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Pro Choice and Rawlsian Justice: Understanding Indian Scenario

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Abstract

The discourse surrounding reproductive rights in India encompasses a complex interplay of legal, ethical, and socio-political elements. This paper evaluates the pro-choice perspective through the lens of John Rawls's principles of justice. It focuses on how the ideas of fairness, equality, and autonomy pertain to women's reproductive rights in India. Rawls's theory, which defines justice as fairness, provides a philosophical foundation for examining whether reproductive policies and societal practices in India uphold women's rights as free and equal moral beings. The study explores the extent to which Indian legislation—such as the Medical Termination of Pregnancy Act (1971, amended in 2021)—is consistent with Rawlsian principles of equal liberty and the difference principle. It also investigates the influence of cultural traditions, religious values, and patriarchal structures that often impede women's autonomy in making reproductive decisions, resulting in disparities that contradict Rawlsian fairness. By employing a descriptive and analytical framework, this research highlights the ethical imperative for a rights-centred approach that ensures women's reproductive freedom as an essential component of social justice. By situating pro-choice discussions within Rawlsian theory, the paper argues that reproductive rights are not merely personal moral dilemmas but crucial public goods for achieving justice

in a diverse democracy such as India. In conclusion, the paper asserts that safeguarding reproductive autonomy is vital for fulfilling Rawls's vision of a just society, where individuals possess equal fundamental rights and the opportunity to pursue their conception of the good life. The study concludes with a call to address social challenges and promote increased societal engagement in order to align India's reproductive rights discourse with Rawlsian ideals of justice, equity, and individual autonomy.

Keywords: Rawls, justice, pro-choice, reproductive autonomy, fairness

Introduction

John Rawls prioritised the value of equality and opposed religious and philosophical doctrines that view women's qualified right to choose as unreasonable. The topic of pro-choice in abortion embodies profound disagreements in the areas of reproductive freedom, moral status, autonomy, equality, and the state's involvement in personal choices (Ackerly, 2006; Green, 1986). Rawls's theory of justice as fairness provides an insightful perspective on the moral and legal aspects of abortion. Rawls's abortion discourse is approached from a liberal egalitarian model based on fair terms of social cooperation among free and equal citizens (Hanshaw, 2018). The key inquiry is how Rawlsian notions of justice either support or challenge the pro-choice stance. It examines perspectives on foetal personhood and the extent of women's rights to make decisions in the Indian context.

Statement of the Problem

India's progressive abortion laws reflect the essential tenets of justice as fairness and align with Rawlsian philosophy. Nevertheless, a critical problem remains unresolved. Although India maintains one of the more advanced abortion laws in the Global South, practical challenges such as restricted access, societal stigma, and lack of awareness continue to impede women's autonomy. The pro-choice initiative in India is backed by human rights and feminist organizations. Campaigns for comprehensive reforms were designed to enhance access, safeguard privacy, and eliminate the stigma associated with

abortion (Stillman et al., 2014). Reproductive rights, including the ability to obtain safe abortions, are essential to women's health, autonomy, and equality. India's legislative stance on abortion has generally been progressive relative to many developing nations, especially after the introduction of the Medical Termination of Pregnancy (MTP) Act in 1971. However, ongoing socio-cultural obstacles and infrastructural shortcomings constrain women's capacity to fully exercise these rights. Considering India's intricate socio-cultural and economic context, Rawls's framework serves as a normative tool for appraising reproductive rights.

Objectives

1. To review Rawlsian theory of justice with emphasis on the pro-choice approach
2. To understand the role of the MTP Act and the challenges faced in implementing abortion rights in India
3. To analyse Rawlsian theory and reproductive rights in India

Methodology

This review article adopts a descriptive and analytical approach to examine abortion rights in India from the purview of Rawlsian justice. It mainly relies on secondary sources such as constitutional documents, the Medical Termination of Pregnancy Act, and judicial decisions. The arguments of the paper are organised into three thematic sections. The first section conceptualises Rawlsian theory of justice based on an understanding of Pro-choice. The second section examines the key features of the Medical Termination of Pregnancy Act and the structural challenges faced by Indian women. Finally, the relevance of abortion rights in India based on Rawlsian justice as fairness is analysed and concluded.

Rawlsian Principles of Justice: A Conceptual Understanding

Rawls views citizens as free and equal individuals endowed with moral capacities to formulate their conceptions of the good and to possess a sense of justice. These abilities underpin equality and mutual respect. Justice as fairness must enable social conditions that allow individuals to cultivate and exercise self-respect, autonomy, and participation in equitable institutions. Public reason carries inherent

significance pertaining to justice and is rooted in shared political values. Rawls acknowledged that pluralism is a constant aspect of democratic existence. Citizens uphold varying moral and religious beliefs; therefore, they must reach a consensus on fair principles to govern their collective institutions. Through overlapping consensus, individuals with differing convictions can converge on political principles that are reasonably acceptable to all (Rawls, 1997).

Rawlsian theory continues to be foundational in modern political philosophy. The original position conceived by Rawls imagines a hypothetical situation in which individuals create a just society without awareness of their own social status, class, gender, religion, innate talents, or personal beliefs. They are placed behind a veil of ignorance. This ensures impartial principles that lead to the establishment of equal basic liberties and the arrangement of social and economic inequalities to benefit the least advantaged. Individuals are regarded as rational agents who select principles of justice. This mechanism guarantees that no one can tailor principles for personal gain and compels participants to adopt a perspective of equality and mutual respect. This prioritisation reflects Rawls's conviction that political rights, freedom of conscience, and bodily integrity are prerequisites for any just society (Buchanan, 2012; Rawls, 2005).

Pro-Choice: Reasoning with Rawlsian Justice

The pro-choice stance is founded on the principle that a woman's right to govern her own body constitutes a fundamental liberty. It underscores personal freedom and bodily autonomy. The first Rawlsian principle, which guarantees equal basic liberties, directly supports this assertion. Included among these liberties are freedom of conscience, freedom of thought, and personal integrity. Behind the veil of ignorance, no rational person would select principles that might compel them, especially if they were women, to experience unwanted pregnancy or motherhood (Dreier, 2009). Thus, a just arrangement would guarantee the liberty to make deeply personal reproductive choices free from coercion. Imposing limits on this liberty would contradict Rawls's stipulation that restrictions must be acceptable to everyone as equal and free citizens. Rawls's notion of equality extends beyond mere formal rights to encompass the social bases of self-respect.

Control over reproduction is essential for women's comprehensive involvement in social, political, and economic spheres (Shaw, 2011). Denying access to abortion reinforces gender hierarchies and undermines fair equality of opportunity. Thus, under justice as fairness, equality of citizenship requires that women be able to decide when and whether to bear children. Rawls recognises women's right to bodily autonomy in cases of conflict with respect to values—respect for human life, the stability of the family, and equality of women (James, 2025; Rawls, 2005). It may therefore be concluded that Rawls's framework supports a woman's right to abort in the first trimester.

The principle of difference pertains to social and economic disparities. According to Rawls, inequalities are justified only if they benefit the least privileged members of society. When applied to abortion policy, this suggests that access should not be determined by one's socioeconomic status. Low-income women frequently encounter obstacles to reproductive healthcare, making the ability to choose more of a privilege than a fundamental right (Feng, 2021; Sen, 2008; Rawls, 2003, 2005). Consequently, a Rawlsian society would not only legalize abortion but also guarantee fair access through public healthcare, contraception, and social support for parents. These initiatives align with the difference principle's goal of reducing disadvantage and fostering fair equality of opportunity.

In the original position, those making decisions are unaware of whether they could be women, infertile individuals, prospective parents, or members of marginalised communities. This lack of knowledge promotes risk-averse reasoning, encouraging them to adopt principles that safeguard individuals from the worst possible outcomes. Compelled pregnancy—particularly in contexts of poverty or trauma—poses a significant threat to personal freedom and self-respect. Therefore, from the original position, rational individuals would endorse the right to choose abortion. Rawls's idea of public reason provides a crucial framework for navigating the abortion debate. Laws that limit abortion must be justified by reasons that all reasonable citizens can accept. Arguments rooted in specific religious beliefs regarding ensoulment or divine directives do not meet this standard (Arrell, 2019).

Rawls's conditional support for abortion rights—especially in early pregnancy—is based on shared societal values: respect for life, family stability, and women's equality. Public reason upholds legal abortion with reasonable limitations centred on viability or public health, rather than rigid moral absolutes. Rawls himself sidestepped metaphysical discussions about the personhood of the foetus and did not consider it part of the political community (Kramer, 2017; Shaw, 2011). A Rawlsian outlook on global justice would necessitate that international institutions work to secure equitable opportunities and fundamental human rights, including reproductive rights (Rawls, 2003). Therefore, the pro-choice concept transcends national borders as a component of a just global system.

Reproductive Rights of Women: Exploring the Indian Context

Reproductive rights are central to women's equality, health, and empowerment. The World Health Organization (WHO) defines reproductive rights as the right of individuals to decide freely and responsibly the number, spacing, and timing of their children, and to have access to information and means to do so. In India, however, women's reproductive autonomy is influenced by socio-cultural traditions, economic conditions, and state interventions in population control. Despite constitutional guarantees of equality and the legal framework supporting reproductive health, a wide gap persists between policy and practice (Pandey, 2025; WHO, 2014).

The Constitution of India guarantees gender equality under Articles 14, 15, and 21, ensuring the right to life and personal liberty. The Supreme Court has interpreted Article 21 to include the right to reproductive choice as a fundamental right (Suchita Srivastava v. Chandigarh Administration, 2009). Furthermore, laws such as the Medical Termination of Pregnancy (MTP) Act, 1971, and its 2021 amendment recognise women's right to safe abortion under specific circumstances. Other relevant legislation includes the Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, 1994, aimed at preventing female foeticide; the Maternity Benefit (Amendment) Act, 2017, which enhances paid maternity leave and workplace protections; and the National Population Policy (2000), emphasising

voluntary and informed choice in family planning (Nadda, 2025; Hartmann & Rao, 2015; Narain, 2013).

The Indian judiciary has played a progressive role in expanding reproductive rights. In the Suchita Srivastava case, the Supreme Court underscored reproductive choice as an aspect of personal liberty. Similarly, in *Devika Biswas v. Union of India* (2016), the Court recognised the state's obligation to provide quality reproductive healthcare, particularly for marginalised women. India's approach to reproductive health has evolved from population control to a broader, rights-based paradigm (*Devika Biswas v. Union of India*, 2016). The Reproductive, Maternal, Newborn, Child, and Adolescent Health (RMNCH+A) strategy (2013) integrates services across life stages. The National Health Mission (NHM) and Janani Suraksha Yojana (JSY) aim to reduce maternal mortality and promote institutional deliveries. However, despite these policy initiatives, access to reproductive health services remains uneven. Disparities based on caste, class, and geography persist, particularly in rural areas where women often face systemic neglect and lack of autonomy in reproductive decision-making (Jain, 2023; Mozumder & Choudhary, 2024; Narain, 2013; Khosla & Choudhary, 2019).

Patriarchal norms continue to impact women's choices regarding reproduction. Early marriages, preferences for male children, and restricted access to contraceptives limit women's control over their lives. Decisions about family size, contraception, and abortion are frequently influenced by husbands or in-laws rather than being made by the women themselves. Low literacy levels and financial dependency reduce women's understanding of their reproductive health rights. Women from marginalised backgrounds—particularly those in Dalit, Adivasi, and Muslim communities—face additional barriers in accessing healthcare services. Although India has made progress in enhancing maternal health outcomes, the quality of reproductive healthcare remains variable. Insufficient infrastructure, a lack of trained medical personnel, and breaches of confidentiality in reproductive services discourage women from asserting their rights. Even though the MTP Act permits abortion under specific conditions, the choice often lies with medical professionals rather than the women

involved. Furthermore, social stigma surrounding abortion continues to violate women's privacy and autonomy. The Surrogacy (Regulation) Act, 2021, and the Assisted Reproductive Technology (Regulation) Act, 2021, raise significant questions regarding reproductive justice, ethics, and women's rights over their bodies. While these regulations aim to prevent exploitation, they also limit access by confining surrogacy to married heterosexual couples, thereby excluding single women and LGBTQ+ individuals (Bhatt, 2022; Patel, 2018; Sengupta, 2021).

The perspective of reproductive justice broadens the conversation beyond personal choice to encompass social, economic, and environmental factors that influence reproductive freedom. In India, adopting this framework is crucial for addressing the inequalities that shape reproductive experiences across social groups. While reproductive rights in India are safeguarded by the Constitution and supported by legislation, their implementation remains limited. Persisting gender inequalities, economic disparities, and systemic obstacles continue to erode women's control over their bodies and reproductive decisions. The development of abortion rights in India illustrates an important intersection between constitutional principles and theories of justice (Abhinaya, 2023; Dhar, 2023; Kaundinya, 2023; Nair, 2022)

Medical Termination of Pregnancy Act: An Overview

In India, abortion was historically governed by the Indian Penal Code, which criminalised termination except to save the life of the pregnant woman. The enactment of the Medical Termination of Pregnancy Act, 1971, marked a paradigmatic shift by recognising abortion as a matter of public health rather than moral transgression. The 2021 amendment further strengthened this rights-oriented approach by expanding access, recognising non-marital relationships, and reinforcing privacy protections. The MTP Act was enacted to reduce maternal mortality arising from unsafe abortions and to ensure that women have access to safe and legal medical termination of pregnancy under regulated conditions. The Act balances reproductive autonomy with medical oversight. The major provisions are as follows:

Conditions for Termination (Section 3)

Section 3 of the Act permits termination of pregnancy under specific circumstances:

1.Up to 20 weeks:

Termination may be carried out with the opinion of one registered medical practitioner if continuation of the pregnancy would pose a risk to the woman's life or cause grave injury to her physical or mental health.

2.Presumption of Mental Injury:

The Act presumes mental anguish in cases of pregnancy resulting from rape and contraceptive failure. The 2021 amendment extended this presumption to all women, irrespective of marital status.

3.20 to 24 weeks:

Termination is permitted for certain categories of women, including rape survivors, minors, and women with disabilities, subject to the opinion of two medical practitioners.

4.Beyond 24 weeks:

Termination is allowed only in cases of substantial foetal abnormalities, subject to approval by a State Medical Board.

Emergency Exception (Section 5)

Section 5 removes gestational limits where termination is immediately necessary to save the life of the pregnant woman, emphasising the primacy of maternal life and health.

Confidentiality and Privacy (Section 5A)

The 2021 amendment introduced strict confidentiality obligations, prohibiting disclosure of the woman's identity except to authorised persons. This provision aligns reproductive rights with the constitutional right to privacy (Medical Termination of Pregnancy Act,1971; Medical Termination of Pregnancy (Amendment)Act,2021).

The Medical Termination of Pregnancy Act represents a significant advancement in India's reproductive rights jurisprudence. When analysed through the lens of Rawls's theory of justice, the Act emerges as a liberal-egalitarian framework that balances autonomy with fairness. By recognising reproductive choice as a basic liberty, as if from behind the veil of ignorance envisioned by Rawls, the MTP Act embodies justice as fairness in the domain of reproductive healthcare. Although the Act does not recognise abortion as an

unrestricted right, it affirms that forced continuation of pregnancy may constitute serious physical and psychological harm. The legal framework thus reflects a conditional pro-choice model grounded in healthcare, dignity, and consent.

India's Abortion Rights and Rawlsian Justification: An Analysis

The progressiveness of India's abortion laws, particularly the Medical Termination of Pregnancy Act of 1971 and its revisions, can be understood when analysed through the philosophical lens of John Rawls's theory of justice. By employing Rawlsian ideas such as the principle of equal liberty, the difference principle, and the veil of ignorance, this analysis contends that Indian abortion rights serve as a practical expression of Rawlsian justice. According to Rawls's first principle, liberty must be equally allocated among all individuals. The right to reproductive autonomy clearly falls within the realm of basic liberties, alongside personal freedom and bodily integrity. The Indian Constitution, specifically Article 21, establishes the right to life and personal freedom, with the Supreme Court interpreting this to encompass reproductive choice (Bakshi, 2017). In this regard, India's abortion framework aligns with Rawlsian liberty by ensuring that women from all social backgrounds have authority over their reproductive health. However, Rawlsian justice also necessitates that such liberty be genuinely attainable. Legal rights that exist solely on paper, without fair access, do not satisfy the fairness criterion. Rawls's second principle asserts that social and legal disparities should be advantageous to the least advantaged. India's reproductive rights framework continues to lag in this respect, with persistent gaps in access and implementation.

The provisions of the MTP Act for particular categories—including survivors of rape, minors, and women with disabilities—reflect this moral insight. The 2021 amendment actualises the difference principle by prioritising vulnerable groups that experience compounded disadvantages. It seeks to reduce inequalities by granting longer gestational periods and confidentiality protections, ensuring that structural inequalities do not result in reproductive coercion or health hazards. From behind a Rawlsian veil of ignorance, legislators formulating abortion policies—unaware of their potential gender, class,

or social identity—would logically support laws that guarantee universal access to safe abortion. Such legislation would protect individuals across all conceivable social positions while balancing medical safety with personal freedom. India’s method of regulating abortion, particularly through rights-based judicial interpretations, closely approximates this model. The incorporation of privacy rights in *Justice K.S. Puttaswamy v. Union of India* (2017) and non-discrimination principles in *Navtej Singh Johar v. Union of India* (2018) reinforces this Rawlsian balance between liberty and equality. India’s abortion rights framework, as outlined in the MTP Act and subsequent amendments, exemplifies Rawlsian justice by recognising reproductive autonomy as a constitutional right and extending protections to those who are least advantaged. Nevertheless, persistent access barriers, stigma, and exclusion continue to pose challenges (Narain, 2013; Abhinaya, 2023). A fully Rawlsian society would not only enact laws promoting fairness but also ensure that institutional and cultural frameworks render that fairness effective. Despite these systemic gaps, Indian abortion rights represent both a philosophical achievement and an ongoing pursuit of Rawls’s vision of justice as fairness in lived experience.

The essence of Rawlsian reproductive justice in India may be summarised as follows:

- (a) **Legal safeguarding of choice:** Constitutional provisions recognising a qualified right to abortion, particularly in early pregnancy, are vital to upholding women’s equal citizenship.
- (b) **Fair access:** Government-funded healthcare, contraceptive methods, and reproductive education should be provided to ensure substantive, not merely formal, freedom.
- (c) **Support for parenthood:** Social initiatives such as childcare provisions, maternity leave, and family income assistance should ensure that the decision to have a child does not result in disadvantage.
- (d) **Public rationale:** Abortion regulations should be justified through public reasoning, avoiding sectarian arguments while engaging shared political values.

(e) **Global equity:** Reproductive healthcare should be supported as part of international aid and human rights strategies, in line with Rawls's principles of fairness among nations (Rawls, 2005,2003,1997).

John Rawls's political philosophy provides a compelling basis for advocating the pro-choice stance. Through the concepts of the original position and the veil of ignorance, individuals would choose principles that uphold bodily autonomy and equality, given uncertainty about their own circumstances. The two principles of justice, particularly the priority accorded to basic liberties, imply a woman's right to make essential decisions regarding her body and future. For Rawls, the equality of women as free and equal citizens is a constitutional necessity that any reasonable political conception must acknowledge. Nevertheless, Rawls's framework establishes certain boundaries—respect for life and the requirement of public reasoning support a qualified rather than absolute right.

Conclusion

The application of Rawlsian theory to reproductive rights in India requires further development. It does not fully account for embodied experiences, ethical relationships, cultural factors, and structural barriers. In India, decisions about abortion are often influenced by family pressure, social norms, religion, caste, and economic conditions rather than individual choice alone. However, Rawls's theory remains one of the most rational liberal foundations and an important intellectual source for advancing reproductive justice for Indian women. Rawls's ideological framework offers valuable insight into the lived realities of Indian women and helps organise society around principles of fairness, thereby enabling individuals to exercise moral agency in matters as personal and consequential as reproductive choice.

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