

Analysis Of Abortion, Violence Against Women And The Corresponding Laws

-Shivalee Duara

Literature Review	2
Abstract	2
Introduction	3
Ground Reality In India	4
Reasons For Unsafe Abortions In India	4
Analysing The Medical Termination Of Pregnancy Act (2021)	5
Mtp And Its Violation Of Article 14	6
The Problem With The Protection Of Children Against Sexual Offences (Pocso) Act	6
The Problem With Writ	7
Abortion: A Privilege Rather Than A Right	8
Sex Trafficking And Abortion	9
Policy Recommendations	11
Conclusion	12
Citations	12

LITERATURE REVIEW

The Medical Termination of Pregnancy Act, 1971 (MTP) is one of the most liberal reproductive laws in the world as it allows termination of pregnancy up to 24 weeks and beyond (in special cases). It aims to make abortion more accessible for all Indian women. Yet the MTP is not without its fair share of problems. The legislation still predominantly places decision-making power in the hands of medical practitioners, rather than empowering women to make autonomous choices about their bodies and reproductive health(Narayan, 2024). The stated paper talks about the problems still prevalent in the MTP by drawing focus on the fact that a major part of the option to avail an abortion is still in the hands of a doctor. This is because in India, people often look down on abortion, and sometimes even doctors discourage it for moral reasons. They might counsel women to contribute to their pregnancy, overlooking the women's right to make major decisions regarding their bodies. The law about abortion, called the MTP Act, mostly favors doctors and puts a technical team without any connection to the pregnancy in charge. This team even has the power to overrule a woman's decision. The paper also discusses the need to consider unmarried women as a part of MTP under the Rule 3B of MTP. Another problem with the MTP is its overlapping nature with the Protection of Children from Sexual Offences (POCSO) Act. Legal ambiguities around the joint interpretation of the POCSO Act and the MTP Act show how a prohibitive environment is created around adolescent abortion, centred around state surveillance and punishment(Jain, 2024). The paper brings to focus how the POCSO Act is acting as a barrier to avail safe abortion services for adolescent girls and could also potentially lead to an increase in false rape allegations. Prosecuting adolescents for rape who are in consensual relationships with pregnant persons is a fallout of the carceral approach of the POCSO Act to address instances or apprehensions of sexual offenses against children. Further, the mandatory reporting provision under POCSO creates a surveillance structure even amongst healthcare institutions, resulting in pregnant adolescents running the risk of their consensual sexual partners being prosecuted for rape if they visit safe abortion providers(Jain, 2024). This can lead to higher cases of unsafe abortions.

The following paper looks at abortion with a more comprehensive view by studying the problem of unsafe abortions in the country and why they happen and then analysing the drawbacks of the MTP Act which is leading to higher cases of unsafe abortion in the country. These drawbacks range from the violation of Article 14, the problems with writ, ignorance of transgender people, and the overlapping nature with the POCSO Act. The paper also brings light into how the concept of abortion is leading to the exploitation of sex trafficked women and how the MTP fails to recognize that.

ABSTRACT

The choice of an abortion empowers women as it allows them to have autonomy over their bodies. Motherhood can have a severe impact on physical and mental health, career, their bodies, etc. With the advent of the amendments made in the Medical Termination of Pregnancy (MTP) Act abortion has been made more enabling to women. In a recent ruling, the Supreme Court allowed the termination of a fetus of 30 weeks, to a 14 year old victim of sexual assault. This judgement is a milestone in terms of reproductive rights. Even the gestation period for abortion has been increased to 24 weeks upon the consultation of two doctors. It has been made more inclusive even for unmarried women. It is a stepping stone for change but there is a long way to go before abortion becomes a human right. Women might have the legal right for an abortion but the ground reality is disheartening. Even after having legal rights and some of the most liberal abortion laws in the world, almost 67%¹ of all abortions in India are unsafe. These statistics goes on to throw light on the ground reality of conditions. The social framework is still very patriarchal and does not allow women to have a choice. Their consent to abortion is almost diminished and is often dominated by the say of their husband and mother in laws. At the same time, there are financial restraints, especially in rural areas. Buying contraceptives is not something everyone is aware of and willing to do. There is hence an economic and social barrier to safe abortions. The public healthcare sector is not of much use either. 75%² of the country's health infrastructure and resources exist in urban areas where only 27% of the population lives. At the same time in the public healthcare environment, 32% reported the ability to perform an abortion compared to 100% among private centres, while 18% of public centres and 77% of private centres had performed an abortion in the last 3 months. The condition is disheartening for women whose conditions force them to access public health care services. Thus there is no infrastructural backbone to provide access and hence support the legalisation. Moreover, the MTP Act itself has many loopholes. The Act indirectly punishes doctors and pregnant women thus criminalising abortion. In such a carnal legal system doctors would be scared to perform abortion services as they fear jail and prosecution. The MTP Act is also highly intertwined with the Protection of Children from Sexual Offences (POCSO) Act which further complicates abortions. Due to the fear of being prosecuted under the POCSO Act doctors are skeptical about performing abortion on adolescent girls. Lastly, the paper discusses how the sex trafficking market is still sustained in India and continues to exploit and violate women. Sex trafficking has defeated the purpose of abortion being a choice for women. As women are coerced

¹ Shaji, S. (2023, January 2). *India has a liberal abortion law - then why are unsafe abortions so rampant?*. The News Minute. <https://www.thenewsminute.com/premium/india-has-liberal-abortion-law-then-why-are-unsafe-abortion-s-so-rampant-171488>

² Kumar, A. (2023, May 16). *The transformation of the Indian Healthcare System*. Cureus. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10292032/>

through violence to undergo an abortion. Moreover sex selective abortions further propagate the market of sex trafficking.

INTRODUCTION

India has one of the most liberal laws when it comes to abortion. The situation was not like this a few years back. In 1971 the Medical Termination of Pregnancy(MTP) Act was passed which legalized abortion in the country, after years of looking down upon it as a sin. According to the 1971 Act a pregnancy can be terminated up to 12 weeks upon the consultation of one doctor and up to 20 weeks upon the consultation of two doctors. Termination is permitted only when the continuance of the pregnancy would involve a risk to the life of the pregnant woman, cause grave injury to her mental or physical health (including rape and failure of birth control measures), or in the case of fetal abnormalities. Termination is also allowed at any point during the pregnancy if there is an immediate necessity to save the woman's life. This law however was not inclusive enough to cater to all the problems that women face. After almost half a century of the bill being passed amendments were brought with the amended MTP Act of 2021. The MTP Act 2021 allows termination of pregnancy up to 24 weeks upon the consultation of 2 doctors. Even the grounds for termination of pregnancy have become more liberal and consider medical, social, humanitarian, and therapeutic grounds for universal access. The MTP Act has even allowed for termination of pregnancy in case of failure of contraceptives by unmarried women. This right earlier was only available for married women. All in all, it is more inclusive than the 1971 Act. However, it fails to propagate universal access to safe abortions in this country.

REASONS FOR UNSAFE ABORTIONS IN INDIA

An unsafe abortion is carried out by someone who does not have the proper skills or is carried out in an environment that does not conform to minimal medical standards or both. **Even after abortion being legal up to 24 weeks upon medical consultation almost 67% of abortions in India are unsafe. This statistic is of important consequence to note because it brings to light that just legal validity of abortion is not important.**Unsafe abortions are scary as they lead to the death of almost 8³ women everyday. This is why studying the ground reality of why it is happening is so important. There are primarily two main reasons that lead to unsafe abortion in India.

First of all, the social stigma that is still synonymous with abortion does not allow women to avail abortion services. Due to religious, social, and personal beliefs, the concept of abortion is still

³ Roy, E. (2022, March 31). *Report: 67% abortions in India unsafe, cause nearly 8 deaths every day.* The Indian Express.

<https://indianexpress.com/article/india/india-unintended-pregnancy-abortion-7845655/>

looked down upon by people in this country. Many people consider abortion as a sin. This moral reasoning is often passed down to their daughters, wives, mother, daughter-in-laws, etc. **They often humiliate, harass, and inflict violence on women of their families who might want to get an abortion in a medical clinic. This results in women getting an unsafe abortion as they are left with no option.** Also a lot of the time this moral policing is not just limited to the house but also extends to hospitals. Many doctors and health care service providers because of their views have hampered the decision that women have taken and conditioned them to feel guilty. There is an institutional problem at the root level that is influenced by social stigma and discrimination.

The problem of unsafe abortion is especially prevalent in rural areas as almost 48%⁴ of child marriages in India happen in rural areas. These girls are sold off in marriage and hence become victims of mistimed and unintended pregnancies. Even after having too many members in the family, under pressure from family members women are forced to conceive. Under pressure from the family, they aren't even able to access abortion. In a country where almost one in every five underage girls are forced into marriage, a support system in their husband's side of the family is not what women can expect. As a result a lot of the time the decision of whether to have an abortion or not is especially dominated by husbands and mother-in-laws. When the right to abortion is not provided to them they might opt for unsafe abortion.

Secondly, the economic condition of many households is a barrier. Even though contraception is available in the market it is expensive and most families especially rural women can not afford it. Cheap contraceptives might be available but there is no reliability and the failure rate is high. As a result in many cases, the option of contraception is ruled out. There is a positive relationship between poverty and illiteracy. So poor families also are not properly educated on how to avail and effectively use contraceptives. The number of abortions performed depends upon unintended pregnancies which are directly associated with the unmet need for contraception.

There is not a very wide gap between the rich and poor in seeking abortion services, but rather in dealing with abortion-related consequences. Abortion can cause serious health issues for the women undergoing it. Most poor families will not be able to financially support the aftercare services thus putting the women at risk.

⁴ Child marriage in India: Key insights from the NFHS-5. (2022, May). https://india.unfpa.org/sites/default/files/pub-pdf/analytical_series_1_-_child_marriage_in_india_-_insights_from_nfhs-5_final_0.pdf

Also, most facilities do not have proper resources, infrastructure, and well trained staff to provide proper services. A staggering 78%⁵ of all abortions are held outside legal healthcare facilities. The health consequences are particularly pronounced in rural and less advantaged urban areas, where access to these facilities is limited. A 2019 study found that women in rural India have a 26%⁶ higher chance of having an unsafe abortion compared to women in urban areas, due in part to 75% of the country's health infrastructure existing in urban areas where only 27% of the population lives.

At the same time, many rural areas have abortion centres only in nearby towns or cities which also adds to transportation costs. As a result, there is also an economic barrier to abortion which is often ignored. What needs to be understood is how to remove these barriers that make abortion inaccessible even after being legal.

ANALYSING THE MEDICAL TERMINATION OF PREGNANCY ACT (2021)

In 2021, the parliament of India passed the Medical Termination of Pregnancy (MTP) Amendment Act which amended India's 50 year old abortion law which legalised abortion. The 1971 MTP Act allowed the termination of a few pregnancies under the guidance of a registered medical practitioner and was introduced as an exception to criminal liability under the Indian Penal Code. Under this act for an abortion up to the gestational limit of 12-20 weeks, the advice of two doctors was necessary and above 24 weeks was only to save the life of the pregnant woman. The 1971 act was quite regressive and did not give women proper reproductive rights. This led to the need for amendments which was done in the 2021 MTP Act. Under the MTP Act 2021, only the advice of one doctor was necessary to terminate pregnancies up to the gestational limit of 20 weeks. The MTP Amendment provides for the constitution of Medical Boards at approved facilities, which may "allow or deny termination of pregnancy" beyond 24 weeks. The 1971 MTP Act did not have this additional layer of third-party authorization. The gestational limit for abortion using medical methods for abortion (i.e., by using approved drugs) was increased to 9 weeks. Also under the 1971 Act, failure of contraception as a basis for abortion was available only for a married woman or her husband. Now under the amendment, even unmarried women can avail an abortion. Even after amendment, the MTP Act has its fair share of problems that limit it from providing access to basic abortion services according to the needs of pregnant women.

⁵ Mishra, C. K. (2022a, September 28). 78% of Indian abortions are outside clinics, even with a good law. ThePrint.

<https://theprint.in/opinion/78-of-indian-abortions-are-outside-clinics-even-with-a-good-law/1145017/>

⁶ Bansal, M. (2023, November 21). *Reporting on reproductive health, part 4: India's limited abortion landscape*. International Journalists' Network.

<https://ijnet.org/en/story/reporting-reproductive-health-part-4-indias-limited-abortion-landscape>

MTP AND ITS VIOLATION OF ARTICLE 14

The MTP Act promises to provide abortion services to all women without any form of discrimination. **Section 3(2)(b) of the MTP Act and Rule 3B of the MTP Rules however are discriminatory as they allow abortion only in case of a change of marital status during ongoing pregnancy (widowhood and divorce). The law completely ignores the possibility of any form of unmarried consensual relationship between two people.** In light of our changing society where many couples opt to live in relationships, this raises serious concerns. This failure to recognize live in relationships is not only discriminatory but also unconstitutional. It is against Article 14 of the Constitution which states that "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." This raises serious questions about the validity of the rights of Indian women if they are not married.

In the case *X V.*⁷ The Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi & Anr. a similar situation was noticed. Where a 25 year old woman was in a relationship with a man and got pregnant. After the pregnancy, the couple went their separate ways as the partner made a false promise of marrying her. The woman wanted to terminate the pregnancy under the provisions outlined in section 3(2)(b) of the MTP Act, which permits pregnancy termination within the 20-24 week range, as well as Rule 3B of the Medical Termination of Pregnancy Rules. However, the High Court of Delhi declined the appellant's request as the MTP makes no mention of unmarried women. She appealed to the Supreme Court and was later allowed to terminate. Although the apex court granted the right to terminate still it is not a victory for women unless the amendments are made in the MTP. The fact that unmarried women will not be allowed to terminate their pregnancy on the grounds of their partner leaving them is very well a barrier to accessing safe abortion services and is against MTP itself as the same right to abortion is provided to a married woman. Also, the judgements across different courts are not consistent. An appellant might have to first file in the high court and then file a case in the supreme court which is not only a hassle but could also lead to the crossing of the gestational period of 24 weeks which further complicates the matter. Modern legislations should be in view with the changing dynamics of society and should aim to make safe abortion services universally acceptable.

THE PROBLEM WITH THE PROTECTION OF CHILDREN AGAINST SEXUAL OFFENCES (POCSO) ACT

The POCSO Act aims to protect children below 18 years of age from sexual abuse including sexual harassment, pornography, penetrative & non-penetrative assault. The interconnectedness of the POCSO Act and the MTP Act poses a problem because it acts as a barrier to availing safe abortion

⁷ *X V.* The Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi & Anr. (<https://www.legalserviceindia.com/legal/article-14113-x-v-the-principal-secretary-health-family-welfare-department-govt-of-nct-of-delhi-case-analysis.html> 2022).

among adolescents. _Although the MTP does not mention the POCSO Act it is crucial to remember that no law is ever studied in isolation. Under the POCSO Act which criminalises sexual offences relating to a child, it is mandatory for a person who is aware of any such offence to report it. It further requires anyone with the knowledge or apprehension of the commission of an offence, including the survivor, to report to the police. **This mandatory report is a huge barrier to access abortion because it diverts attention from what is the immediate need of the patient- the need for an abortion. It puts the adolescent under pressure to go through the legal pressure of filing an FIR, filing a case in the High Court, and appealing to the court for authorization of the abortion.** The whole procedure is accompanied with humiliation and shame for the abortion seeking adolescent. It can also lead to encounters with the police which many families fear would lead to exploitation.

At the same time, children being able to understand the concept of consent is something the judicial system finds hard to grapple with. Even consensual sex for people under the age of 18 might be questioned. In such a scenario a doctor performing an abortion on an adolescent is something that can face prosecution. This puts them at risk which prevents them from providing abortion services ultimately putting the life of an adolescent girl at risk. This criminalisation of consensual sex amongst minors ultimately leads the way to unsafe abortion practices. As the process is extremely tedious the adolescent might find it difficult to approach their family and in the end might end up ordering pills from the internet. This will lead to health repercussions for the girl. Another problem is that engaging the minor to go through this legal procedure can cause her family to not support her and even lead to violence against the girl, especially if the relationship is inter-caste or inter-religion. Moreover out of pressure girls might be forced to report fake rape cases against their partner.

Also in a country like India where between 27%⁸ of girls get married under 18 years of age. The legal age to marry for Indian women is 21. In such a circumstance, the in-laws as well as the husband of the girl will never allow her to access safe abortion as it would result in them being arrested. They would pressurise the girl and may even inflict violence on the girl to undergo an unsafe abortion. All in all the overlapping of the POCSO Act with the MTP causes more harm than good as it leads to higher cases of unsafe abortion.

⁸ Singh, A., & Chattopadhyay, A. (2020, September 8). *Age at marriage in India: A gossamer of complexities and intricate linkages*. Down To Earth. <https://www.downtoearth.org.in/news/health/age-at-marriage-in-india-a-gossamer-of-complexities-and-intricate-linkages-73264>

THE PROBLEM WITH WRIT

The only way to terminate a pregnancy beyond 24 weeks in case of rape is to get permission through a writ as mentioned in the MTP. The steps to be followed for a writ petition must contain a supporting affidavit, facts of the case, question of law, and the documents that the petitioner wishes to rely upon to substantiate his case, along with notice of motion to the other party. This petition is filed at a filing counter in the High Court. The problem with filing a writ is that it is just an extra step that further complicates the procedure for accessing an abortion. Moreover, all of the above mentioned documents might not be easily available to women from rural areas, marginalised communities, and lower income groups due to the lower literacy rates. They might not even be aware of the need for such documents and if they have already crossed the 24 week mark, the hassle of collecting these documents further extends the time thus resulting in complications for the pregnant women.

Moreover, the time frame for the Medical Board to respond in case of a termination of pregnancy beyond 24 weeks due to rape is not mentioned in the MTP. This is quite a sensitive issue because abortion beyond 24 weeks can be risky for the mother's health and further extending that time is just harmful, especially for minors. In such a scenario an unsafe abortion acts as an easy way out.

ABORTION: A PRIVILEGE RATHER THAN A RIGHT

The biggest problem with MTP remains the fact that it treats abortion as a privilege rather than a human right. Even though women have the choice to opt for an abortion the fact that they get to avail one still remains in the hands of medical practitioners. At almost every step of the way, it is the final word of a doctor that is given more importance. **The simple reason that a woman might not want to keep is not enough according to Indian law. For availing abortion services between 12 weeks the advice of one doctor is required and between 12- 20 weeks consultation from one doctor, 20- 24 weeks advice of two doctors and beyond 24 weeks the approval of a medical board is necessary.** If only the woman gets due permission from the doctors, she is eligible for abortion. The big issue with this is that abortion is very subjective, not everyone needs to be open to the idea. Many might consider abortion as a sin. Thus manipulating the pregnant woman into believing and advising her strongly against an abortion. Many doctors even claim that abortion can lead to infertility or that taking pills can cause excessive bleeding. Many doctors have even stated that the only way to get an abortion was if they accepted to get sterilized.

Another major issue with having the final say of the doctors is the fact that it requires the availability of human labour and medical infrastructure in almost all parts of the country. The MTP states that to give opinion on the termination of pregnancy up to the 12 -24 weeks period a doctor should have one year of experience in ObGyn as well as MTP training. For abortion beyond

24 weeks approval from the Medical Board, which should consist of a Gynaecologist, a Paediatrician, a Radiologist or Sonologist and such other number of members as may be notified in the Official Gazette by the State Government or Union territory, as the case may be, to terminate the pregnancy. **This is interesting to note because according to the All-India Rural Health Statistics (2018-19), there are 1,351 gynaecologists and obstetricians at community health clinics in rural regions across India, and the shortfall is 4,002, i.e., there is a 75% shortage of qualified doctors.** The rural health statistics of the Government of India (2015) state that about 10.4% of the sanctioned posts of auxiliary nurse midwives are vacant, which rises to 40.7% of the posts of male health workers. 27% of doctor posts at PHCs were vacant, which is more than a quarter of the sanctioned posts. In the public healthcare environment, 32% reported the ability to perform an abortion compared to 100% among private centres while 18% of public centres and 77% of private centres had performed an abortion in the last 3 months. When there is such a shortfall of medical practitioners in the country especially in the rural areas, the need to get approval is a major barrier to abortion access. In many rural areas to get the approval women will have to first go to a nearby town or city which is an economic burden. On top of this, they might also not have proper ideas about MTP and may not know how to proceed further. Moreover, their families might not be supportive of the termination. Earlier they could have just got the abortion without conveying it to anyone but now due to the increase in duration and complexity of the process, they will have to end up revealing it. In such scenarios, an unsafe abortion is just the easier thing to do.

THE IGNORANCE OF TRANSGENDER PEOPLE

Although the MTP does not differentiate between transgender women and women, the bitter reality remains that society does. **The MTP mentions that abortion should be available to all women which includes trans women too but no law is ever interpreted without keeping in touch with the current situation of the society.** The National Legal Services Authority v. Union of India, also known as the NALSA Judgement, recognised and affirmed the rights of transgender individuals in India. The NALSA judgement allows transgenders to self identify between men, women, or third gender, implying that transgenders who identify as women shall be allowed to avail the privileges of the MTP Act. However, the need for abortion services is equally important for anyone who considers themselves transgender. In such a scenario the MTP is restrictive.

Also although the law prohibits the discrimination of transgender people, in reality they are discriminated against on a daily basis. **They might be dismissed in healthcare facilities and doctors might not give approval due to religious, social, and political beliefs. In such a scenario if the MTP makes a special mention of transgender people they will have more accessibility to abortion services.**

SEX TRAFFICKING AND ABORTION

Abortion an anti choice for sex trafficked women

According to National Crime Records Bureau(NCRB) data a total of 2,189 cases were recorded in 2021, a 27.7 percent increase from the previous year⁹. Delhi registered a 73.5% increase in sex trafficking cases. Over 509 victims were trafficked from different parts of the country to Delhi¹⁰. One of the most prominent reasons for the human trafficking of girls and women in India is because of sexual exploitation. The National AIDS Control Organization in 2022 estimated that nearly 8 lakh women are sex workers in India. Most women in this country and around the world are coerced into the market of sexual exploitation and are referred to as sex workers. The kind of toxic culture that prevails in most of these brothels is inhumane, to say the least. Women and girls around the country are lured under false promises or are kidnapped and then their destiny is under the faith of their kidnappers. In these brothels they are verbally abused, physically assaulted, raped, and given to exist in inhuman living conditions.

Most of the sex work that these women have to undertake is forced upon them. They are under the plight of their pimps and in most cases they do not have a say. The result of these unprotected sex cases leads to pregnancies. **These prostitutes are then under the pressure of their owners to terminate the pregnancy. There are various reasons they are indirectly forced to terminate their pregnancy. The unavailability of proper support, financial restrictions, fear of violence, the pressure of being thrown out of their jobs, and health concerns. In most cases it is the pimps or madams (owners) who coerce them to terminate their pregnancy as they do not want to increase their burden. Moreover, the option of abortion allows them to be mistreated. These women are coerced to abort because if they decide to keep the baby they might have the business as many men will probably not consider them for prostitution.** Unfortunately, pimps see the economic loss and pressurize them to abort several times even though it leads to severe health implications. The consent of women is not considered in any step of the way. The freedom that abortion allows is crushed under the social conditions they have been restricted to.

The absence of laws to solidify the rights of sex trafficked women and girls

⁹ Ministry of Home Affairs. (2023, July 25). *Anti-trafficking cases*. Press Information Bureau. <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1942472>

¹⁰ *Delhi saw 73.5% jump in human trafficking cases last year, NCRB Data reveals*. The Indian Express. (2022, August 31). <https://indianexpress.com/article/cities/delhi/delhi-human-trafficking-cases-ncrb-data-8122331/>

The absence of consent when it comes to abortion for sex trafficked women raises some serious questions about the validity of the MTP Act. The MTP Act prohibits the procedure of abortion without a woman's say. For most prostitutes, this is not the reality. Even doctors comply to be silent as they have had their silence bought. As the market for prostitutes is often shadowed in the dark there is no proper data but according to a study by Swati Ghosh¹¹ upon the sex workers of Calcutta, the highest frequency for the number of abortions was six. This number itself is a testament to how the privilege of an abortion is mistreated by pimps and madams. In that study sex-workers of Sonagachhi and Kalighat reported as frequent as four to five abortions during the reproductive span of 15 to 45 years. Most prostitutes are not even allowed to get a safe abortion. The violence and exploitation they face lead to miscarriages.

The other problem that stems from this violent disregard for consent for abortion leads to the spread of STDs, HIV, AIDS, and various other infections. The cost of so many abortions that these women have to undergo is fragile health. Most of these prostitutes are girls, in Bangalore, Calcutta, Delhi, and Hyderabad, there are an estimated 10,000 girl prostitutes and UNICEF estimates about 300,000 child prostitutes. Their bodies are not developed enough to handle abortions at such a frequency. In 2021 only 16% of trafficking cases saw convictions according to NCB data.

Another problem that is aiding the sex trafficking market is sex selective births. Due to sex selective births, the ratio of men and women is highly disproportionate in India which has led to scarcity of women in the marriage market. This has resulted in the abduction of women from the states which have a strong gender ratio to states with a poor gender ratio. A total of 161¹² Human trafficking cases were reported in Assam in 2021. A very high number even after ignoring the unreported cases. Even though the sex determination of an unborn baby is illegal in India it is still followed in many places. This is an area where the MTP Act also falters as there is strict prohibition of sex determination under it. This cycle of abduction of girls due to sex selective abortions aids the human trafficking market. No law that aims to protect the dignity and choice of prostitutes in this country especially when it comes to abortion. Even the MTP Act makes no mention of it. At this rate, this exploitation of women and abortion will not stop but only strengthen.

In July 2020 the Women Safety Division of the Indian Ministry of Home Affairs issued an advisory to all states and Union Territories to set up or modify their establishment of New Anti- Human Trafficking Units (AHTUs). AHTUs in India are special police units, devoted to tackling human

¹¹ Ghosh, S. (2003, October). "PROFESSIONAL" ABORTION SEEKERS: THE SEX-WORKERS OF KOLKATA. Retrieved April 28, 2024,.

¹² Sadanand, B. (2022, July 15). *Human trafficking in assam: 161 cases registered in 2021*. EastMojo. <https://www.eastmojo.com/assam/2022/07/15/human-trafficking-in-assam-161-cases-registered-in-2021/>

trafficking. A recent report of 16 states and UTs suggests that 225 AHTUs existed only on paper, and only 27 percent of the AHTUs were operational (Janyala, 2021). Only setting up of AHTU's is not enough, proper intervention is necessary on grassroot level.

POLICY RECOMMENDATIONS

SPECIFIC RECOMMENDATIONS

1. Problem - Section 3(2)(b) of the MTP Act and Rule 3B of the MTP Rule allow abortion up to 24 weeks in cases of change of marital status during the ongoing pregnancy. This law remains a revolutionary change for married women but not women in general. It is quite discriminatory in nature as it gives the privilege of abortion to married women and goes against Article 14 of the constitution which promises equality before the law.

Recommendation- Society is evolving every day and the concept of a relationship between two people today has various definitions. The laws should be more inclusive and should also consider women who are single, dating, or are in live-in relationships. Almost 0.61% of the married population in India is separated. These women should also be given the same opportunity. Also, women who face domestic abuse or have partners who are facing serious illness need to be represented. This is why Instead of mentioning 'married women' the law should mention 'women who undergo a change in relationship status', with special cases of domestic violence, serious illness or separation. Amending the MTP Act by bringing in special clauses that aim to help the sex workers who are often in a vulnerable situation. This amendment is necessary because sex trafficked women are often in a critical position. On one hand, a healthcare professional reporting such a case can endanger the safety of the trafficked person but at the same time not reporting could end up in them sex trafficked for a very long time. The MTP can be amended in the following ways:

- Introducing confidentiality clauses: This case should be dealt with differently in below and above 18 cases. For the case of minors, there should be mandatory reporting by the healthcare professional. No personal information about the minor should be given to the police and an investigation should be carried out. Information should only be provided if the police require it for further investigation. For the case of persons above 18, it remains the choice of the trafficked person. In case the trafficked person wants to report the case through the healthcare professional they have the right to do that. At the same time, they can do it themselves. No personal information would be provided unless the police deem it necessary

for investigation. The confidentiality of the trafficked person should be protected at every step of the way.

- Increasing the gestational limit for abortions in case of proven or suspected sex trafficked cases. They should be allowed to access abortion freely even after 24 weeks because a lot of times traffickers control access to healthcare services.
- Allocating funds for shelters, legal aid, and mental health services specifically for sex trafficking survivors. SexHow?Sex Kuchh bhi?

2. Problem- Section 19 of POCSO requires that “any person”, who “has apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed, shall provide such information” to the police, failure to report is considered a crime. This does not specify whether this applies to doctors as well whose mandate is to protect the confidentiality of the patient under the Indian Medical Council (IMC) Regulations, 2002. Since there is no clear mention of the IMC Regulation it is the responsibility of healthcare professionals to report the case but this leads to complications. First of all the adolescent might not want to report due to various social pressures and might only want an abortion. Secondly, it makes the procedure lengthy and complicated as an FIR has to be filed. Thirdly, Section 19 mentions if any person has ‘knowledge’ it does not mention ‘actively seek knowledge and investigate’ but this can be interpreted, which puts the doctors at risk. Lastly, the pregnancy could be a result of a consensual relationship but as the patient is a minor, the concept of a ‘consensual relationship’ might not be given much importance.

Recommendation- To make sure doctors are not prosecuted and there is not a clash of laws, the POCSO should make special mention of doctors to protect them against Section 19 of POCSO. The main focus should be on the patient and providing them abortion services as otherwise, it could cost them their health.

3. Problem: Abortion should be the choice of the woman. The need to get a doctor’s approval for up to 20 weeks should not be necessary. Especially in a country like India where there is a lack of medical infrastructure and practitioners. Registered Medical Practitioners(RMP) might not only be biased against abortion but might also fear being falsely accused of miscarriages and hence prosecuted. RMPs insist on compliance with extra-legal conditions such as consent from the woman’s family, documentary proofs, or judicial authorisation¹³. If the woman fails to comply with these additional requirements, RMPs frequently decline to provide their services in conducting legal abortions. There is no need for extra legal conditions.

¹³ Centre for Reproductive Rights, “Reform to Address Women’s and Girl’s need for Abortion after 20 weeks” (2018)

Recommendation- This is why only the consent of the woman should matter. Up-to 20 weeks the doctor's consultation should not be necessary as it often acts as a barrier to abortion.

4. Problem: There are a lot of delays firstly in filing a writ for a pregnancy beyond 24 weeks as it just lengthens and complicates the process. Moreover, even in a few cases where the women might be close to touching the 24 week mark, authorities have caused unnecessary delays. This is a problem because after touching the 24 week mark availing an abortion is quite critical. In *Z v. State of Bihar*¹⁴, this Court found that the state authorities, including Patna Medical College and Hospital, had erred in failing to terminate the pregnancy before the passage of twenty weeks, despite the woman seeking an abortion on the ground that she was a victim of rape. This Court also rebuked the “negligence and carelessness” of the authorities in failing to terminate the pregnancy as permitted by law. It noted that the proceedings in the High Court were unduly delayed, leading to a situation where the pregnancy could not be terminated without endangering the life of the woman in question.

Recommendation- The cases where women are nearing the 24 week mark should be given more critical attention as they might not be able to avail abortion services after that. The procedure of filing the case and giving a judgement should be speedy and effective. Moreover, cases for pregnancies beyond 24 weeks should not include the filing of a writ.

For reference Abortion in Canada is legal throughout pregnancy and is publicly funded as a medical procedure under the combined effects of the federal Canada Health Act and provincial health-care systems. However, access has been a huge problem for the Canadian government. To make abortion more accessible more than \$4.2 million was announced in funding from the Sexual and Reproductive Health (SRH) Fund to the University of British Columbia (UBC) – Contraception and Abortion Research Team (CART) and Action Canada for Sexual Health and Rights for their projects. This is something the Indian government can do at large with one of the projects being adopting fast track measures and providing critical attention to cases beyond 24 weeks. Objectives of this project can be:

- Advocating for Fast track courts(FTC) that deal with abortion cases beyond 24 weeks and cases where the life of the pregnant person is in danger. These courts should prioritize speedy hearings and judgements.
- These FTC should not require the filing of a writ as they further lengthen the process.
- Working closely with organisations like Lawyers Collective Women's Rights Initiative to Lobby legislators to pass laws mandating faster processing of abortion cases beyond 24 weeks.

¹⁴ (2018) 11 SCC 572

- Spreading awareness among the public and policymakers about the urgency of timely abortion access, particularly after 24 weeks.

GENERAL RECOMMENDATIONS

1. The MTP should also address transgender people by mentioning them in the law as they are also in vital need of abortion services. It should also allow transgender people to report doctors who did not provide them with abortion services due to personal beliefs. This will further solidify their rights in the nation.
2. Amending the MTP Act by bringing in special clauses that aim to help the sex workers who are often in a vulnerable situation. This amendment is necessary because sex trafficked women are often in a critical position. On one hand, a healthcare professional reporting such a case can endanger the safety of the trafficked person but at the same time not reporting could end up in them sex trafficked for a very long time. The MTP can be amended in the following ways:
 - Introducing confidentiality clauses: This case should be dealt with differently in below and above 18 cases. For the case of minors, there should be mandatory reporting by the healthcare professional. No personal information about the minor should be given to the police and investigation should be carried out. Information should only be provided if the police require it for further investigation. For the case of persons above 18, it remains the choice of the trafficked person. In case the trafficked person wants to report the case through the healthcare professional they have the right to do that. At the same time, they can do it themselves. No personal information would be provided unless the police deem it necessary for investigation. The confidentiality of the trafficked person should be protected at every step of the way.
 - Increasing the gestational limit for abortions in case of proven or suspected sex trafficked cases. They should be allowed to access abortion freely even after 24 weeks because a lot of times traffickers control access to healthcare services.
 - Allocating funds for shelters, legal aid, and mental health services specifically for sex trafficking survivors.
3. Abortion should be the choice of the woman. The need to get a doctor's approval up to 20 weeks should not be necessary. Especially in a country like India where there is a lack of medical infrastructure and practitioners.

4. The government should focus on building infrastructure as only that will help women avail safe abortion and after care services.

CONCLUSION

Universal access to abortion is still a far fetched reality for most women in the country. If safe abortion is to be provided for women across the nation the law makers need to amend the MTP Act until it is all inclusive and does not have any barriers. The criminalisation of abortion that is perpetuated through sections 312 and 318 of the IPC needs to be removed so that healthcare workers are not in constant fear of prosecution. Moreover, it is not just the lawmakers because the barrier to abortion is also due to societal norms. The government needs to step up by educating the youth on sex education, family planning, and abortion. The societal barrier to abortion will be stopped when it is no longer considered a sin. Moreover, in the case of sex workers, proper laws should be brought into fruition and then executed to protect them from the exploitation they face from their owners. The continual oppression that sex trafficked women have faced for years needs to be highlighted and also changed for good. Giving them a choice in abortion will help them to have a right and control over their body. Hence universal access to abortion is not just a legal change but also an institutional change in the grassroot level.

CITATIONS

Fatima, A., & Nadimpally, S. (2023, November 17). *Abortion law in India: A step backward after going forward*. Supreme Court Observer.

<https://www.scobserver.in/journal/abortion-law-in-india-a-step-backward-after-going-forward/>

Ghosh, S. (2003, October). "PROFESSIONAL" ABORTION SEEKERS: THE SEX-WORKERS OF KOLKATA. Retrieved April 28, 2024,.

Grossu, A., & Maguire, S. (2017, November). *The link between pornography, sex trafficking, and Abortion*. FRC. <https://www.frc.org/porntraffickingabortion>

Jain, D. (2024). Beyond bars, coercion and death: Rethinking abortion rights and justice in India. *Oñati Socio-Legal Series*, 14(1), 99–118. <https://doi.org/10.35295/osls.iisl.1680>

Janyala, S. (2021) *Activists seek anti-human trafficking units in Andhra* | *Cities News, The Indian Express, Indian Express*. Available at:

<https://indianexpress.com/article/cities/hyderabad/activists-demand-anti-human-trafficking-units->

in-andhra-pradesh-7139519/https://indianexpress.com/article/cities/hyderabad/activists-demand-anti-human-trafficking-units-in-andhra-pradesh-7139519/

Kasthuri, A. (2018). Challenges to healthcare in India - the five A's. *Indian Journal of Community Medicine*, 43(3), 141. https://doi.org/10.4103/ijcm.ijcm_194_18

Narayan, P. (2024). Women reproductive autonomy: Critical analysis of effectiveness and implementation of MTP act. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.4768190>

Thomas, Vivek P. (2020) "Sex-Selective Abortions: The Prevalence in India and its Ramifications on Sex Trafficking," *The Compass*: Vol. 1: Iss. 7, Article 4.

Available at: <https://scholarworks.arcadia.edu/thecompass/vol1/iss7/4>

Tomar, P., Pathak, P. K., & Bhakuni, K. (2024). Assessing socio-cultural barriers related to induced abortion and reproductive health among married women in Rural Uttar Pradesh, India.