

## Research Article

# Abortion Laws Through a Social Justice Lens: Bridging the Legal Gaps Between India and the U.S.

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### Abstract:

Abortion Laws through a Social Justice Lens: Bridging the Legal Gaps between India and the U.S, is a sensitive issue that can scarcely go unnoticed given that it is informed by factors that include gender rights activism, access to health, culture and law. In this Conference paper, the author offered a comparative analysis of the abortion laws in India and the United States in hopes of reconciling the legal and ethical differences between the two countries from the perspectives of social justice. India allows abortion up to 24 weeks of pregnancy under the Medical Termination of Pregnancy Act, 1971 amended in 2021 yet, it infringes women's rights by seeking prior permission from doctors. On the other hand, the US has regressed on reproductive rights in recent years due to the supreme court ruling of the case of Roe v. Wade (410 U.S. 113, 1973) in Dobbs v. Jackson Women's Health Organization in 2022, also reversed the federal abortion rights leaving it to individual states to decide on the matter. This paper aims at comparing and contrasting their legislation with the international human rights standards like CEDAW and ICCPR. From this context, this study fits the social justice niche since it covers issues of healthcare disparities, rural/urban divide, social-economic status, and developing stigma towards abortions. The Conference paper is to explain the need to make women's bodies, rights for women of colour, and abortion legal and safe a policy priority. In the end, the study provides an idea on how the right to abortion, might find a balance with the existing global social justice framework and advance legal frameworks that are inclusionary, rights-based and culturally sensitive.

**Keywords:** Abortion law, social justice, reproductive rights, gender equality, India, United States.

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## INTRODUCTION

The issue of abortion statutes attracts significant social-legal attention to regulate the rights of women, legal principles of sexual and reproductive autonomy, and state sovereignty. These legal restrictions are used not only to define abortion services as to the extent and safety by which women have a right to choose but also reflect the social opinion regarding women's agency and self-determination. Although India has recently been passing some progressive abortion laws, the area is still highly charged, and changes have taken place in both India and the United States recently, thus causing a restart of the debate on abortion and reproductive rights and justice.

In India the Medical Termination of Pregnancy (MTP) ACT was first passed in 1971 that marked the legal right of abortion in certain circumstances. New medical technology and the needs of Indian society were realized to be out of sync with the law hence the passing of MTP (Amendment) Act in 2021. This amendment increased the upper gestational limit for abortion from 20 to 24 weeks for women such as rape survivors, victims of incest among others. Additionally, the amendment ensured that unmarried women had reproductive rights to abortion as they were granted to married women.

On the other hand, the Americans have witnessed a rollback of federal abortion rights. In the relatively recent Supreme Court case, Dobbs v – Roe v. Wade (2022) was reversed by Jackson Women's Health Organization since then. Wade Case 410 US (1973) which overturned the constitutional provision on abortion and gave States autonomy power to legislate on

abortion. This has created a situation in which some states have imposed strict measures while the others seek to protect women's rights to abortion.

These rival legal developments support the need for the analysis of abortion laws in the framework of social justice. Such an analysis takes into account not only legal concerns but social ones, such as concerns of equity, accessibility, and how gender, class and geographical location will come into play. In this regard, analyzing the legal provisions for reproductive rights in India and the United States of America, this paper aims at highlighting the challenges for reproductive rights equity and mapping out ways on how the abortion laws could be aligned to social justice.

## THEORETICAL FRAMEWORK: SOCIAL JUSTICE AND REPRODUCTIVE RIGHTS

In the analysis of any legal system, it is impossible not to mention the aspect of social justice when evaluating the laws on abortion. What it means by 'Social justice' is far beyond legal justice. It is defined as the equal share of persons, groups, or nations in privileges, profits or other benefits or burdens; focusing on the fair treatment of the poor and the disadvantaged. This paper will argue that contemporary understandings of social justice are best understood through the lens of critical race and reproductive justice theorists, building from the work of John Rawls, Nancy Fraser, and Amartya Sen.

I will begin with John Rawls's theory of Justice as Fairness as elucidated in A Theory of Justice; Here, Rawls outlines two principles of justice. These two are principles that are known as the equal liberty principle and the difference principle. That is it defends equal freedoms, and rights as well as structural frameworks for the benefit of the worst off citizens in the society (Rawls, 1971). When applied to reproductive rights, then its significant aspect points that the informed access to reproductive rights, including safe abortion, must be provided as a basic freedom, and any pin that has an adverse effect of dominating the second principle violates the rights of the poor or marginalized women.

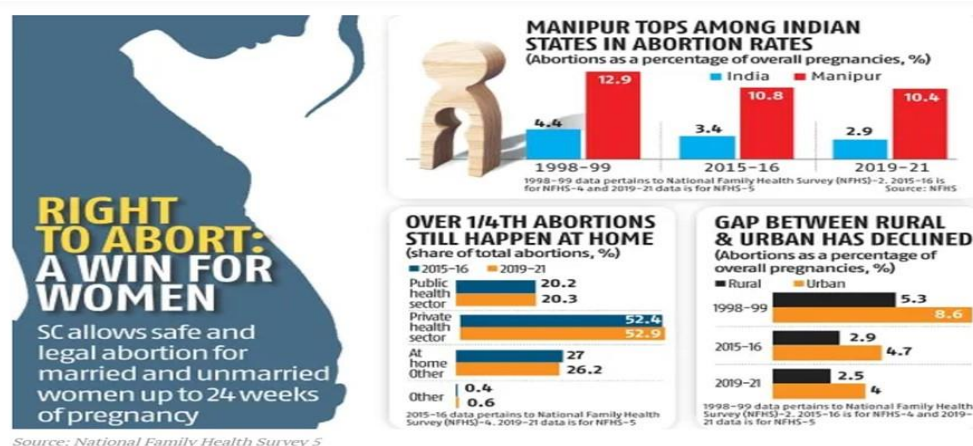


Figure: Abortion Rate in India

Source: <https://images.app.goo.gl/U7buhKcGjA6frKG7A>

Accordingly, Nancy Fraser expands justice to distribution to include recognition and politics of representation. Fraser posited justice as a triple affiliation: a distribution of resources, respect for identities, and political voice; from this vantage point, the framework of reproductive justice can be developed (Fraser, 2009). Theoclaus and religious-based abortion restrictions further ceteris paribus perpetrate misrecognition and erase women, trans, and non-binary individuals from their agency in decision-making regarding reproduction (Mendoza, 2022).

The capabilities approach by Amartya Sen is the improvement of people's real freedoms and capabilities allows them to achieve something they consider worthwhile (Sen, 1999). Opposition to abortion eliminates choices and power in women's life, and the ability to decide about one's own body. Sen (2022) notes that freedom is core to justice; however, reproductive freedom is vital for most human beings.

Reproductive rights is a term used to describe an individual's human rights to accessing safe, effective, nondiscriminatory and free from coercion and violence in reproductive decisions and related health care. This is in sync with Feminism, an aspect of human rights which seeks justice and eradication of laws that limit women in accessing reproductive health. This means that a right to abortion presupposes not only legal availability but also social setting, including poverty, stigma, and unequal healthcare in the community (UN Women, 2022).

These principles are supported further by international human rights instruments. The obligations of the CEDAW include eradicating discrimination in the provision of healthcare and in the access to family planning as well as to abortion

(CEDAW, 2021). The International Covenant on Civil and Political Rights (ICCPR) enshrines the right to life, privacy and freedom from cruel treatment, which are regularly violated by most states through restrictive abortion laws (UNHRC, 2021). Also, in the Universal Declaration of Human Rights, people's rights to health, dignity, and self-determination are upheld (UN, 2022).

As each of these frameworks and instruments signifies, the matter of abortion is not just medical or legal, but also social-justice. This theoretical framework will be again helpful in measuring where the legal systems of India and the United State stand in relation to these international legal obligations and principles of fair justice.

## LEGAL FRAMEWORK IN INDIA

### **The Medical Termination of Pregnancy Act, 1971 and the 2021 Amendment**

The medical termination of pregnancy act 1971 was perhaps the landmark legislation of its time in India which legalised abortion for several reasons, medical, therapeutic and humanitarian. However, as the law evolved people complained that the law was paternalistic and oppressive of women's agency. Due to new medical technologies and increasing demand for women's reproductive freedom, the Indian Parliament passed the MTP (Amendment) Act in 2021.

Earlier, the MTP Act allowed abortion up to 20 weeks of pregnancy; however, the new 2021 Amendment broadened the loophole by allowing abortion up to 24 weeks for rape survivors, victims of incest, and women with disabilities. More notably, being an Islamic country, it ranked marital and non-marital sexual relations as equal, in that both married as well as unmarried women could seek abortion under the same legal status (Ministry of Health and Family Welfare, 2021). The law also created maternity councils for pregnancies beyond 24 weeks, when there is a complication affecting the fetus.

### **Consent, Access, and Procedural Requirements**

Although the amendment was made, the law still calls for one RMP for the first 20 weeks of pregnancy, and two RMPs for abortions of pregnancies between 20 and 24 weeks. This medical approval system not only remains to depower women but also transfer reproductive decisions to decision makers (Srivastava, 2022).

Moreover, it is daunting for people with access to certified medical practitioners, the totality of which can be attributed to inadequate infrastructure and personnel in rural regions. As the NFHS 5 sources have revealed, many women from rural areas of the country resort to untrained providers due to the absence of authorized clinics and the indicated disadvantages such as safety and inequality in receiving health care services.

### **Socio-Legal Barriers: Stigma and Systemic Disparities**

Besides logistical factors, social barriers still persist among women seeking for abortion. This discourages people from discussing it when terribly sick and denies them prompt access to healthcare especially in strict religious households or cultures (Guttmacher Institute, 2022). Most of these people are adolescents, unmarried women and Transgenders, you find that they are turned away by such health facilities due to perceived moral standards while in fact the law allows them to access those services.

### **Landmark Case: Suchita Srivastava v. Chandigarh Administration (2009)**

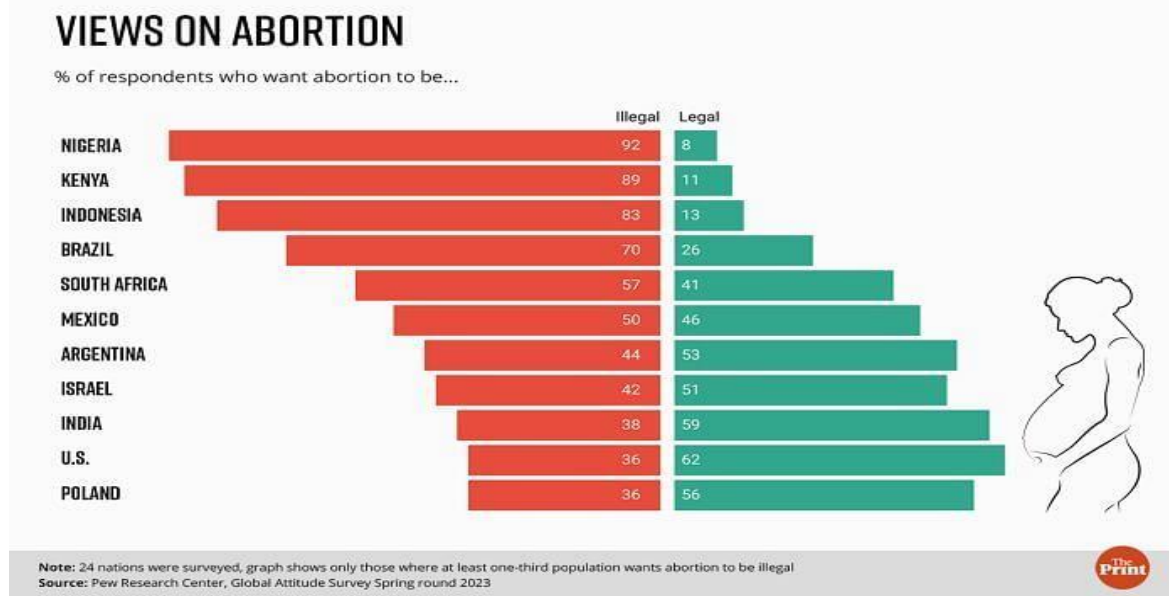
In this founding judgment, the Supreme Court of India as an autonomous legal region acknowledged a woman's right to choose as a part of Article 21, the right to life and personal liberty. The Court found consent and autonomy to be hallmarks of protection in the matter, as the court said "no woman's right to privacy, dignity and bodily integrity can be violated" (Suchita Srivastava v. Chandigarh Administration, 2009). This shaped up the campaign for recognizing reproductive rights as fundamental rights in India.

While important legal transformations are under way, a gap exists between promising models and everyday practice because of systems, cultural, and facilities impediments. Closing these gaps entails developing strategies that socially educate people, reform the laws, invest in health and undertake advocacy demanding the realization of rights.

## LEGAL FRAMEWORK IN THE UNITED STATES

### **Historical Foundations: Roe v. Wade (1973) and Planned Parenthood v. Casey (1992)**

The constitutional right to abortion in the United States marked its inception in the supreme court case of Roe v. In the infamous Roe Vs Wade (1973), the Supreme Court of United States ruled that the right to privacy under the Fourteenth Amendment embraced a woman's decision to have an abortion. The ruling divided the pregnancy into three terms with the first two terms falling in the realm of a woman's decision making to determine whether to continue or terminate a pregnancy and the third and final term being the state's interest because of the potential of fetal life and the mother's health.



**Figure: Rates of abortion over the US and INDIA is the same**

Source: <https://www.google.com/imgres?i>

This framework was modified in *Planned Parenthood v. Casey*. In the case of *Planned Parenthood vs. Casey* in 1992, the court upheld the decision in *Roe*, but set aside the trimester framework for the “undue burden” test. In this regard, any state enactment that seeks to act as a barrier to any woman who wants to undergo the procedure before fetal viability was found to be unconstitutional. Nonetheless, each year, individual states passed more restrictive laws challenging *Casey*’s standard and established a fragmented landscape of abortion in the United States (Guttmacher Institute, 2021).

### Reversal in *Dobbs v. Jackson Women’s Health Organization* (2022)

Scalia and Reinforced by Kennedy The state has utilized the due process clause to the utmost when it comes to regulating contraception eliminating any claim that the Constitution requires that States permit women to procure pre-born children or fetal life in anyway that is not suicidal, for example Mississippi and other States could have passed laws to force pregnant women to give birth or carry unwanted pregnancies to term but if elected they will not enough votes to override the President’s veto The dramatic change in the legal landscape of *Dobbs v. The decision* in regards to *Roe* and *Casey* was made recently in *Jackson Women’s Health Organization* (2022) and the Supreme Court held that there is no right to abortion under the Constitution of the United States of America. Self-supporting from *Roe v. Wade*, the Court approved a Mississippi regulation within 15 weeks, making abortion illegitimate (*Dobbs*, 2022). This was instrumental in returning the decision to allow or prohibit abortion to the individual states, and it roused a snowball effect of state laws banning and restricting abortion that were not an option before *Roe*.

In response to *Dobbs*, at least 14 states have enacted near-total bans on abortion, though many include some exceptions for rape, incest or the health of the mother (Center for Reproductive Rights, 2023). This affects vulnerable populations such as low-income women, People of Colour, and the LGBTQ+ community because they have long been disadvantaged when it comes to getting access to quality healthcare services (Stevenson, 2023).

### Federalism and Legal Inconsistencies

Given that the US has a federal system of government, there are vast differences in the availability of abortions. While some states like California support women’s reproductive rights to the extent of enshrining abortion in law, other states in the US like the state of Texas and Alabama prohibit the procedure. This causes confusion especially to the providers and to those patients who live close to state borders or in restrictive states.

Also, there has been a significant rise in interstate travel to access the procedure, which not only raises financial costs but also puts individuals in need of services through an emotional rollercoaster. Per the Guttmacher Institute analysis conducted in 2023, more than 18% of post-*Dobbs* abortion patients had to cross state lines compared to only 6% before (*Guttmacher*, 2023).

### Socio-Political Effects and Implication on Other Sectors especially the Marginalised Ones

It should be noted that the regulation of abortion remains a battleground of religious conservatism and political partisanship in the U.S. It can also be said that the *Dobbs* decision embodies a more general phenomenon connected with the changes in Supreme Court influenced by the appointment of conservative justices, which proves that political discourses still

remained an important factor in shaping reproductive rights (Ziegler, 2022).

The legal restriction has imposed a negative impact on the accessibility of abortions; medical practitioners practicing abortion in some jurisprudence states are at risk of incarceration. Also, some clinics have shut down due to legal issues even in states where abortion is legal, thus the accessibility has dramatically reduced (AP News, 2022).

Marginalized communities are hit hardest. Black and Latina women who are more often disadvantaged and have poorer access to medical care are more at risk for being forced to continue their pregnancies. Additionally, Transgender and Non-binary people face other challenges caused by the gender disparities in managing their health and the lack of consistent and affirmative documentation (Perry et al., 2023).

Human rights organisations too have not been left out in expressing their disapproval of the U.S stance change. The UN High Commissioner for Human Rights further stated in 2022 that stripping abortion rights is contrary to some of the fundamental human rights, including the right to bodily integrity and non-discrimination (UNHCHR, 2022).

## COMPARATIVE ANALYSIS

### Common Themes: Autonomy and Legal Barriers

While Indians and the U.S share the common concept of reproductive autonomy in the case of abortion laws and policies, they still have hurdles. While abortion, especially under the recent change of law in MTP Act in India in 2021, can be procured in India, it can only be done after seeking a medical recommendation and is not socially accepted (Srivastava, 2022). In the U.S., *Dobbs v. Jackson* (2022) withdrew the federal protection that formerly existed and reduced the disparities (Guttmacher Institute, 2023).

### Contrasts: Centralized vs. Federal Framework

India has a singular law for the entire country and the U.S has a federal system which dramatically differs significantly when it comes to abortion (Ziegler, 2022). While the Indian model ensures legal provision similarity, what we have witnessed post *Dobbs*, is the variation state by state in the United States.

### Judicial Activism

Judiciaries in both countries have tried different roles. India's *Suchita Srivastava v. Chandigarh Administration* (2009) supported it in the context of 'Bodily Integrity', still, the U.S courts have been indecisive till the latest amendment in *Dobbs v Jackson Decision* (UNHCHR, 2022). Perry et al., 2023).

## SOCIAL JUSTICE PERSPECTIVE: BRIDGING THE GAPS

### Tackling Inequality: Access, Consent, and Stigma

Abortion is still restricted depending on structural equity. In India, rural area women suffer from the geographic constraints to travel for an abortion and information decay while post-*Dobbs* rulings affect the black and the poor in the United States (Stevenson, 2023). Srivastava, 2022). Consent laws, especially for the minors and persons with disabilities are not well defined and sensitive in both nations.

### Legal Reforms and International Alignment

Both countries need to change their abortion laws and policies to conform to these international human rights instruments like CEDAW and ICCPR which address the issue of bodily integrity and equality (UNHCHR, 2022). Abortion should not be seen as an exceptional health right but a human right which needs reformist policy and legislative changes to do away with any unnecessary restrictions medically.

## CIVIL SOCIETY AND FEMINIST MOBILIZATION

The reform processes have been empowered by transnational feminist movements, and civil organizations. It is important for them to continue holding such continued ensure that abortion is not stigmatized among women and on the governments for putting equity based policies into practice (Perry et al., 2023). Center for Reproductive Rights, 2023).

## CONCLUSION

As a result of the analysis of this paper, the legal and social legalities of abortion in India and the United States have been viewed from a social justice perspective. As shown above, while both countries allow some degree of legal abortion in some circumstances, the procedures and legislations applied may vary. India's centralized structure provides comprehensive service across the country but is challenged by medical gatekeeping, a lack of awareness of the program, and cultural stigmatization. On the other hand, the United States has a less centralized structure of laws after the overturning of *Roe v. Wade*, which has resulted in gaps in the physical access depending on region, financial status, and color.

Abortion laws need to take into consideration all women and they must be based on the values of autonomy, equality, and dignity. It is therefore evident that current legal reforms must go beyond the mere issue of access and consider other fundamental issues such as informed consent, cultural perception, rural populations, and sexuality education. The existing domestic laws can be aligned with international human rights standards, in an effort to improve the existing laws to be more just and fair.

However, reforming is not limited to the mere passage of innovative policies but also endeavoring to implement substantive changes to the structural inequalities that exist in legal systems. These are Caste and Class System in India and Racism or Socio-economic class systems in America where minorities are overburdened. For reproductive justice to be achieved, there is need for more legal empowerment of women, active participation of women and minorities in policy formulation, and continuing involvement of the judiciary.

The future steps are to travel the legal processes together, to keep up the social pressure and to remember that gender justice is not negotiable. In striving for social justice for the currently marginalized communities or for changing the legal culture that does not sufficiently support reproductive rights as human rights, both India and the United States have the opportunity to draw upon the experiences of the other nation.

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