ORIGINAL RESEARCH ARTICLE

Reimagining reproductive justice: Comparative insights from France and the United States for India's evolving abortion jurisprudence

DOI: 10.29063/ajrh2026/v30i22.7

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Abstract

This article comparatively examines abortion laws in India, France, and the United States to evaluate how constitutional values, judicial interpretation, and public health frameworks shape reproductive rights. The study addresses the problem of whether India's evolving abortion jurisprudence adequately protects reproductive autonomy amid emerging global legal shifts. Adopting a doctrinal and comparative legal research methodology, the article analyses statutes, judicial decisions, and policy developments across the three jurisdictions. France's constitutional protection of abortion rights, the restrictive post-Dobbs approach in the United States, and India's evolving framework under the Medical Termination of Pregnancy Act collectively demonstrate contrasting legal responses to reproductive justice. The article reimagines reproductive justice as an issue of bodily autonomy, dignity, gender equality, and healthcare access rather than merely a medical or penal concern. The study finds that India can strengthen its reproductive rights framework through rights-based, accessible, and constitutionally grounded approaches. *(Afr J Reprod Health 2026; 30 [22]: 72-85).*

Keywords: Abortion Laws; France, Gender Equality; India, Reproductive Rights; United States of America (USA)

Résumé

Cet article examine comparativement les lois sur l'avortement en Inde, en France et aux États-Unis afin d'évaluer comment les valeurs constitutionnelles, l'interprétation judiciaire et les cadres de santé publique façonnent les droits reproductifs. L'étude aborde la question de savoir si la jurisprudence indienne en matière d'avortement, en constante évolution, protège adéquatement l'autonomie reproductive face aux mutations juridiques mondiales. Adoptant une méthodologie de recherche juridique comparative et doctrinale, l'article analyse les lois, les décisions de justice et les évolutions politiques dans ces trois juridictions. La protection constitutionnelle du droit à l'avortement en France, l'approche restrictive post-Dobbs aux États-Unis et le cadre indien en évolution, fondé sur la loi relative à l'interruption médicale de grossesse (Medical Termination of Pregnancy Act), illustrent collectivement des réponses juridiques contrastées à la justice reproductive. L'article repense la justice reproductive comme une question d'autonomie corporelle, de dignité, d'égalité des sexes et d'accès aux soins de santé, et non comme une simple préoccupation médicale ou pénale. L'étude conclut que l'Inde peut renforcer son cadre de droits reproductifs grâce à des approches fondées sur les droits, accessibles et constitutionnellement ancrées.*(Afr J Reprod Health 2026; 30 [22]: 72-85).*

Mots-clés: Lois sur l'avortement ; France ; Égalité des sexes ; Inde ; Droits reproductifs ; États-Unis)

Introduction

The global discourse on reproductive justice has increasingly shifted from viewing abortion as merely a medical or moral issue to recognizing it as a constitutional question of bodily autonomy, dignity, equality, and access to healthcare. Across the world, courts and legislatures are increasingly being called upon to adjudicate the boundaries of bodily autonomy, with reproductive rights and abortion access in particular emerging as one of the defining jurisprudential battlegrounds of the twenty-first century. Abortion is the termination of pregnancy before the fetus is viable, usually around 20–24 weeks gestation or 500 g weight.[1] Abortion has a history of usage spanning thousands of years in multiple cultures, such as ancient Egypt, Greece, Romans and India.[2,3,4] In these societies, people

used things like herbal remedies, physical techniques and rudimentary surgical procedures to end a pregnancy.[5] Sources from ancient India, including the Kama Sutra and Ayurveda, refer to abortion practice.[6] The majority of people adhered to religious dogmas, prescribed in Hinduism, Buddhism, and Jainism which promoted the notion of the sanctity of human life and discouraged the practice.[7] Colonial India marked a shift in the legal landscape with the introduction of the Indian Penal Code in 1860, which made abortion a crime.[8] This attitude did not change even after independence of India. However, despite various socio-economic issues, unsafe abortion was common over time. This historical evolution is significant because it reflects the gradual transformation of abortion from a criminal and moral issue into a rights-based constitutional discourse influencing contemporary reproductive jurisprudence.

The 20th century marked a turning point in the world when a global fight for women's rights and bodily autonomy caused many countries to adopt or change their abortion laws.[9] The progress made are two sides of the same coin: although women in countries with liberal laws had access to safe and legal abortion, there is no such access in developing countries. In particular, there are about 25 million cases of such abortions in several countries, resulting in maternal death and causing health problems.[10] Bodily autonomy is increasingly being recognised as a women's human right, and unavailability of abortion services harms millions of women, girls, and those who do not want to become pregnant. However, even today, legal, social, and economic barriers to safe and legal abortions persist, especially among marginalised communities. Against this backdrop, the present study comparatively examines how differing constitutional approaches in India, France, and the United States shape reproductive rights and influence the future trajectory of abortion jurisprudence in India.

Women are entitled to safe abortion; it is a basic right for gender equity, public health and economic well-being. Access to safe, legal abortions decreases maternal deaths, improves public health and alleviates pressure on health systems. Supporting reproductive autonomy allows families to make informed choices about their futures, a tool for breaking cycles of poverty and setting the groundwork for more stable communities. Although some countries still have restrictions or an outright ban on abortion, "international human rights law and women's organisations increasingly recognise that the right to abortion is a fundamental part of the right to reproductive autonomy and an essential component of the promotion of women's rights and gender equality".[11]

The study aims to identify comparative lessons from the French and United States legal experiences that may contribute towards strengthening a rights-based and accessible reproductive justice framework in India. The article deals with the changing paradigm of abortion laws in different jurisdictions, specifically India, the USA and France. The article starts with a basic overview of abortion and its longstanding role in society. Then, it discusses in greater detail how cultural, legal and moral perspectives have shaped public perception. The article also deals with the abortion laws in each country. Comparison on the statutes, society, judiciary role in determining abortion services. The article systematically compares the broader social and legal trends and their impact on women's reproductive autonomy in these different contexts. Through this comparative analysis, the article aims to identify specific doctrinal and policy lessons that India can draw from France's rights-based constitutionalisation of abortion and the United States' experience of legal volatility following the withdrawal of constitutional protection, with the objective of strengthening India's reproductive justice framework on the foundation of bodily autonomy, equal access, and institutional accountability.

Methods

This is a doctrinal and comparative legal study, structured as a narrative review of statutes, judicial decisions, and policy developments across three jurisdictions. The study is qualitative and non-empirical in nature, relying on normative legal analysis rather than primary quantitative data collection. The review article is a doctrinal legal research based on legal provisions, case laws, and policy perceptions regarding "abortion". The study primarily adopts a doctrinal and comparative legal

research framework to examine abortion jurisprudence and reproductive rights across India, France, and the United States. The study adopts descriptive and critical-analytical methodology in analysing cultural, legal and judicial perceptions of abortion in different jurisdictions, highlighting the global struggle for access to abortion. It is based on primary sources, including various laws and case laws related to abortion in all three jurisdictions. The comparative analysis is conducted through an examination of constitutional provisions, statutory frameworks, judicial decisions, and policy developments in the selected jurisdictions to identify convergences and divergences in reproductive rights protection. The secondary sources include academic writing, review articles, research articles, reports, blogs and scholarly commentary. A selective review of English-language legal and scholarly literature was conducted using databases such as Google Scholar, ScienceDirect, Scopus, and other relevant legal resources focusing on abortion laws, reproductive rights, constitutional interpretation, and medico-legal issues. Non-English publications were excluded. Search terms such as "Medical Termination", "Abortion", "Abortion Laws", and "Reproductive Rights" were used in titles, abstracts, and keywords. The selected studies were also hand-searched to enhance the robustness of the findings. The analysis is based on normative arguments, and the article does not include primary quantitative data or independent numerical evidence.

Ethics approval

Not Applicable.

Results

This section presents the findings of the doctrinal review, set out jurisdiction by jurisdiction. It traces, in turn, the legislative and judicial trajectory of abortion law in the United States, India, and France, establishing the descriptive foundation for the comparative discussion that follows.

From constitutional rights to legal uncertainty: The decline of abortion rights in United States of America

In the United States, abortion continues to be a highly contentious issue, involving a series of complicated interactions between medical, moral and legal issues that have deeply troubled and divided Americans for years.[12] Historically, before the 1820s, abortion was not a topic of public discourse, due to societal expectations (and patriarchal culture) for most women to have many pregnancies, with a majority of them being carried to term. At that time, if a woman wanted to have an abortion, she could find someone trained to perform the procedure with fewer challenges. The attitude at the time was that it was a married woman's duty to bear as many children as possible, and the more women had, the better they were fulfilling their duty as a homemaker to her husband and children.[13] As a result, the prevalence of abortion was low, primarily due to the fact that most women wanted to have a child.

However, the Societal attitudes changed over the course of the 19th century, and after this time, the trend towards larger family sizes weakened.[14] It was this turnaround in views about the need for abortion that was reflected in dropping birth rates. A pivotal point came in the year of 1858 when the American Medical Association (AMA) began a rigorous campaign which led to abortion's criminalisation in the first trimester of pregnancy.[15] By 1890, abortion was generally unlawful, with an exception if a woman's life was at stake. The change in law meant the penalty for performing or aiding an abortion was restrictive, and this included women who sought advice on how they might secure an abortion.[16] Even with these laws, women sought abortions anyway, and at significant physical risk, by resorting to unsafe measures for reproductive care.

It was somewhat easier to get an abortion in urban areas, especially for richer women, but access varied depending on socioeconomic status, race and religion. Discussion over abortion further developed as the early 20th century continued, concurrent with growing involvement in the labour force by women, and the emerging demand for reproductive rights.[17] Despite the changing attitudes towards family size, demand for abortion services was still strong, and many women increasingly demanded the right to choose, wanting more say in decisions about their families and their lives. The absence of accessible contraception only made matters worse, leading to a constant need for abortion as a method of family planning.

Through that time, states acted by passing a wide range of laws that had the effect of making abortion illegal except when a woman's life was at stake. Punishments for abortion depended on the stage of pregnancy and whether fetal movement (Known as "quickening") was felt, with more severe penalties. As public opinion changed, more and more people, regardless of their religious beliefs, agreed that abortion was wrong, and more and more laws were passed to express this belief. But despite all, many medical practitioners never stopped performing abortions clandestinely, with help from friends who whispered where to go and whom to see.

Awareness of the issue grew in the early 1900s, but many Americans remained indifferent. In 1911, the discussion about the acceptability of unmarried women obtaining abortions was starting to appear, indicating a change in public attitude. By the 1930s, the possibility of legalising abortion was growing. In the 1950s and the 1960s, however, some states started to liberalise their prohibitions, particularly when a woman's health was at risk or in instances of rape.[18] Colorado was the first state to relax its abortion laws in 1967, paving the way for others in the early 1970s.[19]

The Supreme Court decision in the *Roe v. Wade*, 410 U.S. 113 (1973) case was a watershed in the abortion debate. It held that the right to privacy in the Constitution protected a woman's decision to have an abortion, in consultation with her doctor, up to the point at which the foetus was developed enough to survive outside the womb. The verdict of the Supreme Court stirred up a lot of controversy, especially in the states, which is highly religious. In trying to protect the woman's reproductive rights, the Court has left life and death decisions to the medical profession and the woman herself. The ruling made abortion legal nationwide, asserting a constitutional right that gave them autonomy over their reproductive decisions.[20]

In 1992 a new controversy arose when the Supreme Court reconsidered the *Roe v. Wade* case in Planned Parenthood of South-eastern *Pennsylvania v. Casey*, 505 US 833 (1992). This case exposed diametrically opposite views among the Justices: some on the side of Roe's principles and others attempting to constrict its reach. In the end, the ruling enabled states to place some restrictions on abortion without overturning the central right announced in Roe.[21] But this resulted in more state-level restrictions, in particular parental consent laws and waiting periods.

Supreme Court in case of *Dobbs v. Jackson Women's Health Organisation*, 597 U.S. 215 (2022) fundamentally changed the trajectory of the abortion debate. The history of abortion rights was transformed in a way that almost no one could have predicted, refashioning both *Roe v. Wade* and its precedent in *Planned Parenthood v. Casey*. Court ruled that the Constitution does not grant an absolute right to abortion and permitted some regulation of it by government if regulations are not determined to place an "undue burden" on women seeking abortions. The ruling came in response to the Mississippi Gestational Age Act, which banned nearly all abortions after 15 weeks except in cases of medical emergencies or severe fetal abnormalities. The Supreme Court, relying upon the historical background of abortion in the USA, which showed a general criminalisation of abortion at the time of the Fourteenth Amendment's ratification, held that abortion was not protected in the Constitution.

The impact of the Dobbs decision has been severe, spurring a flood of state-level restrictions that have fundamentally altered the legal context for reproductive rights in the USA.[22] Since then, many states have passed laws that heavily restrict or even ban access to abortion services. It underscored the necessity and urgency of enacting laws to protect women's right to abortion, as well as to recognise and affirm women's control over their bodies. The conversation about abortion in the USA remains defined by societal rifts. This reality underscores the importance of a robust dialogue that is aimed at protecting the rights and health of women in America.

However, the post-*Dobbs* landscape in the United States is not uniformly regressive. The decision triggered a significant counter-movement at the state level, demonstrating that reproductive rights can retain democratic vitality even in the absence of federal constitutional protection. Voters in California, Michigan, Vermont, Ohio, and Colorado, among other states, passed ballot measures enshrining abortion rights in their respective state constitutions.[23] By 2024, over twenty states had enacted constitutional or statutory protections for abortion access, creating a divergent

national landscape. Several states, including Illinois and California, enacted "shield laws" to protect healthcare providers and patients who travel across state lines to access abortion services.[24] In a significant federal development, the Supreme Court in *FDA v. Alliance for Hippocratic Medicine*, 602 U.S. (2024), unanimously rejected a legal challenge to the FDA's approval of mifepristone, preserving nationwide access to medication abortion.[25] These developments illustrate that the *Dobbs* ruling, while constitutionally transformative, did not terminate the broader democratic and legal contest over reproductive rights in the United States. Rather, it relocated that contest to state legislatures and ballot boxes, producing a patchwork of protections and prohibitions that continue to evolve.

How legislative and judicial actions have transformed abortion laws in India?

A number of landmark legislative and judicial judgments have shaped the course of India's road to abortion rights, reflecting the changing social perspective on women's reproductive rights. Before the path-breaking judgment in early 1970s, abortion was a crime under section 312 of Indian Penal Code 1860 (IPC) except when done to save life of the woman.[26] It is pertinent to note that the Indian Penal Code, 1860 has since been repealed and replaced by the Bharatiya Nyaya Sanhita, 2023 (BNS), and the equivalent provision governing unlawful abortion is now found in Section 88 of the BNS; however, the IPC citation is retained in this article in its historical context, as the MTP Act was enacted and evolved under that statutory framework.[27] This perception however, started shifting as the Medical Termination of Pregnancy (MTP) Act was passed in 1971 bringing about a major milestone in establishing the autonomy over her body for women.[28]

Prior to 1971, the Indian legal system neither stigmatised nor criminalised the acts of legally terminating a pregnancy. Written in colonial times, the IPC did not outlaw abortion in clear-cut language, instead assuming that the act was eschewed, due to its taboo, and did not subject it to legal scrutiny.[29] The lack of legal options was not just a risk to the lives of women, but also forced many of them to turn to illegal and unsafe methods to have an abortion. Realising the need for reform, the government of India formed the Shah Committee in 1964, which conducted a comprehensive inquiry into the socio-cultural, medical and legal aspects of abortion.[30] The recommendation of the Committee became the foundation for the MTP Act and suggested that abortion services be decriminalised and regulated.

The enactment of the MTP Act in 1971 was a turning point in the history of the legality of women's reproductive rights.[31] The Act legalised some abortions, permitting abortions to terminate pregnancies up to 20 weeks' gestation. Abortion was authorised in cases where continuing with pregnancy would pose an imminent risk to the woman's life, to her physical or mental health, or if the fetus would be born with severe bodily or mental defects or during a violation of woman's chastity, incest, or if pregnancy resulted from a failed contraception method.[32] The Act also expanded the reproductive rights regime to permit abortions by the Supreme Court under Article 142 of the Constitution of India, in exceptional cases, after 20 weeks of pregnancy.

The subsequent amendment to the MTP Act brought in significant change, including a terminology change of "lunatic" to "mentally ill person", a term which reflects a compassionate attitude towards mental health.[33] It also enumerated the places where abortion could take place and put forth a framework for compliance. The clauses of the Policy were designed to improve the availability of safe abortion services to women and increase the involvement of medical practitioners in providing abortion services. The 2003 rules further specified the procedure under the MTP Act for the constitution of the District Level Committees for supervising abortion service delivery. As per the rule, these committees should have at least one trained physician to ensure that abortion patients receive appropriate care and treatment. The rule was also broadened to cover more women who would qualify for termination after 24 weeks if they have been sexually assaulted, are underage or those who would put themselves at serious health risk or risk of fetal injury.[34]

The judiciary too has been quite pro-active in interpreting the MTP Act and furthering women's reproductive right through many of its leading judgments. In *Nand Kishore Sharma v. Union of*

India, AIR 2006 RAJ 166 (2005) the Rajasthan High Court dismissed a PIL seeking to quash some sections of the MTP Act on the ground that it is done to regulate abortions and curb its misuse. In the latter case, the Court noted that the law attempted to accommodate women's health concerns with social interests. In *Suchita Srivastava v. Chandigarh Administration*, AIR 2010 Supreme Court 235 (2009) a mentally ill woman was raped. The Supreme Court held that the woman could not be forced to have an abortion, for a woman has the final say on reproduction. The Supreme Court interpreted the right to reproductive choices in Article 21 of the Constitution of India. The Court further held that the right to make reproductive choices is also covered under Article 21 of the Constitution as a dimension of personal liberty. The Supreme Court on mass sterilisation In *Devika Biswas v. Union of India*, 10 SCC 726 (2016) the Supreme Court spoke on mass sterilisation. It felt that Article 21 would cover reproductive choices and if there was any sterilisation program by the state, it would be subject to privacy, consent and bodily integrity of an Individual.

A woman with an anencephalic fetus was permitted to have her pregnancy terminated in the historic case of *Meera Santosh Pal v. Union of India*, AIR SC 787 (2017). This decision marked a welcome departure by the Supreme Court as it expounded on consent and reproductive rights despite adversities: something that is much needed in this battle for autonomy. In *Mrs X v. Union of India*, 3 SCC 458 (2017) the Court allowed a woman to terminate her pregnancy for health reasons by drawing on previous judgments around women's reproductive rights. High Court on its Own Motion v State of Maharashtra, Cri LJ 218 (2017) which ruled that a woman could not be compelled to bear an unwanted pregnancy which would tantamount to violation of bodily integrity and mental distress. Interestingly, in the challenge of *XYZ v. State of Maharashtra*, Writ Petition (L.) no. 21977 (2021), the Court permitted a woman who was already 26 weeks pregnant to terminate her pregnancy due to socio economic and other likely psychological distress.

The MTP Amendment Bill, 2020 was passed in March 2020, which permits abortion outside of the 20 to 24 week range for only specific categories of women- minors, rape or incest survivors and women whose fetus have abnormalities. It was a progressive step in recognising women's human rights and independence. The amendment also clarified the roles of the doctors performing abortions. It lowered the number of medical opinions that abortions had to meet on the following grounds within certain limits of gestation.

Over time, the Supreme Court of India has made several landmark contributions to the recognition of the reproductive rights of Indian women, mainly shown in two contrasting rulings. In *X v. Principal Secretary*, SCC Online SC 1321 (2022), the court held that a right to choice for seeking a termination of pregnancy is essentially the right to bodily autonomy. The Supreme Court decision upheld the way unwanted pregnancies affected women. Echoing a landmark in the struggle for reproductive rights in India, the court asserted marital status as no ground for denying reproductive rights.

This optimism is sucked out of the Supreme Court in another case, *X v. Union of India*, Writ Petition (Civil) No. 1137 of 2023. In this case, a 27-year-old married woman sought anonymity over an application for an abortion at 24 weeks on mental health grounds, said to include postnatal depression. The court prioritised fetal viability over her reproductive autonomy, asserting that, despite satisfying the legal requirements for a termination, she is not entitled to one. Reproductive freedoms were sacrificed on the altar of a convoluted legal morass. One of the responses that could be raised in this case would be to raise questions about the constraint placed by MTP and its first part over a provider centric approached which required women to "fit into" eligibility criteria thus contracting their reproductive rights.

The decisions of the Supreme Court showcase the following pattern: The first case questioned non-consensual body invasions in the name of praising "the autonomy of women"; the second one highlighted a stigma, a trap that forces the idea that women must explain why they need an abortion. The chasm makes clear that a rights-based approach to reproductive health is necessary, one that values women's voices over medical and legal authority, and one that empowers them with their

own experiences instead of having them scrutinised by others. The outcomes of these two cases could hardly be more divergent, highlighting the ongoing battle for reproductive rights in India and the urgent imperative for change in a system that has consistently failed to address the needs, not to mention the choices, of people who become pregnant.

In a recent case of *Minor R Thr Mother H v. State of NCT of Delhi & Anr.*, SCC Online Del 383 (2023) involved a minor who sought to obtain an abortion at 24 weeks and 5 days' gestation because of rape. The Delhi High Court decided in her favour and set out the procedure for cases over 24 weeks of pregnancy and mandated pregnancy tests and consent for the termination of pregnancy. In *ABC v. State of Maharashtra*, SCC Online Bom 175 (2023) the Bombay High Court permitted a woman with fetal abnormalities to undergo an abortion at about 33 weeks, rejecting the findings of the medical board voting against abortion. The ruling also emphasised that the woman's socio-economic context and not just the woman's health had to be considered.

Several additional judicial and legislative developments further illustrate the progressive yet inconsistent character of India's reproductive rights jurisprudence. In *Rekha Agarwal v. Union of India*, Writ Petition (Civil) No. 1262 of 2023, the Supreme Court highlighted the operational gap between the MTP Act's statutory framework and its implementation, directing state governments to ensure the availability of trained medical practitioners for abortion services in public hospitals, particularly in underserved rural districts.[35] The Supreme Court's nine-judge constitutional bench in *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1, while deciding the fundamental right to privacy, affirmed that personal liberty under Article 21 encompasses reproductive autonomy, providing a robust constitutional foundation for the recognition of abortion as a right rather than a discretionary medical provision.[36] At the legislative level, the MTP (Amendment) Act, 2021 expanded the gestational limit for certain categories of women to 24 weeks and introduced the concept of the Medical Board for cases beyond that limit, signalling a legislative intent to balance accessibility with medical oversight.[37] Collectively, these developments reveal a judicial ecosystem that is broadly receptive to reproductive autonomy as a constitutional value, yet constrained by operational deficiencies including provider shortages, inadequate Medical Boards, and inconsistent state-level implementation that prevent the full realisation of the rights the statute and the Constitution formally recognise.

The legislative transformation of abortion rights in France

The issue of legalised abortion in France is highly contextual, deeply within its social, political, and historical landscape, and the development of its laws is a testament to a long and complex battle for women's reproductive rights. For several centuries, women in France had no say in their reproductive choices, according to the dictates of both custom and law.[38] Abortion has been illegal since the eighth century due to the religious morality of the period.[39] The church and the patriarchy had a stranglehold on power, and women's bodies were seen as nothing more than vessels to produce offspring; their autonomy was of no concern.[40] Despite the procedure had been criminalised, women continued to have abortions, often in secret, because they knew that if they were caught, the consequences would be severe, possibly resulting in their being put in prison or their death.

The 1804 Napoleonic Code strengthened the patriarchal control of women's bodies. The law also aimed to enslave women under the rule of their fathers and husbands, thereby preventing them from exercising their freedoms.[41] On top of being illegal, the penalty for abortion was severe, as the Napoleonic Code deemed it a crime. Women who sought abortions and women who performed abortions could each face dire consequences, including imprisonment, under that strict legal regime.[42] Though the law was stringent, it did not stem the tide of women seeking out abortions; many of them sought the procedure clandestinely, in conditions that were often hazardous. It was risky from a legal point of view, but also there was a demand for abortion, which indicates a lack of harmony between the law and the social reality. In other instances, women were acquitted when they were tried, indicating that the legal system itself

implicitly recognised that the law was not matching up with societal standards.[43]

With France dawning on the late 19th and early 20th centuries, ostensibly, "depopulation" concerns were a prime motive for even more rigid abortion laws. The enormous losses of the Franco-Prussian War of 1870 and the cataclysm of World War I left France worried about its future population. In return, the state doubled to ensure it would maintain and increase the birth rate. It was this demography-inspired law that, in 1920, reversed the course of reproductive rights, closing the door on abortion and expanding restrictions to include contraception. The law was a transparent effort by the state to control women's reproduction in the service of the welfare of the nation. Women were expected to bear the next generation and help the nation recover, and abortion was seen as a threat to that goal.[44]

Despite the severe penalties, there was a profound disconnect between what the law meant to do and what it achieved. But very few of those women were convicted on trial thanks to a changing attitude towards the moral acceptability of abortion in society, despite the stagnation of the legal system. However, the legal system cracked down more aggressively as time passed, and convictions mounted. The penalties were severe: any woman found guilty could be fined or imprisoned, and likewise, any person aiding an abortion could also be fined or imprisoned. This legal framework made it nearly impossible for women to access a safe, secure abortion, which ultimately forced them to seek services from unqualified practitioners, where they experienced tragic outcomes.[45]

During World War II, under the Vichy regime, the anti-abortion laws were taken to a new level of strictness. The state prohibited abortion not only as an offence against the unborn child, but as an act of treason against the state. This extreme measure indicates the government's desire to control morality and population expansion in a time of national emergency. Abortion was considered a major crime equivalent to treason, and some women who performed abortions received a sentence of death.[46] It was among the most repressive epochs in French legal history to date of abortion, as the state was asserting its authority over the bodies of women overall.

By the mid-20th century, however, winds of change had begun to blow. The post-war period saw a resurgence in feminist activity. Some women's groups even began to repudiate the profoundly patriarchal systems that had long governed their existence and the oppression of the Napoleonic Code. The feminist movement grew following the 1960s, with the onset of second-wave feminism, which dealt with things like reproductive rights, gender equality and bodily autonomy. One of the major victories for the feminist movement occurred in 1967 when France rescinded the birth control ban, which was one of the most important steps in the expansion of women's reproductive freedom.[47]

As this feminist tide continues to swell, the demand for the decriminalisation of abortion is intensified. Feminist groups, scholars, and political leaders started to advocate for changes in the law that would give women more control over procreation. The public attitude changed with a greater belief that women should have the right to seek safer and legal abortions. That movement eventually brought about the passage of the bill, known as the Veil law, in 1975, named after the Minister of Health, Simone Veil, a Holocaust survivor who later became a leading figure in the push for abortion rights in France.[48] The Veil law sanctioned abortion under certain circumstances: when continuing the pregnancy would have placed the woman in a situation of extreme distress, when the pregnancy was as a result of rape, or when the fetus had a severe abnormality, and it could be carried out up until the 10th week of gestation. Economic and social reasons were valid for having an abortion as well. This legislation was a revolutionary change for France because it was the first time that women in France were considered legally to be the proprietors of their own bodies and could decide for themselves when, or if, to have children.[49] However, the 1975 Veil law did not reflect complete reproductive rights for women in France. Abortion was very heavily regulated, still treated as a last resort rather than an open right.[50] Women who wished to obtain an abortion had to undergo a seven day period of reflection and provide reasons for their decision. Limited as it may have been, the law was a critical victory for the feminist cause and a key foot in the door of women's ability to control them. The Veil law has been amended several times over the years,

making abortion access in France more lenient. The law was revised in 1979 to permit abortions through the 12th week of pregnancy, providing women more time to decide what to do with regard to their reproductive health.[51] The law also included a conscience clause that permitted doctors to refuse to perform abortions on moral grounds. Of significance, therapeutic termination of pregnancy was allowed at any point in the course of gestation and required approval by two physicians, one being from either the Court of Cassation or an appellate court to have more stringent control.

Subsequently, the Veil Act was broadened by the Pelletier Act, 1979. It made access easier for all those women who were getting near the end of the allowable time span by introducing greater flexibility and shortening the waiting period for abortions from close to within the legal time limit.[52] Another progressive step forward was with the Roudy Act, 1982, which saw abortion integrated into public health policy. It created public funding for a portion of abortion costs via state health insurance so that women's reproductive rights would not be hampered just because of financial constraints in seeking an abortion.[53] One of the most significant developments occurred on September 23 1988, when France became the first country to introduce mifepristone (or "the abortion pill"). This gave women a way to end pregnancies without having surgery, making abortion more private and more available.[54]

In the 1990s, due to the comprehensive efforts, the legal framework dealing with abortion was strengthened through the Neiertz Act, 1993. The Act decriminalised self-managed abortion and recognised that women should not be criminally sentenced for assuming their reproductive choices. It also established the distinct crime of "obstruction to abortion", which focused on those who harassed or intimidated women seeking abortions.[55] The antenatal diagnosis centres known as Centres Pluridisciplinaires de Diagnostic Prénatal (CPDPN) were established on July 29 1994. These centres got the power to approve therapeutic terminations of pregnancy for fetal reasons, and at least one physician had to give permission for these terminations. This gave a specialised institutional framework to deal with complex medical cases, including severe fetal abnormalities.[56]

At the dawn of the century, French law on abortion was even more liberalised with the introduction of the Aubry-Guigou Act, 2001. The Act extended the legal period for elective abortion to 12 weeks of pregnancy and had radical provisions favouring a more liberal approach towards abortion. Non-hospital medication abortion was authorised up to five weeks, subject to the condition that there should be an agreement between the practitioner and the healthcare facility. The legislation overturned parental consent for minors and replaced it with the simple requirement that minors have an adult of their choice accompanying them so as to give young women more autonomy. Additionally, the initial mandatory psychosocial interview was no longer required for adults. In the case of therapeutic termination of pregnancy, the law manifested a multi-disciplinary approach to this realm, and doctors no longer needed to register with the Court of Cassation or appeal court, defusing its regulative nature by putting it in a medically grounded context.[57]

The expansion of permitted locations for medication abortions was introduced on December 19 2007, allowing it also to be carried out in family planning and health facilities, decentralising the provision of abortion services and making it more accessible. Subsequently, on July 7 2011, reform concerning therapeutic termination of pregnancy for the health of women offered an expanded balance in the professional composition of multi-disciplinary teams in antenatal diagnosis centres (CPDPNs), while it was designed and coordinated by a medical professional from these centres. A major breakthrough occurred on December 17 2012, when the French State Health Insurance began a full reimbursement of all expenses of an abortion, eliminating any financial barriers. Subsequently, on September 27, 2013, the official abortion information and prevention website (ivg.gouv.fr) was launched by the government, intended to guarantee easily available and accurate public information. On August 4, 2014, the law repealed the requirement that women provide a "situation of distress" argument to justify an abortion and extended the scope of the offence of obstruction so that it criminalises blocking or hindering access to information about abortion. The system was bolstered further, on January 26 2016, when

midwives were granted the power to prescribe medication abortions (bringing a second set of health professionals able to perform one part of the abortion services). Shortly after, on February 26 2016, surgical abortion services were accessible in health facilities, and the waiting period was removed for women who needed abortions, strengthening the principle of access without delay. The following year, a comprehensive abortion care package was established, with standardised medical and non-medical services for women.[58]

France remains staunch in its defence of the freedom to access abortion, and has never been clearer than during the COVID-19 health crisis. Emergency measures were put in place for the COVID-19 pandemic; through this, on April 14 2020, the French government allowed non-hospital medication abortion up to seven weeks of gestation, including consultations by phone or video call, due to access being limited during lockdown. The French government pushed the legal limit for abortion to 14 weeks in response to difficulties caused by the current pandemic. The state then took further steps to assist these female residents in obtaining medical access to abortions by allowing them to receive medications they required without the requirement that they physically go see a healthcare provider. That crisis response also revealed the state's flexibility and determination to protect women's reproductive health in defiance of daunting odds. On August 2 2021, abortion on medical grounds for embryo reduction was allowed by the law, and midwives were granted the right to conduct surgical abortions. This was succeeded by the Gaillot Act, 2022, which extended the legal limit for elective abortions to 14 weeks of pregnancy.[59]

The most pivotal legal change to France's abortion regulations came on March 8 2024, when abortion rights were enshrined in the French Constitution. Hence, this reform to Article 34 of the Constitution of France could be considered the cornerstone of the French legal and social history, since it raised the abortion compliance from a legal right to a constitutional freedom.[60] It held that "the law fixes the conditions under which a woman's freedom is guaranteed to her to proceed with a voluntary abortion". In the process, France secured the reproductive rights for women to choose in perpetuity and made it more difficult for future governments to chisel away this long-won freedom. The constitutional amendment passed overwhelmingly and with support from across the political spectrum, a sign of a broad consensus in France that women's sexual and reproductive rights are an existential part of their equality and autonomy. By enshrining abortion rights in its Constitution, France reaffirmed its commitment to protect and advance the rights of women even at a situation when reproductive freedom is under attack in countries globally.

France went from harsh criminalisation of abortion to fundamental rights under the French constitution, which is indicative of a progressive change in societal attitudes about women's reproductive rights. The legislative changes throughout the decades have gradually extended women's independence, from a very limited legal space to one that codifies abortion as a fundamental right. The journey illuminates both the tenacity and determination of feminist activists, the changing role of the nation-state in defending individual rights, and the trend in society to accept the principle of gender equality. France's approach to termination allows women personal autonomy over their bodies, unencumbered by fear of criminal sanction. It has evolved to become one of the world's most advanced and progressive legislative models.

Discussion

After tracing the legislative and judicial trajectories of the United States, India, and France individually, this section analyses what these trajectories collectively reveal about reproductive justice and draws out the comparative and doctrinal implications for India.

Constitutional anchoring versus judicial construction

The clearest comparative lesson to emerge from the foregoing results is the distinction between rights that are constitutionally anchored and rights that rest solely on judicial construction. France's 2024 constitutional amendment converted abortion access from a statutory entitlement into an enforceable constitutional freedom, placing it largely beyond the reach of ordinary political reversal. The United

States offers the converse lesson: the right recognised in Roe v. Wade was a judicially constructed inference from the constitutional right to privacy, and precisely because it was not textually entrenched, it proved vulnerable to reversal in Dobbs v. Jackson Women's Health Organisation once the composition of the Supreme Court changed.

India's position lies between these two poles: the judiciary has, through cases such as Suchita Srivastava v. Chandigarh Administration, Justice K.S. Puttaswamy v. Union of India, and X v. Principal Secretary, located reproductive autonomy within Article 21, but this protection remains a matter of judicial interpretation rather than explicit constitutional or statutory text, leaving it susceptible to the same volatility that the United States experienced should future benches adopt a narrower reading of personal liberty.

Statutory accessibility and implementation gaps

A second comparative theme concerns the gap between formal legal recognition and operational accessibility. France's legislative history, from the Veil law of 1975 through to full state-funded reimbursement in 2012 and the removal of waiting periods in 2016, demonstrates a sustained pattern of reducing procedural and financial barriers alongside expanding the substantive right. India's MTP Act framework, by contrast, retains structural barriers even as judicial decisions expand the scope of who may access abortion: the requirement of medical board approval beyond 24 weeks, inconsistent availability of trained providers as highlighted in Rekha Agarwal v. Union of India, and the continued centrality of physician discretion over patient autonomy create a provider-centric model rather than a rights-based one.

The contrast between X v. Principal Secretary, where the Supreme Court affirmed bodily autonomy as the basis for choice irrespective of marital status, and the subsequent X v. Union of India, where fetal viability was prioritised over a married woman's mental health grounds, exemplifies this implementation inconsistency: the doctrinal commitment to autonomy is not yet matched by predictable operational delivery.

Democratic resilience as a partial substitute for constitutional protection

The post-Dobbs experience in the United States offers a third, more cautionary, comparative insight. The state-level ballot measures in California, Michigan, Vermont, Ohio, and Colorado, together with the enactment of shield laws and the Supreme Court's unanimous preservation of mifepristone access in FDA v. Alliance for Hippocratic Medicine, demonstrate that reproductive rights can retain a measure of democratic vitality even without federal constitutional protection. However, this resilience is geographically uneven and produces a patchwork in which access depends on the jurisdiction in which a woman resides, a result that is difficult to reconcile with the principle of equal protection. For India, this suggests that while state-level and Parliamentary legislative action, such as the MTP Amendment Act of 2021, can incrementally expand access, such action cannot substitute for the constitutional anchoring that France has achieved, since legislative gains of this kind remain reversible by ordinary majority and are liable to produce the same uneven geography of access seen across post-Dobbs America.

Reimagining reproductive justice for India

The French, American, and Indian results indicate that reimagining reproductive justice in India requires more than the incremental statutory amendments that have characterised the MTP Act's evolution since 1971. The France-United States comparison shows that constitutional entrenchment, not mere judicial recognition or legislative discretion, is the only durable safeguard against political and ideological reversal. Applying this lesson to India, the discussion above suggests that the path forward should combine: first, doctrinal consolidation of the Article 21 reproductive autonomy jurisprudence into a clearer, more consistent constitutional standard than the divergent outcomes in X v. Principal Secretary and X v. Union of India presently allow; second, statutory reform addressing the operational deficiencies identified above, including provider shortages and Medical

Board delays; and third, sustained legislative engagement of the kind reflected in the MTP Amendment Act of 2021, understood as a necessary but not sufficient complement to constitutional reform. It is this combination, rather than any single intervention, that would allow India to move from a welfare-based, provider-centric model of abortion regulation towards the rights-based, agency-centred model that this article terms a reimagined reproductive justice framework.

Conclusion

A practical way forward for India will be the integration of its progressive legal regime with the effective implementation of rights-based and evidence-based policy frameworks. France's experience is proof that when reproductive autonomy is hardwired in the broader framework of public health and gender equality, access to abortion is not turned into a privilege conditionally granted by medicine but rather a social right for all. The United States' trajectory, in contrast, highlights on the one hand how tenuous those rights can become when moral and political contestations overshadow constitutional protections. India, which has already accepted women's reproductive choice under the medical termination of pregnancy regime, now has to grow from a welfare perspective to one based on bodily autonomy and privacy as well as informed consent. This will involve providing equal access in all states, the opportunity to develop a provider base using mid-level practitioners, and integrating comprehensive reproductive health education into public health structures. The legal framework could additionally be reformed in the direction of decriminalisation, an approach that would recognise abortion as health concern themselves with moral regulation so much as upholding principles of respect for women's agency through transparent data collection, ethical medical practices, and state accountability in service delivery. Drawing lessons from France's rights-based inclusion and the U.S.'s cautionary tales of political about-turns, India's roadmap ahead must focus on institutional stability, clear functioning of reproductive governance, and upholding women's autonomy as an absolute constitutional human right.

The comparative analysis across France, the United States, and India reveals that reproductive justice understood as encompassing the right not to have children, the right to have children, and the right to parent in safe and supportive environments is most durably secured when it is anchored in constitutional text, insulated from political reversibility, and supported by universal, publicly funded healthcare infrastructure.[61] France's constitutionalisation of abortion rights in 2024 represents the most advanced expression of this model, having progressively transformed reproductive access from a conditional legal exception into an enforceable constitutional freedom. The United States, conversely, demonstrates the fragility of reproductive rights when they rest solely on judicially constructed constitutional protections that are vulnerable to ideological reversals within the court. For India, these two trajectories together constitute both a normative ideal and a cautionary lesson: the path towards genuine reproductive justice requires not merely incremental statutory reform but a deliberate constitutional and institutional reconfiguration that centres women's agency, eliminates discriminatory access barriers, and ensures that the rights formally articulated in the MTP Act and under Article 21 are operationally realised for all women, regardless of geography, economic status, or social identity.

Author's Contributions

Ankit Anand: Conceptualization, development of the research framework, analysis, manuscript drafting, Proofreading, review and corresponding author responsibilities. Rajneesh Kumar: Literature collection, analysis, manuscript editing and synthesis. Dr. Hrishikesh Manu: Synthesis and critical revisions. Dr. Gurminder Kaur: Provided intellectual guidance and final manuscript review. All authors have read and approved the final version of the manuscript.

Acknowledgement

This study received no external funding and was conducted independently by the authors.

Funding

None to declare.

Conflict of interest

None to declare.

Data availability

Not applicable. This research did not involve the generation or analysis of datasets.

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