

Research Article

Reproductive Rights and Abortion Access for Rape Survivors: An Examination of Legal and Social Challenges in India

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ABSTRACT

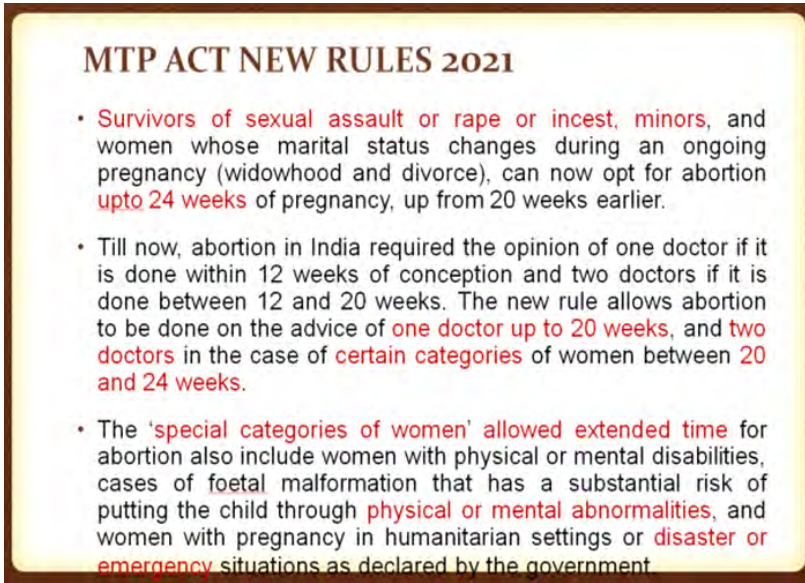
Reproductive rights, particularly the right to abortion for rape survivors, remain critically inaccessible for many women and girls in India. This paper examines the legal, social, and cultural barriers that impede these rights, drawing on the extensive experience and empirical evidence presented by Dr Mamatha Raghuv eer Achanta, founder of Tharuni and Technical Partner of Bharosa centres. The discussion explores the intersection of gender-based violence, reproductive health, and legal frameworks, highlighting the urgent need for reforms to ensure reproductive autonomy and justice for survivors.

Keywords: Reproductive rights, Abortion, Rape survivors, Gender-based violence, Legal challenges, Social barriers

INTRODUCTION

Reproductive rights are fundamental human rights essential for women's and girls' autonomy, dignity, and equality. These rights encompass access to comprehensive reproductive health care, including the right to safe and legal abortion. However, in India, these rights are frequently denied, particularly to rape survivors, who often face insurmountable barriers in their quest for justice and autonomy over their bodies. Despite legal provisions under the Medical Termination of Pregnancy (MTP) Act, 1971, accessing abortion services remains a significant challenge. This challenge is compounded by societal stigma, legal hurdles, and inadequate healthcare infrastructure, which collectively undermine women's ability to exercise their reproductive rights.

The MTP Act, while progressive for its time, has not evolved sufficiently to meet the needs of contemporary Indian society. Rape survivors, in particular, find themselves navigating a complex web of legal and bureaucratic obstacles to access safe abortion services. The societal stigma attached to rape and abortion further exacerbates these challenges, often leaving survivors isolated and without support.



MTP ACT NEW RULES 2021

- Survivors of sexual assault or rape or incest, minors, and women whose marital status changes during an ongoing pregnancy (widowhood and divorce), can now opt for abortion upto 24 weeks of pregnancy, up from 20 weeks earlier.
- Till now, abortion in India required the opinion of one doctor if it is done within 12 weeks of conception and two doctors if it is done between 12 and 20 weeks. The new rule allows abortion to be done on the advice of one doctor up to 20 weeks, and two doctors in the case of certain categories of women between 20 and 24 weeks.
- The 'special categories of women' allowed extended time for abortion also include women with physical or mental disabilities, cases of foetal malformation that has a substantial risk of putting the child through physical or mental abnormalities, and women with pregnancy in humanitarian settings or disaster or emergency situations as declared by the government.

Recently new rules have been stipulated for MTP ACT 2021—very comprehensive rules have been brought in and they have increased the time period up to 24 weeks for abortion. It also says that one Doctor's opinion is enough for up to 20 weeks and two doctors' for certain categories, for up to 24 week's pregnancy. Yet, this is not being implemented by the health department till today'. Special category of women include those who have mental or physical abnormalities from the emergency or disaster situations, for such cases, the rules say, a state-level medical board should be set up and the board should decide on cases of 24 weeks of gestation. She is concerned about the delay in implementation of rules... 'when will they set up the board? She says that the government needs to set up these boards even at the district level because the women can reach out to the boards easily, if the facility is there at the district level'.

The rules also say that the Board need to examine, give their opinion within three days and also take up the termination procedure within five days. This time period also may help in speeding up these procedures and it also says that they should maintain confidentiality of the survivors; they should not reveal the name or the particulars of

the rape survivor. But there are some flaws in these rules also. Abortion is seen as something not as a woman's right rather it is considered as a privilege. They have to seek permission from the board or even the state. And also when we are talking about the board, you have to have some professionals who are well-trained medical professionals but everybody is aware that in any Primary Health centre we don't have gynaecologists or trained neo-natal medical professional. There is 75% shortage and we don't know when this 75% shortage will be filled in. There are also other concerns, if they have to set up these boards perhaps, we have to bring in lot of privatisation because without that we cannot give these services efficiently. Because when you look at Arogyashree or some other programmes taken up by the government in collaboration with private hospital, only then the poor and needy are getting some healthcare. Similarly, maybe this is also to be done through private hospitals then only we can fill up this 75% shortage.

The first thing we can do is create awareness. People even educated also don't know where to go, whom to approach. There is a survey which says that over-the-counter pills, I-pills and all those pills which are available are creating many hormonal and other problems and are still available in the market and most of the young girls are opting for them. Without the proper sensitisation and awareness among the girls, we cannot give them these rights. We should also use trans-inclusive language to include transgender persons that is very important. Then train and sensitise medical boards, they have not been trained and informed about the new rules in any hospital. Nobody knows anything about these rules, the rules have not yet been implemented. Every time they ask for a court order, we have to go from post to pillar to get the court orders on behalf of these victims but what about people who are not having any support or help and who are in a rural area or in a tribal area? We have to have mobile vans, maybe for helping these victims to reach out to the medical boards to get the termination of pregnancies. Complete autonomy has to be given to legally and medically terminate the pregnancy for women and also give extension to the gestation period-24 weeks/ 26 weeks it all depends on each case if the woman or the girl is healthy and she can take care because there are umpteen number of new medical technologies which have come into place if she can use all those technologies, the period limit can be extended. Similarly unsafe abortions have to be addressed. We have to have control on all the pharmaceutical companies which are bringing out many kinds of pills and even on the medical outlets where these pills are being sold and further, we have to stop those advertisements of I-pills because they are misleading. Every case is different and only under medical guidance they have to use these pills otherwise they will suffer.

This paper, based on insights from Dr Mamatha Raghuveer Achanta's extensive work with Tharuni and Bharosa centres, delves into these multifaceted issues. Dr Achanta's

experience highlights the harsh realities faced by rape survivors in India and the systemic failures that perpetuate their suffering. By examining the intersection of gender-based violence, reproductive health, and legal frameworks, this paper aims to shed light on the urgent need for reforms. It proposes comprehensive strategies to ensure reproductive autonomy and justice for survivors, addressing both the immediate needs and long-term systemic changes required to protect and uphold reproductive rights in India.

LEGAL AND SOCIAL BARRIERS TO ABORTION ACCESS

Legal Framework

The MTP Act, 1971, and its subsequent amendments theoretically provide a framework for abortion services in India, especially in cases of rape. However, the implementation of these laws is fraught with challenges. The requirement for third-party authorisation, lack of trained medical personnel, and societal stigma are significant barriers. According to Dr Achanta, these barriers often lead to denial of services, poor quality of care, and further victimisation of rape survivors (Achanta, 2024).

Societal and Cultural Barriers

Cultural practices and societal norms significantly impede women's and girls' access to abortion services. Survivors of rape are often silenced and stigmatised, preventing them from seeking necessary medical care. This societal silencing is compounded by the trauma of sexual violence, leading to severe psychological and physical health consequences (Achanta, 2024).

Empirical evidence suggests that gender-based violence in India is pervasive and deeply rooted in societal norms that prioritise family honour over individual rights. This violence not only violates the rights of women and girls but also reinforces a cycle of oppression and marginalisation (United Nations, 2020).

THE ROLE OF BHAROSA CENTRES AND THARUNI

Bharosa Centres

Bharosa centres, established in partnership with the Telangana Police, serve as rape crisis centres providing comprehensive support to survivors of sexual violence. These centres offer medical, legal, and psychological services, yet they face significant challenges. Data from these centres reveal that many cases involve minors who have been abused by individuals known to them, including family members (Achanta, 2024). The high incidence of abuse within the family underscores the need for sensitive and accessible support systems.

ABORTION RIGHTS

- Restrictive abortion laws **violate women's rights**, including the right to life, to health, to equality, to privacy, and to live **free from discrimination** – UNHCR
- CEDAW's General Recommendation 35 on gender-based violence recommends establishing **state accountability** in the case of failure of services to **rape survivors**.
- **India's national obligation** with regard to rape-related pregnancies is also clear. National guidelines issued to medical providers on provision of medico-legal care specifically state that abortion services are required for rape survivors. Failure to treat rape survivors in India is a punishable offence under **Indian Penal Code 166. B**. Punishment is accompanied by a fine and/or **imprisonment up to one year**.

Tharuni

Tharuni, founded in 2000, has worked extensively on issues such as child labour, child marriage, infanticide, child sexual abuse, and human trafficking. The organisation has trained thousands of girls in rural areas on their rights, life skills, and reproductive health. Tharuni's initiatives have empowered many young women to become change agents in their communities, advocating for their rights and fighting against gender-based violence (Tharuni, 2020).

THARUNI'S WORK ON SEXUAL & REPRODUCTIVE HEALTH RIGHTS

- Trained **19,000 girls** on Reproductive Health Rights since 2000
- Conducted campaigns on HIV/AIDS and reproductive rights for **90,000 women** and **30,000 young men**
- Reached out to Tribals in **450 thandas** on HIV/AIDS and reproductive health
- Helped in formation of **100 youth clubs** to work on SRHR in rural areas
- Organized **Gynic and Cancer** detection camps for rural women



CHALLENGES IN REPRODUCTIVE HEALTH SERVICES

Inadequate Healthcare Infrastructure

The inadequacy of reproductive health services is a significant barrier to abortion access. Many primary health centres lack trained gynaecologists and neonatal medical professionals. This shortage, combined with the need for third-party authorisation, creates insurmountable hurdles for women seeking abortions (Achanta, 2024).


A study by the Population Council (2015) revealed that only 3.4 million of the 15.6 million abortions performed annually in India were conducted in hospitals. The majority were unsafe, leading to severe complications and even death. This statistic underscores the urgent need for accessible and safe abortion services.

Legal and Regulatory Hurdles

The legal process for obtaining an abortion, especially for rape survivors, is cumbersome and often traumatic. A recent survey by Pratigya (2020) analysed cases of medical termination of pregnancy brought before the Supreme Court and High Courts between June 2016 and April 2019. The study found that many women were denied services, highlighting the inconsistency and rigidity of the legal system. For instance, in some cases, courts denied abortions due to the pregnancy surpassing the legal gestational limit, forcing survivors to carry pregnancies to term against their will (Pratigya, 2020).


STATUS OF SRHR FOR WOMEN IN INDIA

- Many women **lack the freedom** to plan pregnancies but also face multiple barriers when they seek abortions.
- India as a society is **unable to ensure reproductive autonomy** to the women
- In a **report** by New Delhi-based **Pratigya**, an NGO that works to advance women's rights to safe abortion in India, from June 2016 to April 2019, the Supreme Court and High Courts of India have seen a total of 194 writ petitions from women who have sought to have their pregnancies medically terminated.
- Out of the 173 cases before **High Courts** in India, MTPs were permitted in 139 cases and denied in 29 cases.

A photograph showing three pregnant women standing side-by-side. They are wearing traditional Indian clothing: a red sari, a blue floral sari, and a blue sari. They are all smiling and looking towards the camera. The background is a plain, light-colored wall.

CASES OF CONCERN

- In 2017, a **17-year-old girl** who was rejected by her family due to her pregnancy, was also rejected by hospitals and gave birth in the street
- In an **Honour Killing** in a tribal hamlet in Naigonda district, the family removed the foetus from the womb of their daughter who married against their consent before doing the last rights.
- An **adolescent died** when she was aborted by a non-registered practitioner without the knowledge of her family as the pregnancy was a result of sexual abuse.
- In Chandigarh, a **10 year old victim** had to deliver a child in 2017 because by the time her petition for termination of pregnancy reached the Supreme Court, the medical board appointed to examine her found that terminating the pregnancy at that stage would put her **life at risk**.



Abortion in India

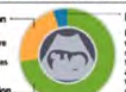
Abortion has been legal in India since 1971

- Under the Medical Termination of Pregnancy (MTP) Act, 1971, abortion is legal up to 20 weeks of pregnancy, based on certain conditions and when provided by a registered medical practitioner at a registered medical facility.
- According to the MTP Act, consent of one medical practitioner is required in cases of first trimester abortions and two medical practitioners for second trimester abortions.

Findings from the Guttmacher and Population Council study

15.6 million abortions occurred in India in 2015

3.4 million
(22%)
abortions were obtained in health facilities



0.8 million
(5%)
were through methods other than medication abortion and were probably unsafe

11.5 million (73%)
Were obtained outside medical facilities through medication abortion

- Of the 3.4 million facility-based abortions, public sector facilities accounted for 24%, whereas private sector facilities accounted for 73% of all facility-based procedures, while NGO facilities accounted for the remainder
- Of the 48.1 million pregnancies, about 48% were unintended and abortions accounted for one-third of all pregnancies

Situation in U.S.

- Alabama has become the latest state to ban abortion
- The law bans abortion in cases of rape and incest
- The ban has inspired protests across the U.S., with activists stating that the decision for pregnancies should be of the woman

More than half or **56%** abortions in India are **unsafe** and 10 Indian women die daily due to unsafe abortion, as per a 2015 report by Ministry of Health and Family Welfare that cites data from research done between 2001 and 2004.

Even during pandemic-induced lockdowns, in four months to August 2020, 112 cases of abortion appeals were heard across 14 High courts in India, according to the [report](#) authored by Rastogi for Pratigya.

There were almost 194 written petitions from women regarding the medical termination of their pregnancies. And in the High Court of India, almost 173 cases were found of which 29 cases were denied permission. So we can see that abortion in India is not a right, it is a privilege. She further speaks of the unjust practices she has witnessed in the trajectory of her life as an activist.

‘A 17 year old in 2017 was rejected by her family due to her pregnancy and she couldn’t get services at hospitals, as a result she gave birth in the street of Hyderabad. Similarly honor killing, a women, because she has married a person in a tribal, the parents killed her and removed the foetus from her womb before performing the last rites! This was very

gruesome incident which she says she had to go through. Similarly an adolescent girl who was studying in 8th class in a government school was manipulated and sexually abused by some person, was impregnated and she went to a non-registered practitioner in Hyderabad; she died because of complications. In Chandigarh a 10 year old victim approached court, here the court said 'we cannot give permission for her to remove or have medical termination of pregnancy because her life is at risk and she has to give birth as the pregnancy had crossed the legal age'. These cases are just a minuscule because so many cases are there in the field but are not reported. More than 56% of abortions in India are unsafe, because people don't know where to go whom to approach and they are very scared because there is no confidentiality no security provided to them- ten woman in India die daily, everyday almost ten women because of this unsafe abortions that is what the Minister of Health report says. During pandemic lockdown in four months from August 2020, 112 cases of abortion appeals were heard across 14 high courts in India, according to the reports authored by Rastogi for Pratigya. In 2015, according to Population Council study, there were about 15.6 million cases of abortions, out of which only 3.4 million were conducted in hospitals, all others were done by some others and we can well imagine, they must have landed in complications.

If we see the High Court figures focusing only on the rape cases, there were many cases- almost out of 46 cases only 15 were denied 31 were allowed. In some of the cases like which happened in Orissa the High Court said because they had crossed the term of 24 and half weeks, it cannot give permission to the victim. In those circumstances the victim has to give birth to the child and always the courts have to depend on the opinion of the medical boards and it takes long time. There is so much pendency in the courts, for instance, in one of the cases recently we filed, she says, it took us two weeks to get the permission from the High court, and that led to more complications for the victim who was only 17 years old in a rape case and she had to deliver the baby'.

RECOMMENDATIONS FOR REFORM

Creation of Awareness

Educating women and girls about their reproductive rights and the availability of abortion services is crucial. Comprehensive awareness campaigns can help demystify abortion and reduce the stigma associated with it. According to a study by the Guttmacher Institute (2018), awareness and education are key to increasing the utilisation of reproductive health services.

Trans-Inclusive Language

Laws and policies should use inclusive language to ensure that transgender persons' abortion rights are recognised and protected. This inclusivity is essential for creating a supportive environment for all individuals seeking abortion services (UN Women 2019).

Training Medical Boards

Members of medical boards should be trained and sensitised to the new rules and regulations regarding abortion, ensuring they can provide informed and compassionate care. This training should include updates on the MTP Act and best practices for handling sensitive cases involving minors and rape survivors (WHO, 2020).

Complete Autonomy

Women should have complete autonomy to legally and medically terminate their pregnancies without unnecessary barriers or delays. This autonomy is fundamental to ensuring their reproductive rights and health (Center for Reproductive Rights, 2019).

Extension of Legal Abortion Period

The legal period for abortion should be extended to accommodate the unique circumstances of each case, utilising advancements in medical technology. Research indicates that extending the gestational limit can significantly reduce the number of unsafe abortions and improve health outcomes (Royal College of Obstetricians and Gynaecologists, 2017).

Reducing Unsafe Abortions

Efforts should be made to reduce the number of unsafe abortions through better regulation of pharmaceutical companies and medical outlets. Additionally, public health campaigns should address the risks of over-the-counter abortion pills and promote safe medical practices (WHO, 2020).

CONCLUSION

Ensuring reproductive rights for rape survivors in India requires concerted efforts to address legal, social, and cultural barriers. Dr Achanta's work with Tharuni and Bharosa centres highlights the critical need for reforms that provide survivors with the necessary support and services. By implementing comprehensive awareness programs, inclusive policies, and improved medical training, India can move towards a future where reproductive rights are fully respected and upheld.

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