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“In a significant step backward for women's rights in the U.S. the Supreme Court overturned its own landmark 1973 judgement, which guaranteed abortion as a constitutionally protected right.

On the other hand, India, the other largest democratic country has further amended the MTP ACT 1971 in early 2021 and provided the legal right to women to terminate the pregnancy in 24 weeks (approximately 5 months) by having the approval of a doctor and performed by a medical professional at a recognised medical institution.”

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## **Women Health Rights - Where do two largest democracies stand?**

**Alok Srivastava**

**O**ne of the recent judgements in the United States of America or (US), on Medical Termination of

Pregnancy has raised many eyebrows not only in the US but across the globe. Medical Termination of Pregnancy or abortion is a constitutional right in most countries including India except 24 countries including the USA, as per the Centre for Reproductive Rights.

Considered one of the largest democracies in the world, the USA's recent court judgement annulling abortion as a constitutional right for women, read:

*'We therefore hold that the Constitution does not confer a right to abortion... and the authority to regulate abortion must be returned to the people and their elected representatives'...*is a matter of concern from women's health rights perspective.

On the other hand, India, the other largest democratic country but a developing economy, has a Medical Termination of Pregnancy Act, 1971 that allows for legal abortions under specific conditions within 20 weeks of pregnancy. This Act was further amended in early 2021 and provided the legal right to women to terminate the pregnancy in 24 weeks by having the approval of a doctor, and performed by a medical professional at a recognised medical institution.

Medical termination of pregnancy or MTP is considered an important right of women. MTP is also called as 'Safe Abortion', wherein trained medical practitioners provide the

required services, through medicine or surgically, depending upon the period of pregnancy, condition and growth of the fetus.



As per the Census of India 2011, around 19 percent of India's female population is in the age group of 15–24 years, among the largest reservoir of young population in the world. A sizeable proportion of young women in India get married, pregnant and deliver for the first time at this age. As per NFHS-5 (2019- 21), a little less than 25 percent of the women in the age group of 20-24 years get married before the legal age of marriage i.e. 18 years and the adolescent fertility rate for women aged 15-19 years is as high as 43 percent.

No doubt, a plethora of factors including lack of awareness and agency makes them vulnerable to poor reproductive health outcomes, including teenage pregnancy, unintended pregnancy, and unsafe abortion and related morbidity and mortality. Young women in India constitute 30% of total maternal mortality in the country. The highest maternal deaths (38%) in India are also recorded for young women ages 15-24 years, as per Registrar General of India's special bulletin on maternal mortality in India, 2015-17.

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The situation is no better in the USA, even though one of the most developed countries on all indicators including health. As per Guttmacher Institute in 2011, nearly half (45%, or 2.8 million) of 6.1 million pregnancies in the United States were unintended. Specifically, 27% of all pregnancies were “wanted later” and 18% of pregnancies were “unwanted”.

As per Pew Research Center, two organizations – the Centers for Disease Control and Prevention (CDC) and the Guttmacher Institute – try to measure total abortions figure in US, but they use different methods and have different figures. CDC reported a yearly national total for abortions in 2019, as around 6.29 lakh abortions, slightly up from 2018. While Guttmacher’s latest available figures from 2020, say there were around 9.30 lakh abortions nationwide, up from 9.16 lakh in 2019. One can notice the difference between the estimation of the two organizations, a whopping 45 percent. The gap between the two figures is unbelievable!

Whatever may be the case but one thing is clear that a number of abortions reported or documented are not less. Therefore, women in US (or for that matter any country) demand to get legal and constitutional to avail of services for medical termination of pregnancy as their rights, is genuine and strong.

On the other hand, to meet the expectations of women with the changing time and needs, India has taken positive actions at the policy level. Governments, at both national and state levels, as well as health service providers and civil society groups are promoting institutional delivery and it has shown good results.

As per NFHS-5 findings, around 90 percent of the deliveries are happening at health facilities, public or private. This is a noticeable achievement and will play an important role in reducing maternal mortality.

Similarly, the other two key policy-level decisions i) **Paid Maternity Leave** and ii) **advancing the legal age for marriage for girls** along with the amendment in the MTP Act in the recent past, are equally landmark and further strengthen women’s health rights in India. In 2017, the government increased the paid maternity leave for women from 12 weeks to 26 weeks, in both public and private sectors. Surprisingly, in the United States, the Family and Medical Leave Act (FMLA) of 1993 provides a total of 12 work weeks of unpaid leave during any 12-months period for the birth of a child and the care of the newborn, except for a few individual US states and possessions.

As per the data of the US Bureau of Labour Statistics, only 17 percent of U.S. private-sector workers have access to paid family leave through their employers. More so because FMLA applies only to workers in companies with 50 or more workers. On the other hand, in India, in any organization with at least 10 employees, women employees have right to avail of 26-week maternity leave.

No doubt, few studies have suggested that longer maternity leaves have resulted to some extent in reducing promotions, upward mobility in management and getting raises in salary. However, but there is no doubt that the decision of the government stands out in terms of bringing women’s health causes to fore. These provisions may not see an

Irrespective of the challenges and obstacles one may perceive with regard to implementation and ease in access of these health rights initiatives by women, these amendments are undoubtedly worth appreciating and well-intended action to mainstream women’s health rights in India as a constitutional right.

Another noteworthy decision by the government of the day in India is to advance the legal age of marriage for women from 18 years to 21 years in 2022, which will definitely play a critical role in improving young girls' health by delaying their marriages and pregnancy but will also reduce maternal mortality.

immediate impact but in the long term they will help in at great extent in improving child and mother's health.

Another noteworthy decision by the government of the day in India is to advance the legal age of marriage for women from 18 years to 21 years in 2022, which will definitely play a critical role in improving young girls' health by delaying their marriages and pregnancy but will also reduce maternal mortality. It is further expected that young girls may get an opportunity to continue their education, which gets discontinued due to getting married.

In NFHS-5 findings, this emerged as one of the key reasons for girls dropping out of school along with other reasons like lack of interest, cost of education and to assist with housework.

In the US, child marriage is currently legal in 46 states (source: [www.newsnationnow.com](http://www.newsnationnow.com)). Even among states within US it varies significantly. As reported, the legal age is 17 years in 10 states, while 21 others set the standard at 16 yrs.

Like any other issue, which has social and economic consequences, both positive and

negative, there are some apprehensions about its negative impact as well. Particularly, MTP related recent amendments in India and US, must be a matter of healthy debates across different national and international platforms, to address the concerns of stakeholders and women, in particular.

As it is being critically analysed that law still does not recognize abortion as a woman's choice that can be sought on-demand; or women will have to seek out the opinion of two practitioners and a medical board for certain kinds of abortions is unfair.

Similarly, on advancing legal age at marriage poor families may not be able to borne expenses of continuing girls' education if they remain unmarried till 21 years; concerns with regard to the girls' safety and security, among others.

Irrespective of the challenges and obstacles one may perceive with regard to implementation and ease in access of these health rights initiatives by women, these amendments are undoubtedly worth appreciating and well-intended action to mainstream women's health rights in India as a constitutional right.

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