pregnancy, including women, transgender and non binary people, lies in ensuring that they have secure access to abortion, a safer use of modern contraceptives, availability of medical abortion drugs in primary healthcare facilities, complete autonomy on abortion on request, and post abortion services. This is the path to achieving safe and equal abortion laws. Even in places where the legislation does not need the approval of either spouse for an abortion, it has been observed that the concepts of confidentiality and autonomy about abortion are severely lacking in rural communities. Before a woman in a rural clinic may have her constitutionally protected right to abortion exercised, she must first obtain the approval of her husband or a close family. It is within the power of the government to implement measures that will bring subsidised rates of abortion operations and medical medications within the reach of women, particularly in rural regions, as well as to fill in the gaps caused by a shortage of medical experts. In areas where there is a shortage of medical experts, maternal clinics, and post abortion care, Dr Setya suggests that there is an urgent requirement to raise knowledge about the regulations that govern abortion, in addition to the provision of counselling services.

**4.** As a last point of discussion, it is proposed that the definitions of "termination of pregnancy" and "vulnerable women" be enlarged and detailed, respectively, in order to facilitate a more purposeful interpretation of helpful law. In addition, the inclusion of genuine

practitioners of Ayurveda, Unani, and other similar practises through the establishment of standard criteria under the scope of certified medical practitioners will go a long way towards eliminating unauthorised methods of abortion. Even after the passage of the initial act half a century ago, we have failed to include the original beneficiaries in the financial benefits of the legislation. After all, the woman is the one who possesses full control over her own body. As a piece of advice, it will be preferable if the government, rather than keeping the ambit of 'vulnerable women' narrow in regard to which it is proposed to increase the upper gestational period from 20 to 24 weeks, expands its realm to include in its realm so as to include not just rape and incest survivors and differently abled women, but woman of every kind, rather than confining it to the whims of a definition. This would be better. If the woman does not conform to any of the established vulnerabilities, other than the vulnerability of being pregnant and being unable to get an abortion for this reason alone, then the very fact that she does not fall into any of the specified categories might prove to be devastating.

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