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**Moving Towards a Reproductive Justice Model:
A Comparative Analysis of Reproductive Feminist
Discourse in Ireland and India**

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MA Programme Euroculture Declaration

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Signed

Eleanor Brooks

Date

30th July 2019

*I would like to dedicate this thesis to the memory of
Savita Halappanavar and the ten Indian women who die
each day from unsafe abortions.*

Abstract

This thesis advances the argument that reproductive justice is the more suitable framework to support women's realisation of their reproductive rights. This is contextualised against the history of reproductive oppression experienced by women in Ireland and India through the exploitation of their bodies in post-colonial Ireland and India. This thesis demonstrates how both denial and access to reproductive services can produce these experiences of oppression, and thus problematizes the assumption that reproductive freedom is secured through reproductive technology. I argue that the choice framework endorsed by Irish feminists fails to achieve meaningful reproductive autonomy due to its narrow vision. Finally, I propose that the intersectional and comprehensive design of the reproductive justice framework might be a better framework through which to approach and understand the reproductive needs of women and plan and implement interventions to meet the same

Keywords – reproductive justice, choice paradigm, post-colonialism, reproductive rights, state coercion

Table of Contents

Introduction	5
1. The Historical Trajectory of Reproductive Rights in Ireland and India	10
<i>A. Evolution of Reproductive Rights in India</i>	<i>10</i>
1.1 Discourses During the Colonial Era in India.....	10
1.2 The Introduction of Family Planning to India’s National Agenda.....	14
1.3 The Current Situation of Reproductive Rights in India.....	16
B. Evolution of Reproductive Rights in Ireland	18
1.4 Post-Colonial Discourse: Irish Women and the Free State	18
1.5 Church/State Attitudes towards Reproductive Rights in Ireland	20
1.6 The Irish Women’s Movement and Reproductive Rights.....	21
2. Reproductive Services and the Project of Nationhood	28
2.1 The Project of Nationhood in the Post-Colonial Period.....	28
i Women as the Symbolic Embodiment of National-Identity	29
ii The Role of ‘Women as Mothers’ in Irish and Indian Society	31
iii Consequences of the Independence Movement for Reproductive Feminist Discourse	34
2.2 Reproductive Rights and the Project of Nationhood in India.....	36
i Colonial State, Nationalist Discourse and Birth Control	36
ii Family Planning Policies in Post-Independence India.....	39
iii Implementation issues in state-led family planning programmes.....	42
2.3 Reproductive Rights and the Project of Nationhood in Ireland.....	43
i Women’s Bodies As the Physical Embodiment of State.....	46
3. Challenging the Choice Paradigm: Respect, Resources, Power.....	50
3.1 Understanding the Pro-Life/Pro-Choice Dichotomy.....	50
i The emergence of pro-life v pro-choice discourse	50
ii Pro-Life/Pro-Choice Discourse in an Indian and Irish Context	51
iii Bodily Autonomy, the X Case and Pro-Choice Discourse in Ireland.....	54
3.2 Evaluating the Choice Framework	56
i What is the validity of applying a choice narrative in an Indian context?	56
ii. Why is it appropriate to evaluate the choice framework as a solution to female reproductive oppression?.....	57
iii Methodology for Evaluating the Choice Framework.....	57
3.3 Evaluating the Choice Paradigm: Respect.....	59
i Trust as an Expression of Respect.....	59
ii Motherhood, Female Sexual Liberty and Pro-Abortion.....	62

3.4 Evaluating the Choice Paradigm: Resources.....	65
3.5 Evaluating the Choice Paradigm: Power	69
i Power within the Domestic/Private Sphere	70
ii State Power.....	72
4. Moving Towards a Reproductive Justice Framework.....	79
4.1 Why choice rationale makes bad feminist theory: a case-study of sex-selective abortions in India	79
4.2 Choice Discourse in Ireland: Case-Study of Migrant Women	88
4.3 Moving Towards a Reproductive Justice	93
i How does reproductive justice differ from the choice model?.....	94
4.4 Bringing Reproductive Justice to Ireland and India?	96
i Envisioning Reproductive Justice in an Indian Context	97
ii Envisioning Reproductive Justice in an Irish Context	99
Conclusion	103
Bibliography.....	108
List of Abbreviations.....	120

Introduction

The inspiration for writing this thesis can be pinpointed to two memorable periods in my personal history. The first was a major event within Irish political life when it was announced on the 25th May 2018 that the Irish public had voted overwhelmingly in favour of liberalizing abortion law in Ireland. The second occurred a few short months later when I moved to India to spend a research semester studying at the Savitribai Phule Pune University. During the semester I started to learn more about the lives of Indian women, whose social and cultural context provided a different hue to similar issues experienced in Ireland. As my perspective broadened, it was in the arena of reproduction and sexual violence against women that I began to question most profoundly my pre-conceived notions. The unsolicited and reductive interjections of Western feminists and Western media following the infamous Delhi rape case exhibited an ignorance of the complexity of issues facing Indian women, reviving colonial discourse through representations of Indian women in need of ‘saving’ from their ‘backward’ culture.¹ Feminists such as Suruchi Thapar-Björkert & Madina Tlostanova critique the dialogues amongst European and American feminists as arguing position of privilege and thus failing to meaningfully engage with global hegemonic social relations.²

Engaging with the reproductive landscape in India problematized the overly simplistic discourses I had engaged with in an Irish context, which framed abortion as a guarantor of female bodily autonomy. Still high on the euphoria following the victory to repeal Ireland’s anti-abortion law, it was inconceivable to me that access to these services could have anything but a positive impact on the lives of women. This all changed when I learnt about the cultural phenomenon of sex-selective abortions in India, whereby the higher value placed on boys in Indian society motivated parents to terminate the pregnancy upon learning that the foetus was female.³ This revelation, that reproductive technology could be a tool of exploitation rather than female liberation, was at odds to the emphatic endorsement of abortion by feminist activists during the pro-abortion

¹Claire Chambers, ‘Who’s Saving Whom? Postcolonialism and Feminism’, *Postcolonialism and/or Feminism* 15 (Spring/Summer 2015): 5–7; Rishita Nandagiri, ‘Outraging Whom?’, *Postcolonialism and/or Feminism* 15 (Spring/Summer 2015): 8–9.

²Suruchi Thapar-Björkert and Madina Tlostanova, ‘Identifying to Dis-Identify: Occidental Feminism, the Delhi Gang Rape Case and Its Internal Others’, *Gender, Place & Culture* 25, no. 7 (2018): 1025–40, <https://doi.org/10.1080/0966369X.2018.1435511>.

³Nivedita Menon, ‘The Impossibility of “Justice”: Female Foeticide and Feminist Discourse on Abortion’, *Contributions to Indian Sociology* 29, no. 1 & 2 (1995): 369–92.

campaign. Although I may have been late in the game, this new understanding transformed my approach to reproductive technologies. I no longer regarded it as a benign instrument but recognised that like all forms of technology, its utility is embedded in hegemonic social relations that serve the interests of the dominant social groups.

When I originally began my research I intended it as a critique of Western feminism, which I intended to explore through a comparative analysis of feminist discourse on reproduction and sexual violence against women in Ireland and India. As my research developed I began to grasp the immensity of these topics, and it became clear to me that it would be impossible to engage with them comprehensively given the temporal and textual limitations of my thesis. I also came to realise, particularly in the arena of reproduction, that Western feminism was more diversified and inclusive than I had anticipated. Following these limitations I reformulated the focus of my thesis, deciding to omit the theme of sexual violence against women and concentrate on feminist reproductive discourse instead. I also reconstituted my design structure as a comparative analysis between Ireland and India, with the objective of seeking a reproductive framework that would encompass the needs and interests of both Indian and Irish women.

Both Ireland and India gained independence within two decades of each other, with Ireland becoming a Free State in 1922 and India becoming an independent nation-state in 1947. During the independence movement the motif of women as the symbolic mothers of the nation was recurring in nationalist discourse. While Thapar-Björkert and Ryan⁴ have compared the gendered dialogues of Mother India/Mother Ireland in colonial and nationalist discourse, there has been no prior comparative research investigating the influence of these narratives on reproductive politics in Ireland and India.⁵ During the colonial era Gandhi propounded abstinence from sex as part of his personal philosophy and nationalist rhetoric, thus quelling any feminist efforts in favour of liberalising reproductive rights.⁶ However, marking a drastic shift, shortly after independence in 1951 India became the first country to incorporate family planning in its national agenda, providing access to state-funded reproductive services for men and women. In 1971 the

⁴Suruchi Thapar-Björkert and Louise Ryan, 'Mother India/Mother Ireland: Comparative Gendered Dialogues of Colonialism and Nationalism in the Early 20th Century', *Women's Studies International Forum* 25, no. 3 (2002): 301–13, [https://doi.org/10.1016/S0277-5395\(02\)00257-1](https://doi.org/10.1016/S0277-5395(02)00257-1).

⁵My research on this topic has yielded no prior comparative works on this theme, therefore this statement holds true to the best of my knowledge.

⁶Sanjam Ahluwalia, *Reproductive Restraints: Birth Control in India, 1877-1947* (University of Illinois Press, 2009).

Indian government decriminalised abortion with the passing the Medical Termination of Pregnancy (MTP) Act, 1971, which was heralded as being “one of the most liberal laws”.⁷ The approach of the Irish Free State was in diametric opposition. Heavily influenced by Catholic ideology, the Criminal Law (Amendment) Act, 1935 criminalised the importing and sale of contraceptives. The prohibition of abortion was already in place thanks to the colonial legacy of the 1861 act, however in 1983 this proscription was strengthened when the Irish public voted in favour of inserting the 8th Amendment into the Irish Constitution. This clause regarded the value of life of the unborn as equal to that of the mother.

Although their methods and objectives may have been different, the state policies adopted by the Indian and Irish governments in the post-colonial era reflected a willingness to exploit women’s bodies to further the national interest. The evolution of India’s national family planning programme saw the government introduce coercive implementation strategies, reflecting its shift of emphasis on achieving population control goal rather than improving maternal healthcare.⁸ Ireland's staunch attitudes towards fertility control was the product of societal angst, stemming from a fear that indigenous Irish culture was imperilled by corrupting foreign influences.⁹

Both Irish and Indian women suffered immensely through the implementation of these nationalist policies, and there has been robust feminist engagement in both countries to tackle the infringement of women’s human rights. Feminists in India largely chose to subvert the law while Irish feminist activists devoted their energies to lobbying the government for legislative reform. In India the Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act banning the use of sex-selection test was passed in 1994, however this was found by feminists to be mostly ineffective.¹⁰ Irish feminists secured access to contraceptives through incremental legal amendments, yet as mentioned at the very beginning, it wasn’t until 2018 that abortion was finally decriminalised.

⁷Malini Karkal, ‘Family Planning and the Reproductive Rights of Women’, in *Understanding Women’s Health Issues: A Reader* (New Delhi: Kali for Women, 1998), 161–79.

⁸Peter J. Donaldson, ‘The Elimination of Contraceptive Acceptor Targets and the Evolution of Population Policy in India’, *Population Studies* 56, no. 1 (March 2002): 97–110, <https://doi.org/10.1080/00324720213793>.

⁹Lisa Smyth, ‘Narratives of Irishness and the Problem of Abortion: The X Case 1992’, *Feminist Review* 60, no. 1 (1998): 61–83, <https://doi.org/10.1080/014177898339398>.

¹⁰Madhu Kishwar, ‘When Daughters Are Unwanted: Sex Determination Tests in India’, in *Off the Beaten Track: Rethinking Gender Justice for Indian Women* (New Delhi: Oxford University Press, 1999), 78–92.

For a period of time Ireland and India were comparable in their political, social and cultural attitudes towards fertility control. However following India's independence they reached a disjuncture, a move that was at least partially triggered by impulses to slow down India's birth rate.¹¹ This thesis will trace the trajectory of reproductive discourse in Ireland and India. In the second chapter I will elucidate the argument that the state's position towards reproductive technology was designed to support the nation-building project that occurred in the decades following independence. This will engage with historical and contemporaneous discourses within Irish and Indian feminist literature, in addition to media sources. This thesis will posit that women's bodies were used to assert and affirm Ireland's emerging nation identity, and to improve the health of the nation through population control in India. In the third chapter I will assess the efficacy of choice paradigm to support the reproductive needs of Indian and Irish women. This will be assessed using the equality values of respect, resources and power as per Baker et al.¹² My evaluation will find that the privacy rationale which forms the bedrock of the choice framework fails to account for the needs of minority women. In the final chapter, I will evince this argument using the phenomenon of sex-selective abortions in India, and the barriers to abortion faced by migrant women in Ireland, as a case-study. I will outline the reproductive justice framework as envisioned by Lorretta Ross.¹³ Finally, this thesis will assert that the reproductive justice framework is a more suitable model as it seeks to overcome the oppression experienced by women seeking to access abortion.

Prior to the writing of this thesis it was important for me to locate myself within reproductive feminist discourse. Although I spent eight months living in India, I am much more intimately associated with Ireland and the reproductive issues as they manifest within an Irish context. Consequently, my understanding of India's reproductive discourse might be shaped, and placed in relation to, Ireland's reproductive landscape. My personal experiences and my educational background within a European academic system, therefore, align me more closely with the reproductive discourses within the Global North. My impetus for writing pursuing research on this topic, specifically incorporating a country located in the Global South, is to extract myself from this Western-centric perspective which I hope to achieve by leaning into Indian feminist

¹¹ Ahluwalia, *Reproductive Restraints: Birth Control in India, 1877-1947*.

¹² John Baker et al., *Equality: From Theory to Action* (Houndmills, Basingstoke, Hampshire ; New York: Palgrave Macmillan, 2004).

¹³ Loretta J. Ross, 'Understanding Reproductive Justice', *Sistersong*, 2006.

dialogues. As a result, this may engender a critical approach towards feminist reproductive discourse in Ireland. By gaining nuanced understanding of the reproductive experiences of Indian women and broadening my perspective, I hope to gain deeper insight into Ireland's reproductive landscape.

1. The Historical Trajectory of Reproductive Rights in Ireland and India

Introduction

In this first chapter I shall briefly outline the historical and contemporary development of access to contraception and abortion in Ireland and India. This will deal with the state and statutory discourse, initiatives taken by feminist and civic bodies, and the experiential realities of Indian and Irish women. I shall deal with both countries separately in order to present clearly the trajectory of their historical evolutions and shifting discourse, before engaging in comparative analysis in later chapters. I shall begin first by looking at India's history beginning in the colonial era, followed by the outlining of reproductive rights in Ireland since the emancipation of the Free State.

A. Evolution of Reproductive Rights in India

In this section I will trace the evolution of reproductive rights in India.

1.1 Discourses During the Colonial Era in India

Discussions surrounding contraception had already begun to emerge in the colonial era, during which period India remained under British rule until it gained Independence in 1947. Following the reduction of mortality rates, concerns had been raised that India would soon spill into over-population. In 1872 it was predicted that the population would double within one hundred and fifty years.¹⁴ Hodges suggests that this apprehension, which began emerging in the mid-19th century, was a departure from the way population had been understood until that point.¹⁵ Colonial authorities recognised the need to mitigate India's population expansion, however it lacked a clear consensus with regards to developing policy to this end. Abortion was criminalised by the 1861 Offences Against the Person Act and birth control was a contentious issue, even in the West where there was little agreement about its virtues.¹⁶ The authority of British rule was already being called into question, and colonial representatives anticipated a backlash against any policies that would be perceived as interfering with the reproductive capacities of its

¹⁴Ahluwalia, *Reproductive Restraints: Birth Control in India, 1877-1947*.

¹⁵ Sarah Hodges, 'Governmentality, Population and Reproductive Family in Modern India', *Economic & Political Weekly* 39, no. 11 (13 March 2004): 1157–63.

¹⁶Ahluwalia, *Reproductive Restraints: Birth Control in India, 1877-1947*.

subjects. According to Ahluwalia, “Instead of a panoptical, all-pervasive presence on the Indian political, social, and cultural landscape, the colonial state appears doubtful and nervous about undertaking policy initiatives, opting instead for minimal intervention and, at times, for outright retreat from positions of leadership.”¹⁷ Recognising the limitations of their imperial power, the British Raj displayed an implicit willingness to negotiate with their subjects' masculinities by granting them a slice of autonomy within their private sphere. Despite internal discussions in favour of adopting population reducing measures, a period described as ‘foot dragging’ ensued, during which no definitive position was taken on the matter of birth control.¹⁸ The colonial administration’s interest in contraception stemmed from its concern with the ‘population problem’ (rather than maternal health or infant mortality rates); following this misguided concern, its state of paralysis resulted in the unmet contraceptive needs of the Indian population.

Despite this indecision certain elite members of Indian society had formed resolute opinions in favour of contraception and urged the British Raj to take action. Mr. P. N. Saprú was an elected Indian representative who was highly outspoken about the need for the government to curb India’s rapid population growth. In 1940 he presented a resolution before the Council of State which argued for the establishment of birth control clinics.¹⁹ His advocacy for birth control was embedded in concerns for India’s rapidly population growth: “This Council recommends to the Governor General in Council that in view of the *alarming growth of population in India*, steps be taken to popularise methods of birth control and to establish birth control clinics in centrally administered areas.”²⁰ Ahluwalia notes that colonial official perceived that “a Malthusian dread was hovering over India because of its dangerously high rate of demographic increase” as indicated by census data.²¹ According to the Malthusian argument, poverty and food shortages are a consequence of unchecked population growth,²² an argument which held great sway at this time as there were fears that India’s population had already outpaced

¹⁷Ahluwalia, 127.

¹⁸Ahluwalia, *Reproductive Restraints: Birth Control in India, 1877-1947*.

¹⁹ S. N. Agarwala, ‘Population Control in India: Progress and Prospects’, *Law and Contemporary Problems* 25 (Summer 1960): 581.

²⁰Ahluwalia, *Reproductive Restraints: Birth Control in India, 1877-1947*, 130.

²¹Ahluwalia, 121.

²² According to Betsy Hartmann, population alarmists “drew their ideological inspiration from Thomas Malthus, the British clergyman-turned-economist who wrote in the late 1700s and early 1800s. Malthus maintained that, unless restrained by “preventative checks,” human population would double every twenty-five years.” Betsy Hartmann, *Reproductive Rights and Wrongs: The Global Politics of Population Control and Contraceptive Choice* (Harper & Row, 1987), 13.

its limited resources.²³ In 1944 Gyan Chand, professor of Economics at Patna University, published a book titled *The Population Problem* in which he argued (quoting from Hodges): "The gap between our means and needs is so large, and is so evident in the shriveled bodies of the vast majority of our men, women and children, that it is the path of ordinary prudence and wisdom to add to our means but not to our needs."²⁴ He argued that lowering India's birth rate was imperative in order to solve India's food shortage. Malthusian logic found many supporters in India around this time and, according to Ambirajan, it "provided the intellectual basis for the Indian administration's long-run perspective about Indian famines."²⁵

The dialogues in favour of birth control were infused with multiple narratives. Future prime minister Jawarhal Nehru, who chaired the National Family Committee, was in favour of birth control as a non-exhaustive measure to tackle population control, however, his arguments also adopted a eugenic slant.²⁶ His committee recommended fertility control and cheaper contraceptives to fulfil the aims of a "eugenic programme", having recognised that, "measures for the improvement of the quality of the population and limiting excessive population pressure are necessary."²⁷ Social rights activist Periyar E. V. Ramasamy, 'Father of the Dravidian Movement' and founder of the Self-Respect Movement, was unique amongst birth control advocates of his time as he centred his arguments around the autonomy of women.²⁸ He argued (quoting from Anandhi) that, "There is a basic difference between our insistence on birth-control and other's notion of birth-control...They have only thought of family and national welfare through birth-control. But we are only concerned about women's health and women's independence through birth-control."²⁹ His views were more liberal than certain women's organisations such as the WIA (Women's Indian Association) and the AIWC (All India Women's

²³ Ahluwalia, *Reproductive Restraints: Birth Control in India, 1877-1947*.

²⁴ Hodges, 'Governmentality, Population and Reproductive Family in Modern India', 1160. Quoting from Gyan Chand, *The Problem of Population*, Humphrey Milford and Oxford University Press, Bombay, 1945 (1944), p9.

²⁵ S. Ambirajan, 'Malthusian Population Theory and Indian Famine Policy in the Nineteenth Century', *Population Studies* 30, no. 1 (March 1976): 5.

²⁶ Sapru (referenced by Ahluwalia), however, acknowledged that population control was a politically contentious issue and could be perceived as an effort of state to represses certain sections of society, therefore he emphasised that any legislation on the matter should be voluntary in nature.

²⁷ Matthew Connelly, 'Population Control in India: Prologue to the Emergency', *Population and Development Review* 32, no. 4 (December 2006): 632.

²⁸ S. Anandhi, 'Women's Question in the Dravidian Movement c. 1925-1948', *Social Scientist* 19, no. 5/6 (June 1991): 24-41.

²⁹ Anandhi, 27.

Conference), who were founded by English feminists and attended by members belonging to the middle class and upper-caste social ranks.³⁰

Certain Indian women activists were wary about being too vocal in advocating in favour of contraception. India's political discourse was dominated by Gandhi's nationalist movement and all other interests were subordinated as a result, particularly those which were interpreted as contravening the Gandhian representation of an Indian free state. Gandhi was a staunch detractor of any form of contraception, which was borne out in his much documented debate with American birth control advocate Margaret Sanger.³¹ He framed sexuality as a Western import incompatible with traditional Indian culture and took the extreme position of advocating celibacy, even amongst married couples.³² His repulsion of sexual intercourse and his emphasis on self-discipline held sway and Indian women activists were divided on the issue of birth control. Rameshwari Nehru, a prominent social worker of India, was a firm supporter of Gandhian self-control as the ideal method to regulate reproduction.³³ Others within the AIWC shared her opinion due to fears of 'race suicide' and the belief that women would be reduced to sexual slavery within their own homes.³⁴ Despite these reservations, in 1932 the AIWC passed a resolution in favour of birth control in limited circumstances, recommending regulating its use to married women only and restricting dispensing services to medical professionals.³⁵

Female proponents of birth control also relied on patriarchal modes of argumentation to support birth control, in order to allay fears that its use would potentially disrupt the gendered social order. According to Ahluwalia, "Indian middle-class women found politicizing the patriarchal ideology of motherhood helpful in defending the controversial demands for the use of birth control and contraceptives."³⁶ Having

³⁰Ahluwalia, *Reproductive Restraints: Birth Control in India, 1877-1947*.

³¹ Doctor Vikram, 'Gandhi-Sanger Debate: Margaret Battled over Birth Control & Many of Those Battles Are Still Being Fought', Economic Times India, 4 October 2015,

<https://economictimes.indiatimes.com/news/politics-and-nation/gandhi-sanger-debate-margaret-battled-over-birth-control-many-of-those-battles-are-still-being-fought/articleshow/49209228.cms?from=mdr>. It is worth noting that Sanger employed eugenic arguments in her pro-contraceptive discourse, exhorting (quoting from Petchesky): "More children from the fit, less from the unfit—that is the chief issue of birth control." Rosalind Pollack Petchesky, *Abortion and Woman's Choice: The State, Sexuality, and Reproductive Freedom* (Great Britain: Verso, 1986), 93.

³²Ahluwalia, *Reproductive Restraints: Birth Control in India, 1877-1947*.

³³ Ahluwalia.

³⁴Ahluwalia.

³⁵Ahluwalia.

³⁶Ahluwalia, 95.

demonstrated their allegiance to women's role in the home, they exalted the health benefits that would be realised by mothers and children due to spacing between births. Besides these, population control and eugenic logic also held currency amongst middle-class women. While Indian women activists demonstrated a genuine concern for the unmet reproductive needs of Indian women, according to Ahluwalia their upper-class, upper-caste positionality inhibited them from addressing the variegated nature of challenges facing Indian women across all social ranks. "The middle-class women proponents of birth control espoused an exclusive rather than an inclusive agenda, in that they did not address the wide spectrum of reproductive experiences or needs of Indian women."³⁷ Besides merely misrepresenting the needs of Indian women, the eugenic arguments actively deprived woman of lower socio-economic status of their personhood by representing them as objects to be acted upon for overall social gain. The disjointed response amongst feminists was mirrored amongst medical practitioners: their equivocal knowledge of birth control cast them as followers rather than reformers on the issue, and even those in favour of birth control did so on the back of Malthusian and eugenic logic.³⁸ Ahluwalia states that male physicians who wrote about the merits of contraception overlooked its potential implications for maternal and infant health, stressing instead the interests of the middle-class.³⁹

1.2 The Introduction of Family Planning to India's National Agenda

Incremental steps were taken to introduce family planning services to India, but it wasn't until India gained its independence that the state took proactive efforts to support these initiatives. In 1946 the government of India released a report commonly referred to as the Bhore Committee Report, which offered its unanimous support in favour of the manufacture and sale of contraceptives under the management of the Indian state, adding the caveat that the provision of birth control and knowledge from state facilities would only be carried out if it received public support.⁴⁰ Fertility control policies were implemented through national family planning programmes beginning with the First Five-Year Plan in 1951. In the following chapter I will delineate in detail the evolution of these programmes, whose increasing concern with population policy rather than maternal health resulted in coercive, target-based implementation strategies. The events

³⁷Ahluwalia, 98.

³⁸Ahluwalia, *Reproductive Restraints: Birth Control in India, 1877-1947*.

³⁹Ahluwalia.

⁴⁰Ahluwalia.

preceding this policy decision left a moral stain on India's health system, culminating in what Datta and Misra describe as, "a system that slowly degenerated into abuse of people's rights."⁴¹

Without fanfare and having little to do with the women's movement, abortion was decriminalised in India following the passing of the Medical Termination of Pregnancy (MTP) Act of 1971.⁴² It followed the recommendation of the 1966 Shantilal Shah Committee which recommended that legal abortion services be made available as a solution to the high number of illegal and unsafe abortions that were happening every year.⁴³ Anticipating the potential for backlash, the committee went to pains in its report to assure that it was not a means of population control.⁴⁴ Despite the ambivalent attitudes towards abortion in India, there were no vocal pro-natal advocates that challenged the passing of the MTP.⁴⁵ Its supporters bifurcated into two branches: those who viewed liberalisation as a boon for the lowering of birth rates and those concerned with the harmful effects of illicit abortions.⁴⁶ According to Jesani and Iyer, "Given these two dominant positions, demographers and doctors emerged as the leading actors shaping policy on abortion, both motivated by their own material interests and ideologies."⁴⁷

In 1975, four years following the passing of the MTP, the All India Institute of Medical Science (AIIMS) performed sample amniocentesis tests⁴⁸ to learn more about foetal genetic conditions. An unanticipated consequence arose when the research team noticed the keen interest of the volunteer participants to learn the sex of the foetus.⁴⁹ Upon

⁴¹Bishakha Datta and Geetanjali Misra, 'Advocacy for Sexual and Reproductive Health: The Challenge in India', *Reproductive Health Matters* 8, no. 16 (November 2000): 28, [https://doi.org/10.1016/S0968-8080\(00\)90184-8](https://doi.org/10.1016/S0968-8080(00)90184-8).

⁴²Jesani and Iyer, 'Women and Abortion'.

⁴³Nivedita Menon, 'Abortion: When Pro-Choice Is Anti-Women', in *Recovering Subversion: Feminist Politics Beyond the Law* (Urbana and Chicago: University of Illinois Press, 2004), 66–105.

⁴⁴Menon.

⁴⁵Jesani and Iyer, 'Women and Abortion'.

⁴⁶Jesani and Iyer.

⁴⁷Jesani and Iyer, 2592.

⁴⁸Chhachhi and Sathymala provide a thorough explanation of amniocentesis tests: "It is performed by inserting a long needle through the mother's abdomen and drawing off a small sample of the amniotic fluid - the liquid in which the foetus floats. The cells from the foetus are separated from the fluid and either examined directly under a microscope or placed in a nutrient bath where they continue to grow and divide. By analysing these cells chemically doctors can identify nearly 70 genetic diseases, most of which are serious. Certain genetic disorders can be detected directly by examining the chromosomes present in the foetal cells. However, certain other diseases cannot be detected in this way. In these cases the doctor can only predict the probability of genetic disorders by finding out if the foetus is male or female i.e. by a sex determination test."

⁴⁹Vibhuti Patel, 'A Long Battle for the Girl Child', *Economic & Political Weekly* XLVI, no. 21 (21 May 2011): 18–20.

receiving the information that it was female, the revelation would swiftly be followed by the women insisting that an abortion be performed.⁵⁰ Following this development, the Centre for Women's Development Studies (CWDS) petitioned the health minister to prohibit the use of this technology with the intention of procuring the abortion of a female foetus.⁵¹ Given the anti-natal policies of the government during the Emergency period, their request fell on deaf ears. When women's studies scholars co-related the decline in sex ratio with sex determination tests (SDT), in 1978 the Union Health Minister banned tests for the purpose of sex determination from government hospitals.⁵² This cleared the path for private clinics, whose business thrived on the steady flow of parents seeking sex-determination tests.⁵³ In 1994 the Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act was unanimously passed, which restricts the use of pre-natal diagnostic tests to the detection of five specific types of abnormalities,⁵⁴ thus leaving access to abortion itself intact.

In 1997 the Indian government revised its position on a targets-based approach to contraception distribution and put in its place the Reproductive Child Health (RCH) programme. The design of the programme aligned itself more with the health and contraceptive needs of women than its predecessors, and marked a shift in approach in favour of family planning.⁵⁵ These developments came off the back of the International Conference on Population and Development in Cairo in 1994, at which India agreed that reproductive rights (encompassing reproductive and sexual health) fall within the rubric of human rights. According to Radhika this shift towards reproductive health, "represented a significant paradigm shift for countries like India that had long followed a population control model."⁵⁶

1.3 The Current Situation of Reproductive Rights in India

Indian feminists describe India's abortion law in liberal terms as it provides for abortion in most circumstances. The MTP frames abortion as a medical service provided to women upon receiving approval of a doctor. Abortions are allowed up to 20 weeks of gestation,

⁵⁰Patel.

⁵¹Patel.

⁵²Patel.

⁵³Patel.

⁵⁴Menon, 'Abortion: When Pro-Choice Is Anti-Women'.

⁵⁵Radhika Chandiramani, 'Mapping the Contours: Reproductive Health and Rights and Sexual Health and Rights in India', in *Where Human Rights Begin* (Rutgers University Press, 2005), 127–53.

⁵⁶Chandiramani.

however beyond 12 weeks the approval of a second physician is required and a woman's life must be in danger if she is to be permitted an abortion past 20 weeks. A woman seeking to terminate her pregnancy must fall within the legal grounds established by the MTP. According to Hirve these grounds include:⁵⁷

grave risk to the physical or mental health of the woman in her actual or foreseeable environment, as when pregnancy results from contraceptive failure, or on humanitarian grounds, or if pregnancy results from a sex crime such as rape or intercourse with a mentally-challenged woman, or on eugenic grounds, where there is reason to suspect substantial risk that the child, if born, would suffer from deformity or disease.⁵⁸

Despite India's liberal implementation of abortion law, the declining female gender ratio has subjected this interpretation to scrutiny and created restrictions of access.

Feminists are anticipating positive legal amendments to the MTP, which would reconfigure female bodily autonomy as its guiding principles.⁵⁹ According to the Economic and Political Weekly (EPW) article 'Right to Safe Abortion'⁶⁰ the judiciary have been faced with a number of cases challenging the 20 week upper limit, which does not encompass non-fatal cases such as foetal abnormalities, or risk to the physical or mental health of the mother. The proposed amendments which have been pending in Parliament since 2014 include nullifying any temporal restrictions on abortion in the case of significant foetal abnormalities or danger to the life of the mother, and removing the marital clause which only allows married women to cite contraceptive failure as grounds for abortion.

In spite of the legalisation of abortion the vast majority of Indian women continue to undergo extra-legal abortions due to social, economic and logistical barriers,⁶¹ with unsafe conditions still a major concern. Given the circumstances, finding reliable data is difficult. Writing in 2005 and referring to a study written in 1994, Chandiramani reports that an annual 670,000 abortions are officially registered, while an estimated 5-6 million additional abortions are conducted in unrecognised facilities.⁶² More recent figures reported by *The Lancet* place the figures much higher. According to their 2015 study they

⁵⁷ In the final chapter I shall elucidate India's abortion law, including barriers to access

⁵⁸ Siddhivinayak S Hirve, 'Abortion Law, Policy and Services in India: A Critical Review', *Reproductive Health Matters* 12, no. sup24 (2004): 115.

⁵⁹ The introduction of the MTP in 1971 was against the backdrop of population control and concerns for high maternal mortality following unregulated abortions

⁶⁰ 'Right to Safe Abortion Care', *Economic & Political Weekly* LII, no. 9 (4 March 2017): 8.

⁶¹ I will discuss this further in the third and fourth chapter.

⁶² Chandiramani, 'Mapping the Contours: Reproductive Health and Rights and Sexual Health and Rights in India'.

estimated that 15.6 million abortions (14.1 million–17.3 million) occurred in India in 2015.⁶³ 3.4 million abortions (22%) were procured in health facilities, while a staggering 11.5 million (73%) abortions were medication abortions done outside of health facilities, and a further 0.8 million (5%) abortions were reportedly done outside of health facilities using methods other than medication abortion.⁶⁴ A Guttmacher Institute report published in 2018 found that unsafe abortion was the third leading cause of maternal mortality in India, with up to eight women dying each day from causes arising from unsafe abortion.⁶⁵

Access to safe and regulated reproductive services remains uneven in India, and feminists continue to grapple with the evolving landscape of reproductive rights in response to reproductive technological advancements. While there are signs of improvement, there is still some way to go before the Indian government sheds its coercive legacy of reproductive healthcare.

B. Evolution of Reproductive Rights in Ireland

In this section I will trace the evolution of reproductive rights in Ireland.

1.4 Post-Colonial Discourse: Irish Women and the Free State

The shifting terrain of political and societal attitudes towards reproductive rights in Ireland is heavily rooted in its post-colonial history, with modern Ireland continuing to grapple with the implications this had for women's reproductive rights. Ireland inherited its anti-abortion law from the British colonial state and abortion criminalised under section 58 of the Offences Against the Persons Act 1961.

Irish women played a pivotal role in the independence movement that paved the way for the Irish Free State in 1922, and had hoped that they would be accommodated as equal citizens in the newly independent nation-state.⁶⁶ However the egalitarian promises

⁶³Susheela Singh et al., 'The Incidence of Abortion and Unintended Pregnancy in India, 2015', *The Lancet Global Health* 6, no. 1 (January 2018): e111–20, [https://doi.org/10.1016/S2214-109X\(17\)30453-9](https://doi.org/10.1016/S2214-109X(17)30453-9).

⁶⁴Singh et al.

⁶⁵S Singh et al., 'Abortion and Unintended Pregnancy in Six Indian States: Findings and Implications for Policies and Programs', *Guttmacher Institute*, 2018.

⁶⁶Noel Whitty, 'Law and the Regulation of Reproduction in Ireland: 1922-1992', *The University of Toronto Law Journal* 43, no. 4 (Autumn 1993): 851–88. I would like to clarify my use of the term 'nation-state' here. A 'state' is defined as an area, "whose borders are usually clearly defined and internationally recognized by other states", which is ruled by its own bureaucracy and demarcated by borders. A nation is defined as, "a group of people who see themselves as a cohesive and coherent unit based on shared cultural or historical criteria" and refers to "imagined communities" brought together by a shared identity. A nation-state is the communion between a state and a nation. For the purposes of this essay I will refer to Ireland and India as nation-states following their independence, although this could be

of the 1916 Proclamation of the Irish Republic did not come to pass, at least in the case of women.⁶⁷ In their efforts to establish Irish exceptionalism, the newly elected conservative leaders of the Free State refracted Irishness through Catholicism and imbued the nascent Irish state with this dual Catholic-nationalist identity.⁶⁸ The assimilation of Church and State reached its peak in 1937 with the enactment of the Irish Constitution. This included Article 44.1.1^o, which recognised Catholicism as the official state religion and imbued the letter of the law with spiritual teachings of the Church. According to Smyth the 1937 Constitution, “attempted to combine the democratic ideal of popular sovereignty with theocratic authoritarianism.”⁶⁹

As an institution founded on patriarchal traditions, the attitudes of the Catholic Church towards gender roles were anachronistic and regressive. Reflecting on the reducing of women to their maternal roles following independence, Quesney asserts, “Women’s fortunes were further undermined by the prominent role of the Catholic Church in Irish politics. Catholicism’s construction of women as inferior to men legitimises and commends normative gender roles and women’s subordination to men”.⁷⁰ These values permeated the political and legal structures of the State and undid some of the liberties that women had gained during the dependence era. According to Fletcher, “One of the ways in which the newly independent Irish state asserted its independence and authority was by rolling back legal rights which women had had under the colonial regime.”⁷¹ In 1919 Countess Markievicz, who had fought as a revolutionary during the 1916 Easter Rising, became the first woman to be elected as cabinet minister in Western Europe. Yet a mere three years later, in a move which Pauline Conroy describes as the relegation of women “from comrades and citizens to a caste of silent and subordinated servants”,⁷² the Juries (Amendment) Act disbarred women from sitting on juries. This

contested as both countries sacrificed territory envisioned as part of the nation in becoming a republic. For definitions see: ‘State, Nation and Nation-State: Clarifying Misused Terminology | GEOG 128: Geography of International Affairs’, accessed 19 July 2019, <https://www.e-education.psu.edu/geog128/node/534>.

⁶⁷Whitty, ‘Law and the Regulation of Reproduction in Ireland’.

⁶⁸Lisa Smyth, *Abortion and Nation: The Politics of Reproduction in Contemporary Ireland* (Ashgate Publishing Limited, 2005).

⁶⁹Smyth, 39.

⁷⁰ Anne Quesney, ‘Speaking Up! Speaking Out! Abortion in Ireland’, in *The Abortion Papers Ireland: Volume 2* (Cork: Attic Press, 2015), 152.

⁷¹Ruth Fletcher, ‘Post-Colonial Fragments: Representations of Abortion in Irish Law and Politics’, *Journal of Law and Society* 28, no. 4 (December 2001): 57, <https://doi.org/10.1111/1467-6478.00203>.

⁷² Pauline Conroy, ‘Dúirt Bean Liom...Punishing the Productive and the Reproductive’, in *The Abortion Papers Ireland: Volume 2* (Cork: Attic Press, 2015), 36.

decision was justified on the assumption that, “in this country the number of women who desire to serve on juries is very small, and in practise the insertion of women’s names in the Jury Book leads to nothing but trouble.”⁷³

1.5 Church/State Attitudes towards Reproductive Rights in Ireland

The fixation of the Irish Catholic Church with sex and reproduction brought these matters under intense scrutiny during the early years of the Irish Independent State. The focus of their attention was directed towards women, and steps were taken to ensure the monitoring and regulation female sexuality. Women who were deemed sexually deviant were institutionalised in Catholic Church-run Magdalene Laundries that operated from 1922 till 1996, where they were forced into unpaid labour and forced to give up their ‘illegitimate’ child for adoption.⁷⁴ The Church’s repugnance towards pre-marital sex was also attached to the children they bore, resulting in their status of illegitimacy which prevented them from accessing the same rights as ‘legitimate’ children.⁷⁵ The Church/State conglomeration enacted a slew of statutes which sought to collapse (and essentially erase) female sexuality into motherhood. In 1928 the Censorship of Publications Bill came into effect, which banned the writing, publishing or promoting of text remotely related to the unnatural prevention of conception or the procurement of abortion. Women’s role as mothers within the private sphere was emphasised and in 1936 the Marriage Bar was introduced, disbaring women from working once they were married.⁷⁶ In 1935 the Criminal Law Amendment Bill (in a sweeping gesture that exhibits shockingly blunt moral relativism) criminalised contraceptives and brothels in one fell swoop, bringing an end to the fifteen-year period during which contraceptives had essentially been legal.⁷⁷

Despite abortion being illegal, Irish women circumvented the law (which had outlived its colonial origins) by travelling to England to undergo termination of pregnancy. This long-enduring migratory tradition traces back to 1938 when a doctor operating in England performed an illegal abortion on a suicidal 14-year-old girl (who

⁷³Pauline Conroy, ‘Dúirt Bean Liom....A Woman Told Me... Punishing the Productive and the Reproductive’, in *The Abortion Papers Ireland: Volume 2* (Cork: Attic Press, 2015), 931. (Quoting from *DáilÉireann*, 1924, vol. 6, p. 1665).

⁷⁴Maeve O’Rourke, ‘Ireland’s Magdalene Laundries and the State’s Duty to Protect’, *Hibernian Law Journal* 10 (2011): 200.

⁷⁵*The Irish Feminist Review* ’84 (Dublin: Women’s Community Press, 1984).

⁷⁶Whitty, ‘Law and the Regulation of Reproduction in Ireland’.

⁷⁷Pauline Conroy, ‘Outside the Jurisdiction: Irish Women Seeking Abortion’, in *The Abortion Papers Ireland: Volume 1* (Cork: Attic, 1992), 119–37.

had been gang raped by soldiers) and was later acquitted. The case set a legal precedence and thus allowed clinics providing backstreet abortions to continue with relative impunity.⁷⁸ Infanticide was also a common means of dealing with an unwanted pregnancy, particularly in years during the Second World War when travel to England was prohibited.⁷⁹ This, coupled with the increasing prevalence of prosecution for backstreet abortions during this period, led the government to introduce the Infanticide Act 1949.⁸⁰

1.6 The Irish Women's Movement and Reproductive Rights

It was in the 1960's that women's consciousness-raising groups began to emerge in Ireland.⁸¹ Contraception was at the forefront of the movement in the sixties and seventies and a number of organizations and feminist groups formed around this issue. A Fertility Guidance Clinic opened in Dublin in 1969 and a year later saw the coming together of the Family Planning Rights Group.⁸² The Irish Women's Liberation Group (IWLG), which began meeting in 1970, and Irishwomen United, formed in 1975, were influential advocates of reproductive rights at this time. Piercing the oppressive silence, different feminist groups began demonstrating in a highly brazen and publicised, albeit uncoordinated, manner.⁸³ On May 22nd 1971 the Irish Women's Liberation Movement (IWLM) organised a highly publicised demonstration dubbed 'The Contraceptive Train', which saw a group of women travel on a train from Dublin to Belfast to buy contraceptives.⁸⁴ This was done with impunity in full view of the government, who, according to Barry, preferred behaviour was to ignore breaches rather than initiate social reform.⁸⁵

1973 brought about a clear, albeit restricted, victory in the Constitutional case *McGee v The Attorney General*, in which the court found that the right to privacy in marital affairs conferred on a married woman the right of access to contraception for their personal use only. The following year saw a narrowly failed attempt to legislate based on

⁷⁸Conroy.

⁷⁹Conroy.

⁸⁰Conroy.

⁸¹Ailbhe Smyth, 'Introduction', in *The Abortion Papers Ireland: Volume 1* (Cork: Attic Press, 1992), 4–7.

⁸²Smyth.

⁸³Sandra McAvoy, 'The Catholic Church and Fertility Control in Ireland: The Making of a Dystopian Regime', in *The Abortion Papers Ireland: Volume 2* (Cork: Attic Press, 2015).

⁸⁴Ursula Barry, 'Movement, Change and Reaction: The Struggle over Reproductive Rights in Ireland', in *The Abortion Papers Ireland: Volume 1* (Cork: Attic Press, 1992), 107–18.

⁸⁵Barry. During this time contraception were legal in the six counties of Northern Ireland.

the ruling of *McGee*. Sandra McAvoy blames this on the outspoken critiques of the Church on these issues,⁸⁶ which framed contraceptive use as sexual licentiousness and a contravention of Catholic religion.⁸⁷ Reflecting on the agenda-setting of the Church, McAvoy says, “The stance of the Church had successfully moved the political focus away from the needs of women like Mrs McGee, effectively defining them as secondary.”⁸⁸

In 1976 the Contraception Action Programme came together and launched a campaign strategy plainly selling contraceptives in pop-up stores and outdoor stalls in community areas.⁸⁹ Family planning clinics such as The Irish Family Planning Association (IFPA) similarly operated on the margins of the law. They flagrantly dispensed birth control information and even sold an array of contraceptives, which technically fell within the law⁹⁰ as clinics asked for a donation rather than charging a fee.⁹¹ Women were also able to legally gain prescriptions for the contraceptive pill, so long as it was dispensed within its capacity as a ‘cycle regulator’ rather than a contraceptive.⁹² Contraception was eventually legalised in 1980 when the Family Planning Bill came into effect, however it was only to be availed of with a medical prescription on the conditions of ‘bona fide daily planning purposes’ as laid down by *McGee*.

Despite concrete steps being taken towards contraceptive liberalisation, there lacked a clear national consensus on abortion. Feminism in Ireland was small and fractured and even within women’s groups the issue remained controversial. Pauline Jackson says, “Abortion, however, remained a taboo subject in most women’s groups and few dared to articulate demands that it be included amongst the ‘rights’ that ought to be reappropriated by women.”⁹³ The emergence of the Women’s Right to Choose Group (WRCG) in early 1980 marked the first feminist organisation which, in addition to campaigning on behalf of free and safe contraceptive access, maintained a clear and unequivocal position in

⁸⁶ Proselytising on the issue the Catholic Archbishop of Dublin John Charles McQuaid said, “but if by *planned* is meant the spacing of births by contraception, then that use of marriage is not in agreement with the law of God. McAvoy, ‘The Catholic Church and Fertility Control in Ireland: The Making of a Dystopian Regime’, 2015, 51.

⁸⁷ McAvoy, ‘The Catholic Church and Fertility Control in Ireland: The Making of a Dystopian Regime’, 2015.

⁸⁸ McAvoy, 1240.

⁸⁹ McAvoy, ‘The Catholic Church and Fertility Control in Ireland: The Making of a Dystopian Regime’, 2015.

⁹⁰ The 1935 act prohibited the sale and distribution of contraceptives but not their manufacture or usage.

⁹¹ Barry, ‘Movement, Change and Reaction: The Struggle over Reproductive Rights in Ireland’.

⁹² Smyth, *Abortion and Nation: The Politics of Reproduction in Contemporary Ireland*.

⁹³ Conroy, ‘Outside the Jurisdiction: Irish Women Seeking Abortion’, 130.

favour of the legalisation of abortion in Ireland.⁹⁴ Mary Gordon, a founding member of the WRCG, said that when the organisation was originally formed, abortion was not a political issue for Irish feminists. She attributes this to the accessibility to abortion in England where abortion was legalised since the 1967 Abortion Act, thus shielding Ireland from the negative repercussions of illegal and unsafe abortions. “Thus by escaping the brutal facts of backstreet abortion, Ireland was able to ignore the existence of these problems altogether.”⁹⁵ Proxy organisations such as the Dublin Well Woman Centre offered referral services since 1978, however, apart from the WRCG no other feminist groups seemed inclined to disturb the status quo and efforts were concentrated on contraception instead. In 1981 the organisation took the step of publishing its first pamphlet titled ‘*Abortion: A Choice for Irish Women*’ and held its first public meeting that March.⁹⁶

The entrance of the Pro-Life Amendment Campaign (PLAC) onto the political stage less than a month later interrupted these efforts. PLAC’s raison d’être was to quell even the most tentative possibility that abortion may be legalised in Ireland by securing the life of unborn the highest legal protection possible. Consisting of a coalition of forces that coalesced at the bidding of the Irish Catholic Doctors, it intended to launch a campaign seeking for an amendment to the Constitution that would guarantee the “unborn child an absolute right to life from the moment of conception”.⁹⁷ PLAC was a small yet powerful organisation and its members had access to the highest offices of political power. Within the space of three weeks they had gained the political backing of Fianna Fáil and Fine Gael, Ireland’s two biggest government parties.⁹⁸ Their endeavour was rather remarkable at the time given that abortion was already illegal in Ireland, nor was there any campaign underway or a specific legislation proposal seeking to legalize abortion services.⁹⁹ Its reaction was in response to what the group’s members regarded as a shifting consensus in the Western world in favour of legalising abortion. 1967 saw Britain overhaul its anti-abortion legislation, swiftly followed by the legalisation of

⁹⁴McAvoy, ‘The Catholic Church and Fertility Control in Ireland: The Making of a Dystopian Regime’, 2015, 111.

⁹⁵*The Irish Feminist Review* ’84, 9.

⁹⁶*The Irish Feminist Review* ’84.

⁹⁷*The Irish Feminist Review* ’84, 12.

⁹⁸*The Irish Feminist Review* ’84.

⁹⁹Smyth, *Abortion and Nation: The Politics of Reproduction in Contemporary Ireland*, 7. (Quoting from O’Carroll, J.O. (1991) ‘Bishops, Knights – and Pawns? Traditional Thought and the Irish Abortion Referendum Debate of 1983’, *Irish Political Studies*, 6: 53-71

abortion services in the United States on the back of the landmark ruling in the 1973 *Roe v Wade*¹⁰⁰ case. As countries around the world began to loosen their abortion laws, Ireland's anti-abortion stance emerged as a brand of Catholic Ireland's exceptionalism. However as Smyth notes, "This national and international accumulation of events throughout the 1960s and the 1970s threatened to undermine the hegemony of conservative and patriarchal discourse through which Irish legal, political and social decisions and policies had been produced."¹⁰¹ Fomenting fears that similar changes could be introduced at home, PLAC hoped to pre-empt any such disruptions to Catholic Ireland. The decision by PLAC to bring the issue of abortion to the Irish public in such a swift manner when there had been little prior debate had a detrimental and lasting impact for the pro-abortion movement in Ireland. As Smyth notes, "one major cultural effect of PLAC, given the absence of any mainstream feminist movement aimed at decriminalizing abortion, was that moral opposition to abortion framed the terms of the debate during the 1980s and the early 1990s".¹⁰² The interests and concerns of Irish women were conspicuously absent from the debate which PLAC kickstarted despite the claims it made on their bodies. Originally the WRCG group wanted to oppose the 8th amendment on a pro-abortion ticket, however following fears that this position wouldn't garner public support the Anti-Amendment Campaign (AAC) emerged as the leading feminist campaign group.¹⁰³ The AAC did not advocate abortion but exhorted the Irish public to vote against the 8th Amendment.

On the 7th September 1983 67% of the Irish republic voted in favour of the insertion of the 8th amendment to the Irish constitution.¹⁰⁴ The amendment read,

The State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right.¹⁰⁵

¹⁰⁰ *Roe v. Wade*, 410 U.S. 113 (1973) was a landmark case in the US in which the Supreme Court ruled in favour of abortion access which was advanced on the rationale that a woman was free to exercise her personal autonomy free from excessive government interference.

¹⁰¹ Smyth, *Abortion and Nation: The Politics of Reproduction in Contemporary Ireland*, 9.

¹⁰² Smyth, 9.

¹⁰³ This will be elucidated in more detail in the third chapter.

¹⁰⁴ Sinead O'Carroll, 'History Lesson: What Happened during the 1983 Abortion Referendum?', *TheJournal.ie*, accessed 6 June 2019, <https://www.thejournal.ie/abortion-referendum-1983-what-happened-1225430-Dec2013/>.

¹⁰⁵ *Bunreacht Na HEireann (Irish Constitution Enacted in 1937)*, Article 40.3.3 § (n.d.).

In the following years the Irish republic experienced the full weight of their decision through a series of cases demonstrating the logical conclusion when the life of the mother is placed on an equal footing with that of the foetus. With the establishment of the foetus as a rights-holding citizen, any competing rights of pregnant women were jeopardised.¹⁰⁶ This was borne out in landmark X case that emerged in 1992 in the wake of the 8th Amendment, concerning a 14-year-old girl who denied the right to travel to the UK to undergo abortion.¹⁰⁷ Following her case being heard in the high court the right to travel was reinstated. While this provided an option for women with the means and circumstances to realise this right, more high-profile cases emerged demonstrating its discriminatory effect on marginalised women and girls. Five years later, the public was once again traumatised by the C case,¹⁰⁸ concerning a thirteen-year-old rape victim whose parents petitioned the court seeking to prevent her having an abortion.

Despite the acknowledgement that the 8th Amendment implied a duty towards the life of the mother, the ‘legal uncertainty’ arising from the bad wording of the 8th amendment resulted in what is described as the ‘chilling’ effect¹⁰⁹ of the medical community.¹¹⁰ According to Erdman, “Viewed as a whole, the legal system worked to deny rather than protect women's access to lawful services”.¹¹¹ The tragic death of Savita Halappanavar in 2012 marked a turning point in Ireland’s abortion discourse, and paved the way for the repeal of the 8th Amendment. An Indian dentist working and residing in Ireland, Savita was seventeen-weeks pregnant when she went to hospital as she was undergoing a miscarriage.¹¹² Her repeated requests for a termination of pregnancy were denied because a foetal heartbeat was still detected, despite there being no prospect of its

¹⁰⁶ The first of such rights to be attacked was the right to information. The Society for the Protection of Unborn Children (SPUC) were successful in seeking an injunction against pregnancy counselling services which provided information to Irish women travelling to England for an abortion. Ursula Barry, ‘Abortion in the Republic of Ireland’, *Feminist Review* 29, no. Summer (1988): 57–63.

¹⁰⁷ This case will be elucidated upon in more detail in chapter two.

¹⁰⁸ This case will be elucidated upon in more detail in chapter four.

¹⁰⁹ In the absence of a legal instrument to bridge the gap between the legal implications of the X ruling and the medical realities facing doctors and pregnant people, they were forced to interpret it on their own with the threat of imprisonment if they misjudged. Tellingly, a false interpretation threatening imprisonment was always viewed from the perspective of an illegal abortion, rather than the failure to save the life of a woman due to the denial of a legal abortion. Consequently, the ‘chilling effect’ operated to make doctors hesitant to provide women with services they were legally obliged to perform.

¹¹⁰ Fiona de Londras and Máiréad Enright, *Repealing the 8th: Reforming Irish Abortion Law* (Bristol University Press, Policy Press, 2018).

¹¹¹ Joanna N Erdman, ‘Procedural Abortion Rights: Ireland and the European Court of Human Rights’, *Reproductive Health Matters* 22, no. 44 (January 2014): 23, [https://doi.org/10.1016/S0968-8080\(14\)44798-0](https://doi.org/10.1016/S0968-8080(14)44798-0).

¹¹² Fiona de Londras, ‘Constitutionalizing Fetal Rights: A Salutary Tale from Ireland’, *Michigan Journal of Gender & Law* 22 (2015): 243–89.

survival. For three days Savita existed in the space of legal uncertainty, where the threat caused by the pregnancy did not meet the legal test of “real and substantial danger” to her life,¹¹³ but her health continued to decline.¹¹⁴ During this time she developed a very serious case of sepsis. The decision was taken to remove the foetal remains, however, due to the delay, the treatment Savita received was inadequate and a few days later she died.

Following Savita’s death, the government finally took steps to legislate in the aftermath of the X case.¹¹⁵ In 2014 the Protection of Life During Pregnancy Act (PLDPA) came into effect allowing for abortion in the case where there is a risk to the life of the pregnant woman, however, it was criticised for its bias¹¹⁶ towards the life of the unborn.¹¹⁷ According to Teachta Dála (Member of Parliament) Clare, “The 2013 act is [was] so restrictive that none but the most desperate, or those in state care, are [were] likely to benefit from it.”¹¹⁸ Despite changes of law effected by the PLDPA its benefits failed to materialise because the discourse surrounding lawful termination of pregnancy continued to be steeped in anti-abortion sentiment. According to Enright and de Londras, “pregnant people entitled to access life-saving abortions could not do so.”¹¹⁹ We see this in the case of Miss Y in 2014,¹²⁰ concerning an immigrant woman who found out what she was pregnant as a result of a rape shortly after arriving in Ireland. Despite being suicidal and meeting the legal criteria of the act, her requests for abortion were repeatedly denied. Cultural barriers to abortion continued to be the most difficult for women in Ireland to overcome.

After over three decades of defensive and reactive campaigning, Irish feminists adopted an unequivocal pro-abortion stance and began earnestly campaigning for the repeal of the 8th Amendment. In response to an emotionally charged campaign by the anti-choice organisation Youth Defence in 2012, the Abortion Rights Campaign (ARC) formed and began organising protests, meetings and events with the view to establishing

¹¹³ According to de Londras and Enright, the case of Savita Halappanavar demonstrated that, “abortion was inaccessible even in cases where it was arguably constitutional.”¹¹³

¹¹⁴ de Londras, ‘Constitutionalizing Fetal Rights: A Salutary Tale from Ireland’.

¹¹⁵ In the X case Justice Finlay established the legal test for abortion which held that a woman had a right to abortion if there was a “real and substantial” risk to her life.

¹¹⁷ Erdman, ‘Procedural Abortion Rights’.

¹¹⁸ Clare Daly, ‘Ireland’s First Abortion Legislation’, in *The Abortion Papers Ireland: Volume 2* (Cork: Attic Press, 2015), 267.

¹¹⁹ de Londras and Enright, *Repealing the 8th: Reforming Irish Abortion Law*.

¹²⁰ This case will be discussed in more detail in chapter four.

abortion rights for Irish women.¹²¹ Numerous other pro-abortion organisations, NGOs, activists and campaign groups cropped up, raising consciousness in favour of abortion amongst the public. An impassioned, and at times vitriolic, campaign ensued, with both pro-choice and pro-life organisations drawing support and actively visible in Irish political life. Circa 2016 For the first time in Irish history public polls indicated that a significant majority of the population were in favour of repeal.¹²² Recognising a shift in mindset, the Irish government put together an advisory board in the form of a Citizen's Assembly comprised of 99 ordinary members of the public plus a chairperson to consider the whether abortion should be legalised. 64% of the Assembly recommended that abortion should be legalised up to twelve weeks.¹²³ A referendum was announced for May 25th 2018, which asked the Irish public if the 8th Amendment to the Irish Constitution should be repealed. In an overwhelming indication of support 66.4% of people voted yes.¹²⁴ The Health (Regulation of Termination of Pregnancy) Act came into effect in 2019 which allowed for unqualified abortions for up to twelve weeks, and abortions past this threshold if the health or life of the mother is at risk with the approval of two doctors. The law in its current format will come under the review circa 2022, seeking to make any amendments deemed necessary to improve the access of abortion care for Irish women.

Conclusion

In this chapter I have traced the reproductive histories of Irish and Indian women and outlined the current situation of reproductive rights in both countries. Despite their unique trajectories and inverse state attitudes towards fertility control, the delineation of reproductive rights was considered a key component of nation-building in the post-colonial period. In the next chapter I will explore the exploitation of women's bodies as part of Ireland's and India's projects of nationhood. I will identify the social mechanisms undergirding the reproductive politics agenda, while contextualising these developments against their colonial past.

¹²¹Cathie Doherty and Sinéad Redmond, 'The Radicalisation of a New Generation of Abortion Rights Activists', in *The Abortion Papers Ireland: Volume 2* (Cork: Attic Press, 2015).

¹²²Damian Loscher, "'Irish Times' Poll: Clear Shift in Attitude to Abortion since 2013', *The Irish Times*, accessed 8 June 2019, <https://www.irishtimes.com/news/social-affairs/irish-times-poll-clear-shift-in-attitude-to-abortion-since-2013-1.3467547>.

¹²³Susan McKay, 'A Jury of Peers', *Foreign Policy* (blog), accessed 8 June 2019, <https://foreignpolicy.com/2019/01/05/a-jury-of-peers/>.

¹²⁴Jon Henley et al., 'Irish Abortion Referendum: Yes Wins with 66.4% – as It Happened', *The Guardian*, 26 May 2018, sec. World news, <https://www.theguardian.com/world/live/2018/may/26/irish-abortion-referendum-result-count-begins-live>.

2. Reproductive Services and the Project of Nationhood

Introduction

Having sketched the trajectory of reproductive rights in Ireland and India in the previous chapter, it is clear that the social mechanisms undergirding fertility regulation are nuanced and tightly intertwined with the process of nation-building in the post-independent period. In this chapter I will interrogate the relationship between the experience of colonialism and the actions and attitudes adopted by the Irish and Indian nation-states towards fertility control. Interwoven with this analysis, I will argue that the ‘project of nationhood’ (a term I borrow from Lisa Smyth¹²⁵) used women’s bodies to further its own aims, incurring tragic consequences for the welfare of women and profoundly shaping the landscape reproductive landscape for Indian and Irish women.

2.1 The Project of Nationhood in the Post-Colonial Period

As former colonies of the British Empire, the historical development and political landscape of Ireland and India are profoundly impacted by their colonial past. The experience of colonialism entailed subjection to foreign rule, subordination of national interests and sustained periods of violence to gain independence. The trauma incurred during this period played a formative role in shaping the national agenda and the public consciousness in the decades following independence, the reverberations of which are still felt to this day. Against this historical backdrop, the development of reproductive rights in Ireland and India is understood more clearly when contextualised with their colonial past.¹²⁶ Very seldomly was access to contraceptive services and maternal and infant welfare dealt with exclusively from a healthcare perspective; women’s reproductive bodies were embroiled with overarching nationalist interests and identity-building processes that dominated national discourse following independence. For this reason I rely on post-colonial concepts during this chapter’s analysis.¹²⁷

¹²⁵ Smyth, *Abortion and Nation: The Politics of Reproduction in Contemporary Ireland*.

¹²⁶ Fletcher, ‘Post-Colonial Fragments’.

¹²⁷ While I believe that post-colonial analysis is useful to contextualise reproductive rights in Ireland and India, this should not be taken to imply that the experience of colonialism in Ireland and India are of equal extremity. Ruth Fletcher’s interrogation of the appropriateness of applying post-colonial concepts to Ireland is highly beneficial. She says, “As with the development of post-colonial criticism generally, the application of post-colonial concepts to the study of Irish culture has not passed without controversy. This is partly because Ireland’s relative economic wealth and political development, as well as its contemporary position within the European Union, have jarred against the most dominant image of a post-colonial country. And secondly, the disputed nature of Ireland’s past colonial status has challenged the application of post-colonial concepts to the contemporary Irish condition.” Fletcher, 572. However, she defends her use of post-colonial analysis, arguing, “I am claiming that there is something about the

In post-Independent Ireland and India, the ensuing process of nation-building relied heavily on the circumscribing of female sexuality and fertility control in accordance with conservative, patriarchal norms. This was linked to the construction of society around prescriptive, traditional familial values that viewed a patriarchal construction of family as the microcosm of society. According to Smyth, “Gendered and sexualized nationalist discourses often rely primarily on the naturalization of the patriarchal heterosexual family as the source of, and justification for, hegemonic ‘national’ culture.”¹²⁸ The inscribing of national identity on women’s bodies was not a linear process but entailed both a forward and backward movement. Backward in the sense that women’s bodies were instrumentalized in the efforts to undo and unlearn colonialism, but also forward looking as women’s bodies were employed in identity-making processes to define the sovereign, post-colonial nation-state.

i Women as the Symbolic Embodiment of National-Identity

In this section I shall argue that the establishing of national selfhood in India and Ireland relied upon the regulation of female sexuality, realised through public morality and state policies that envisioned ‘woman as mother’. To demonstrate the veracity of this claim it is first necessary to explore the link between motherhood and national cultural identity. The concept that ‘women as mothers’ represented the nation took shape in symbolic and physical form, both of which will be explored below.

Both India and Ireland have a long-established history of imbuing their national discourses with maternal representations of national identity, the commonalities of which have attracted comparative analysis. According to Thapar-Björkert and Ryan, “Gendered discourses informed the range of symbols that represented Irish and Indian nationalism.”¹²⁹ Sumathi Ramaswamy traces this practice in India back to the late 19th century, when visual, literary and cartographical personifications of ‘Mother India’ were expressed through the Hindu goddess Bharat Mata.¹³⁰ The associations of this Hindu nationalist iconography evolved through time in response to the exigencies of the

British settlement of Ireland that can be explained in terms of metropolitan political control and economic exploitation of a peripheral territory, that is, in colonial terms. And therefore the experience of British colonial settlement, along with historical experiences, has effects on the way Irish society develops economically, politically, culturally and legally.” Fletcher, 573.

¹²⁸ Smyth, *Abortion and Nation: The Politics of Reproduction in Contemporary Ireland*, 36.

¹²⁹ Thapar-Björkert and Ryan, ‘Mother India/Mother Ireland’, 305.

¹³⁰ Sumathi Ramaswamy, ‘Maps and Mother Goddesses in Modern India’, *Imago Mundi* 53, no. 1 (2001): 97–114, <https://doi.org/10.1080/03085690108592940>.

independence movement. According to Geeti Sen, earlier renderings of the Bharata Mata were equanimous and lacked the fierceness of the goddess Kali.¹³¹ However following the partition of Bengal in 1905 hostility towards the British heightened, and a more militant female deity was needed to stimulate revolutionary violence.¹³² Thus from 1906 nationalist groups turned towards Kali for inspiration.¹³³

This altered once more when Gandhi assumed leadership of the nationalist movement. Gandhi propagated a non-violent struggle for freedom and his perception of women as self-sacrificing and silent sufferers rendered them the ideal embodiment of this Stayagraha movement. Commenting on the politicization of women's bodies Radha Kumar says, "Notably, in the search for national identity to oppose British colonialism, Gandhi turned political method into means of expressing Indianness, particularly for women (Satyagraha, for example)."¹³⁴ This relied on a representations of ordinary women though the symbolism of motherhood, whose uniquely female capacity to endure the agony of labour and the hardship of childcare and domestic duties exemplified Gandhi's passive resistance.¹³⁵

Speaking to an Irish context, Smyth comments on the hypermasculinity emerging from an anti-colonial and nationalistic context that produced representations of women as both feeble yet self-sacrificing in need of male protection. Similarly Meaney (quoted in Thapar-Björkert and Ryan) argues that following the emergence of the Free State in 1922, the organisation of Irish society mirrored the gendered division of roles within the private sphere, thus collapsing 'Mother Ireland' and the dutiful mother into a single entity: "Sexual identity and national identity are mutually dependent...The images of suffering Mother Ireland and the self-sacrificing Irish mother are difficult to separate. Both serve to obliterate the reality of women's lives."¹³⁶ In both countries British culture was

¹³¹ Geeti Sen in "Iconising the Nation: Political Agendas,," in *India a National Culture?* Editor, Geeti Sen (New Delhi: India International Centre, Sage Publications Pt. Ltd., 2003), 154-175., as referenced in Mary-Ann Milford-Lutzker, 'The Politicization of an Icon: Durga/Kali/Bharat Mata and Her Transformations', in *The Constant and Changing Faces of the Goddess: Goddess Traditions of Asia* (Cambridge Scholars Publishing, 2009).

¹³² Mary-Ann Milford-Lutzker.

¹³³ Radha Kumar, *The History of Doing: An Illustrated Account of Movements for Women's Rights and Feminism in India 1800-1990* (New Delhi: Kali for Women, 1993).

¹³⁴ Radha Kumar, 82.

¹³⁵ Ila Patel, 'The Contemporary Women's Movement and Women's Education in India', *International Review of Education, Social Movements and Education*, 44, no. 2/3 (1998): 155-75.

¹³⁶ Meaney, Geraldine (1993). Sex and nation: women in Irish culture and politics. In Ailbhe Smyth (Ed.), *Irish women's studies reader* (pp. 230-44). Dublin, Ireland: Attic Press. Thapar-Björkert and Ryan, 'Mother India/Mother Ireland', 305.

characterised in sexual undertones as a deviant and corrupting foreign influence, that would pollute the purity of their women, and by proxy, the nation. Gandhi dealt with sexuality expressly within a nationalistic framework by positing it as a foreign import incompatible with Indian culture, asking, “Is it right for us?”¹³⁷ In the case of Ireland, this fragile model of motherhood emphasised the sexual purity of Irish women who were vulnerable to deviant infiltration by the British. According to Smyth, “As it is women’s sexuality and reproductive capacity that frequently symbolize the nation and its future, women’s reproductive rights are often consequently politicized in nationalist articulations of gender and sexuality.”¹³⁸ Similar concepts were also mimicked within British colonial discourse, which depicted Ireland as a young virginal bride to be married to a male representation of England.¹³⁹ The urge to protect women from foreign infiltration stems from the representation of women as repositories of perennial cultural values and enduring national identity. Thapar-Björkert and Ryan purport that, “Women in particular are seen as the keepers of the traditional culture that has the effect of circumscribing women in specific roles and “protecting” them from outside influences.”¹⁴⁰

ii The Role of ‘Women as Mothers’ in Irish and Indian Society

Women’s association with motherhood did not merely hold symbolic value but represented the social realities faced by women in Ireland and India, whose activities and limited agency were primarily confined to the domestic sphere. Gandhi sought to challenge the subordination of women within Hindu practices by enlisting women to the nationalist movement; by exalting the non-violent behaviour of women and foregrounding their welfare in public consciousness, he hoped to incite a change in attitudes that would reduce their inequalities and improve their material conditions.¹⁴¹ However, Gandhi’s vested interest in women’s equality was not an end unto itself and his definition of legitimate womanhood was exclusionary: his dedication to the female emancipation was always in conjunction with and subordinate to his over-arching aim to rid India of British imperialism¹⁴² and relied on representations of chaste women fulfilling

¹³⁷ Ahluwalia, *Reproductive Restraints: Birth Control in India, 1877-1947*, 80.

¹³⁸ Smyth, *Abortion and Nation: The Politics of Reproduction in Contemporary Ireland*, 36–37.

¹³⁹ Thapar-Björkert and Ryan, ‘Mother India/Mother Ireland’.

¹⁴⁰ Thapar-Björkert and Ryan, 305.

¹⁴¹ Debali Mookerjee-Leonard, ‘To Be Pure or Not to Be: Gandhi, Women, and the Partition of India’, *Feminist Review* 94 (2010): 38–54.

¹⁴² Ashwini Tambe, ‘Gandhi’s “Fallen” Sisters: Difference and the National Body Politic’, *Social Scientist* 37, no. 1/2 (February 2009): 21–38.

their duties as mothers and wives. According to Patel, “Gandhi reaffirmed their traditional role in the family as wife and mother and did not assign any significance to women’s productive role within the family or the economy.”¹⁴³ It was only in their capacity as mothers and wives that women served Gandhi’s purpose within the nationalist movement, and any initiatives by women activists beyond this were curtailed.¹⁴⁴ Prostitutes were also excluded from his freedom struggle as they did not conform to his ideal of the desexualised female.¹⁴⁵ His version of female sexual emancipation comprised of teaching women to refuse their husbands sexual intercourse rather than exercising sexual autonomy.¹⁴⁶ This manifested itself in his vehement objection to all forms of birth control, which posed a quandary for Indian feminists operating with the perimeters of the nationalist struggle. According to Ahluwalia, “On the specific issue of birth control, it would be fair to argue that Indian feminists were caught between a contradictory impulse of simultaneously representing Indian women as repositories of national traditions and as embodiments of modernity in an emerging nation.”¹⁴⁷ Such conformist representation of women slotted neatly into existing patriarchal structures and fed into the overarching nationalist narrative: women as passive receivers achieved symbolic status of a ‘unified’ nation (a non-threat to the traditional male hierarchy),¹⁴⁸ reliant on men as the protectors of ‘Mother India’.¹⁴⁹

While Ireland lacked a symbolic leader as monolithic as Gandhi¹⁵⁰ to give a face to the nationalist struggle, Ireland’s association with Catholicism was strongly emphasised during the nineteenth century, and constituted a formidable outlet through which Irish cultural exceptionalism could express itself during the establishment of the sovereign state. According to Smyth, “...Catholicism provided a means of maintaining a distinctively national culture, as the Gaelic language declined. Indeed, Catholicism provided a form of cultural expression with heroically anti-colonial associations, in the

¹⁴³ Patel, ‘The Contemporary Women’s Movement and Women’s Education in India’, 119.

¹⁴⁴ Radha Kumar, *The History of Doing: An Illustrated Account of Movements for Women’s Rights and Feminism in India 1800-1990*.

¹⁴⁵ Ashwini Tambe, ‘Gandhi’s “Fallen” Sisters: Difference and the National Body Politic’.

¹⁴⁶ Ahluwalia, *Reproductive Restraints: Birth Control in India, 1877-1947*.

¹⁴⁷ Ahluwalia, 86.

¹⁴⁸ Suruchi Thapar, ‘Women as Activists; Women as Symbols: A Study of the Indian Nationalist Movement’, *Feminist Review* 44 (Summer 1993): 81–96.

¹⁴⁹ Suruchi Thapar.

¹⁵⁰ While Páidric Pearse was a prominent leader during Ireland’s struggle for independence, his influence was not as far-reaching as Gandhi.

light of colonial oppression of Catholicism, and the persecution of Catholic clergy.”¹⁵¹ This was realised through the amalgamation of State and Church, who occupied mutual seats of power within the Irish society in the post 1920’s Independent Ireland. The state apparatus coalesced around a structure built from nationalist republicanism and Catholic ideology. The apogee of this is the 1937 Constitution, which according to Lisa Smyth, “attempted to combine the democratic ideal of popular sovereignty with theocratic authoritarianism.”¹⁵² In communion with Catholic values, the state structure was anchored by the institution of marriage¹⁵³ with women as its linchpin. The centrality of women within Irish society is clear from Article 41.2° which defined women as “the natural primary unit group of society”.¹⁵⁴ From this, Ursula Barry extrapolates the symbolic significance of women in Ireland, who are, “the standard bearers, the holders of culture, the representatives of its soul.”¹⁵⁵ The cultural belief that womanhood and motherhood are mutual states is evident through the interchangeably use of ‘mother’ and ‘woman’ in Articles 41.2.1° and 41.2.2°.¹⁵⁶ Similar to Gandhi, the Catholic Church shunned sexuality, viewing sexual intercourse and all its associations as immoral and debased physical urge against the will of God.¹⁵⁷ However, unlike Gandhi the Catholic Church’s efforts to regulate sexuality did not reach the extremity of abstinence, although the use of contraceptive devices was considered a grievous sin. Catholic Archbishop of Dublin John Charles McQuaid (quoting from McAvoy) claimed that ‘the natural use of marriage is planned and is responsible’ yet added:

But, if by *planned* is meant the spacing of births by contraception, then that use of marriage is not in agreement with the law of God. It is not *planned* according to the rational nature of man as such.”¹⁵⁸

With the Irish state conforming to the Church’s hard-line stance against family planning, sexually active women in Ireland were consigned to motherhood.

¹⁵¹ Smyth, *Abortion and Nation: The Politics of Reproduction in Contemporary Ireland*, 38.

¹⁵² Smyth, 39.

¹⁵³ Smyth, *Abortion and Nation: The Politics of Reproduction in Contemporary Ireland*.

¹⁵⁴ Bunreacht na hÉireann (Irish Constitution enacted in 1937).

¹⁵⁵ Barry, ‘Movement, Change and Reaction: The Struggle over Reproductive Rights in Ireland’, 114.

¹⁵⁶ Pat O’Connor, *Emerging Voices: Women in Contemporary Irish Society* (Dublin, Ireland: Institute of Public Administration, 1998).

¹⁵⁷ Sandra McAvoy, ‘The Catholic Church and Fertility Control in Ireland: The Making of a Dystopian Regime’, in *The Abortion Papers Ireland: Volume 2* (Cork: Attic Press, 2015), 47–62.

¹⁵⁸ McAvoy, 51–52.

iii Consequences of the Independence Movement for Reproductive Feminist Discourse

Due to the all-consuming nature of the independence movement in both countries, whose impact lasted long into the nation-building process, women's bodies and their reproductive capacities were at times overwhelmed, at times subsumed and at times subordinated by the exigencies of the project of nationhood. As the above discussion demonstrates, the symbolic value attached to the imagery of 'Mother India' and 'Mother Ireland' was not mere rhetoric, it was embedded in the social realities of Indian and Irish women. By bridging these two realities, the cultural image of women as repositories of national heritage and the social reality of women as mothers, leaders of the Indian and Irish state were able to leverage women's reproductive capacities to advance the project of nationhood. The effect of this nationalist discourse was so powerful and resonant it had the effect of tethering women to the roles as wives and mothers, thus making it difficult for women activists to articulate demands that would increase their participation in the public sphere.¹⁵⁹

For the feminist movement, particularly in the arena of reproductive rights, the consequences of this were profound. For both countries, a patriarchal construction of the nation-state informed multiple discourses, legitimizing the curtailing of women's reproductive rights in the interests of the project of nationhood. According to Lisa Smyth, "The articulation of distinctively patriarchal familial notion provides justification for the cultural subordination of women, both in 'natural' and 'national' terms, an effect that significantly delegitimizes feminist critique."¹⁶⁰ While she is speaking to an Irish context, according to Tambe this is a tried and tested strategy used by nationalists. "This gesture, commonly used by nationalists across regions, reinscribed an instrumental approach to women: rather than being ends in themselves, women were meaningful only in relation to the community to which they belonged, and whose honor they represented."¹⁶¹

Women in India began campaigning as part of the social reform movement at the beginning of the 19th century and evolved during the 20th century into India's women's

¹⁵⁹ Women's work within the private sphere during the Independence movements in Ireland and India was devalued. Both Irish and Indian women were active militants within their national independence movement however as this took place within the private sphere it has been side-lined by history. Thapar-Björkert and Ryan, 'Mother India/Mother Ireland'.

¹⁶⁰ Smyth, *Abortion and Nation: The Politics of Reproduction in Contemporary Ireland*, 36.

¹⁶¹ Ashwini Tambe, 'Gandhi's "Fallen" Sisters: Difference and the National Body Politic', 32.

rights movement¹⁶². Both phases of activism took place against the backdrop of India's nationalist movement and many female activists fought on both fronts. In many ways, it was through their activities within the nationalist movement that women, previously marginalised on the fringes of Indian society, began to insert themselves public consciousness and they saw it as an opportunity to elevate their subordinate status.¹⁶³ Due to this affiliation Indian women activists felt bound to the objectives of the nationalist movement, therefore they constructed their demands to complement its aims. Ahluwalia describes this as a "self-conscious feminist position".¹⁶⁴ Bounded by the nationalist movement Indian women activists such as Nehru assimilated the aims of the women's movement with over-arching nationalist aims, however this deterred them from arguing in favour of birth control as it was perceived as contravening Gandhi's moral proscription of sex.

Within the Irish context, a similar co-relation can be drawn between the response of feminist organisations following the announcement of a referendum to insert the 8th Amendment. In pre-empting a feminist movement to legalise abortion by launching an anti-abortion campaign, right-wing Catholic extremists put Irish feminists on the backfoot, and it was decades until they were able to proactively advance their own agenda. According to Smyth, the press played a "politically significant role in constructing their audiences as 'national' and anti-abortion"¹⁶⁵ in the lead up to the 1983 referendum, placing what she describes as 'moral entrepreneurs' such as "the clergy, medical practitioners, theologians, and representatives of grassroots organizations"¹⁶⁶ in the position of defining the narrative of the abortion debate, thus leaving feminists and other anti-amendment campaigners to conform to a pre-established narrative if they were to be included in the conversation at all. This echoes back to the above-mentioned idea by Smyth, that the naturalization of patriarchal familial structure undermines feminist demands.

¹⁶² Radha Kumar, *The History of Doing: An Illustrated Account of Movements for Women's Rights and Feminism in India 1800-1990*.

¹⁶³ Radha Kumar.

¹⁶⁴ Ahluwalia, *Reproductive Restraints: Birth Control in India, 1877-1947*, 99.

¹⁶⁵ Smyth, *Abortion and Nation: The Politics of Reproduction in Contemporary Ireland*, 56.

¹⁶⁶ Smyth, 55.

2.2 Reproductive Rights and the Project of Nationhood in India

In this section I will look at India's family planning programme and how it sought to advance the project of nationhood by controlling women (as well as men's) reproductive bodies. This analysis will occur in three phases: i) birth control discourse during the colonial period ii) family planning policies in Post-Independence India iii) implementation issues in state-led family planning programmes.

i Colonial State, Nationalist Discourse and Birth Control

The early discussions around birth control during the colonial era were heavily embedded in national sentiment. While three main strands of argument in support of birth control emerged, improving maternal health, eugenics and population control, neo-Malthusianism, these concerns were refracted through Hindu-nationalist discourse that identified the future of nation-state through the image of 'Mother India'.

Liberalising birth control access was seen to help the project of nationhood in a number of ways. From its earliest days, women were envisioned the main targets for contraception. Women in their maternal capacity, both symbolically as mothers to the nation and literally as mothers to their own children, were regarded as care-takers, whose labour would raise fit and healthy children and therefore a fit and healthy nation.¹⁶⁷ Concern for women's reproductive health was couched in the belief that if ceaselessly in the throes of pregnancy, belaboured by childbirth and its recovery period, they would not be strong enough to undertake this role. According to Ahluwalia, "It was argued that women had to be physically strong to be able to act as nurturing moral models to their children and also to keep their commitment to the family and, through it, to the nation."¹⁶⁸ In this sense women's health (read maternal health) was a mere placeholder for the health of the nation. This follows the view promulgated by hospital social worker Paromita Goswami, who said that that women's health, especially reproductive health, is only valued because of her role of a mother, because it is in her capacity as a mother that she furthers the project of nationhood: "Women's reproductive health, or women's health, is usually seen vis-à-vis a woman's role as a mother. This is only to be expected in a society which is essentially patriarchal, and constructs a woman's sexuality around her function

¹⁶⁷ Ahluwalia, *Reproductive Restraints: Birth Control in India, 1877-1947*.

¹⁶⁸ Ahluwalia, 102.

of giving birth. Drawing on nationalist ideology, the survival of a woman is important because she is to be the ‘mother of a thousand sons’.¹⁶⁹

Despite the potential for women to enjoy sex without the responsibility of motherhood, fertility control was rarely viewed as a means to enhance female sexuality. Examining the discourse of the biomedical community, Ahluwalia concludes that, “there was no room for expressions of female sexual autonomy. The attempt was to police, control, and discipline middle-class women, constructing them as repositories of national identity and culture.”¹⁷⁰ While there were some exceptions,¹⁷¹ doctors and upper-class feminists cradled a fear that access to birth control would result in an unwarranted female sexual awakening and stir women away from their natural duties as mothers.¹⁷² It was strictly in their capacity as mothers that women’s bodies were harnessed to further the project of nationhood.

Population control and neo-Malthusian arguments were popular amongst Indian bourgeoisie feminists, independence activists, state officials, and the medical community, in their support for contraception. These arguments emphasised the future success of India and regarded female reproduction as a source of national health and prosperity. Dr. Santosh Mukherji (quoting from Ahluwalia), a biomedical supporter of contraceptives, argued that it was in the interests of tackling India’s overpopulation that reproductive technology was most urgently needed.¹⁷³ He argued that the total level of food produce in India was insufficient to feed its large population, arguing that, even “if these were divided equally everyone will be under-fed.”¹⁷⁴

Not all female reproduction was valued equally and eugenic arguments held currency within the identical social groups, signalling that population control policies were intended to be borne by ‘unfit’ social groups. Kamaladevi Chattopadhyaya, a social reformer and freedom fighter, claimed: “Mere breeding adds neither to the quality nor the

¹⁶⁹ Paromita Goswami, ‘Insights into Women’s Health: Field Notes of a Hospital Social Worker’, in *Understanding Women’s Health Issues: A Reader* (New Delhi: Kali for Women, 1998), 181.

¹⁷⁰ Ahluwalia, *Reproductive Restraints: Birth Control in India, 1877-1947*, 154.

¹⁷¹ Margaret Sanger celebrated female sexuality, however according to Ahluwalia her perspective favoured fulfilling a husband’s sexual needs rather than a genuine expression of female sexual liberation. Ahluwalia, *Reproductive Restraints: Birth Control in India, 1877-1947*.

¹⁷² Ahluwalia.

¹⁷³ Chhachhi and Sathymala criticize the over-emphasis of the Malthusian argument that over population causes poverty, rather than looking at poverty exacerbating over-population.

¹⁷⁴ Ahluwalia, *Reproductive Restraints: Birth Control in India, 1877-1947*, 146.

greatness of a nation, it merely lowers vitality, spreads diseases and brings unsound citizens into the world.”¹⁷⁵ This suggests that when freedom fighters drew inspiration from ‘Mother India’, only upper-class, upper-caste Hindu women were envisioned as worthy to populate the new nation-state. It was feared, however, that the mainstream accessibility of contraception would result in a higher uptake amongst middle class women, resulting in the undesirable consequence of a population in favour of the working class and other subaltern¹⁷⁶ groups.¹⁷⁷ Such dysgenic concerns were also common amongst bourgeoisie Indian feminists and the medical community. In 1939 an article by the *Calcutta Medical Journal* stated that this practice was (quoting from Ahluwalia), ‘slowly but surely killing the growth of ‘A-grade population’.¹⁷⁸ In her report “Marriage, Maternity and Succession,” Begum Hamid Ali advanced the argument that the “unfit” should be sterilized in the interests of “the larger social interest.”¹⁷⁹ According to these views, middle-class women were worthy of the responsibility to populate the future nation-state, while subalterns were blamed for dwindling resources and burdened with reducing the birth rate.

In the next section I will discuss the introduction of family planning to India’s national agenda. Before I continue, at this point of the discussion it is important to mark the significance of India’s shift in favour of contraception, which was by no means could be classed as inevitable. Despite finding some favour amongst bourgeoisie feminists and medical classes, there was no clear consensus in favour of liberalising reproductive rights. For the period of time in which Gandhian discourse on contraception held sway, both India and Ireland were steadfast in their resistance to all forms of contraception in the interests of protecting patriarchal constructions of national identity. When contemplating birth control as a means to reduce birth rates, the colonial state rejected the idea due to the belief that it would be perceived as going against Hindu ideology. The Age of Consent committee stated that, “the dominant belief among Hindus about the son ensuring the spiritual salvation of the father would make the use of contraceptives unpopular among a large section of the Indian population.”¹⁸⁰ The ease with which contraception, and

¹⁷⁵ Ahluwalia, 97.

¹⁷⁶ ‘Subaltern’ refers to groups that are outside of established political structures.

¹⁷⁷ Ahluwalia.

¹⁷⁸ ‘Current Comments,’ *Calcutta Medical Journal* 35 (January 1939): 38-39. Quoting from Ahluwalia, *Reproductive Restraints: Birth Control in India, 1877-1947*, 147.

¹⁷⁹ Ahluwalia.

¹⁸⁰ Ahluwalia, *Reproductive Restraints: Birth Control in India, 1877-1947*, 120.

abortion in particular, was legalised is also noteworthy. When the MTP abortion legislation was proposed in the Lok Sabha it passed almost unanimously, with only two MPs opposing the bill on the grounds that abortion is murder.¹⁸¹ Menon questions the absence of a tenable anti-abortion movement given the denouncement of abortion in Hinduism, however she attributes this to the persuasive argument by politicians that overpopulation is the cause of mass poverty to justify their development strategy.¹⁸² Such arguments in the interest of national progress and development were far more palatable to religious leaders and elite classes than concepts of bodily autonomy or female sexual liberty.

ii Family Planning Policies in Post-Independence India

In the first chapter we see that in its formative days, the planning and execution of the family planning programme was directed towards improving the dire conditions of maternal healthcare. These higher aims were later usurped by baser objectives of population control and eugenics, motivated by Hindu-nationalist sentiment and neo-Malthusian theory framed as development. For the subjects of these programmes, this departure would have devastating consequences. In the following section I will elucidate the rationale underpinning this policy change.

The connotations between contraception and its implications for national development may not have expressly informed family planning agenda, but such sentiments were always lurking in the background. In a chapter addressing “The Population Problem”, the Bhore Committee correlated the fecundity of Indian subalterns with their weak economic standing, surmising that until these conditions were improved upon they would continue to rely on child labour as a form of economic insurance, thus stymieing the lowering of fertility.¹⁸³ Reflecting on this line of argumentation Ahluwalia comments, “Correlating fertility patterns to national development left a lasting legacy well into the postcolonial period.”¹⁸⁴ These reported concerns echoed the fears held by the medical community and elite feminists, who recognised that a higher uptake amongst, “the more energetic, intelligent and ambitious sections of the population” held the potential for dysgenic consequences.¹⁸⁵

¹⁸¹ Menon, ‘Abortion: When Pro-Choice Is Anti-Women’.

¹⁸² Menon.

¹⁸³ Ahluwalia, *Reproductive Restraints: Birth Control in India, 1877-1947*.

¹⁸⁴ Ahluwalia, 136.

¹⁸⁵ Ahluwalia, 137.

Karkal notes that although the rate of population growth had been flagged during the initial Five-Year-Plans, no efforts were made to tackle this issue. This changed, however, circa 1959 onwards when demographers were drafted in as guides to the programme and sterilisation services were added.¹⁸⁶ She documents the gradual change in nature of the family planning programmes as their objectives shifted from concern for the welfare of Indian citizens to managing efforts to control the rate of population growth. Certain external and internal events acted as a catalyst. In 1965 there was famine in 1965 due to severe food shortages. Also around this time, countries in the West began to worry about the population sizes of so-called 'Third World Countries' as they feared this would undermine their dominance in the future.¹⁸⁷ Despite knowledge, attitude, practise (KAP) studies indicating a wish for smaller families, there had been little tangible change in the birth rates which, were estimated to be as high as 41 per 1,000 population with the conclusion of the Third Plan.¹⁸⁸ The family planning programmes had not yielded the desired results and by the Fourth Five Year Plan (1966-71) the Indian Government placed population control as its primary objective¹⁸⁹

The prioritization of population control as the objective of India's family planning programme was accompanied by an over-haul of strategies to expediate results, with success measured using the metric of 'births averted'.¹⁹⁰ According to Chandiramani, when the government began implementing such population control strategies, "it viewed family planning not as the right of individuals and couples to decide how many children they might want but rather as a mechanism to stabilize population growth to reduce poverty."¹⁹¹ A top-down targeting and incentive-based implementation (with disincentives for healthcare workers who failed to meet their targets) became the blueprint of the programme for decades, with women conceptualised as the primary contraceptive receptors.¹⁹² Donaldson posits that from a bureaucratic and budgetary perspective, the top-down system of targeting rendered the administration of contraceptives much easier. However the limited range of contraceptives, the lack of adequate information and

¹⁸⁶ Karkal, 'Family Planning and the Reproductive Rights of Women'.

¹⁸⁷ Karkal.

¹⁸⁸ Karkal.

¹⁸⁹ Karkal.

¹⁹⁰ Karkal.

¹⁹¹ Chandiramani, 'Mapping the Contours: Reproductive Health and Rights and Sexual Health and Rights in India', 129.

¹⁹² Chandiramani, 'Mapping the Contours: Reproductive Health and Rights and Sexual Health and Rights in India'.

undertrained staff diminished the quality of services provided to women, and contraceptive targets were impervious to the level of contraceptive use and demand in a given area. Donaldson's analysis speaks to the willingness of the government to sacrifice the reproductive autonomy of women to carry out their population control policy expediently.¹⁹³

India's family planning programme was informed by eugenic and dysgenic logic operationalized at a national and international level. According to Hartmann, Western population control enthusiasts selectively applied Malthusian theory to so-called 'Third World' countries, blaming overpopulation as the cause of poverty and political upheaval in the Third World.¹⁹⁴ She posits that it was this impetus that prompted Western policy makers to donate to family planning interventions in countries such as India, rather than a concern for the well-being or sexual autonomy of women.¹⁹⁵ On a national level, communities occupying the lower social-stratum were disproportionately targeted by the government's population control policies, in particular poor, scheduled castes and Muslims.¹⁹⁶ India had a well-engrained history of eugenic practices such as caste endogamy (intra-caste marriage) to draw upon. Reflecting on the Hindu-elitist history Wilson proposes that, "These caste-supremacist eugenic approaches, which defined Dalits, Adivasis and oppressed castes as unfit to reproduce, were therefore arguably embedded from the outset in post-Independence 'Family Planning' policies in India."¹⁹⁷

¹⁹³ In all likelihood, the Indian government would have seen more favourable results of its population control policy if it had given women more reproductive autonomy. Mishra and Ravindran complicate the classification of met and unmet contraceptive needs. Through their analysis of National Health Survey I (1992-93) they found that 40% of ever-users of contraceptives reported their current pregnancy to be unplanned, compared to 27% of never users. Following interviews with seventy married women, they learnt that women were not informed of their choices adequately and in some cases were only given a single specific choice, which they declined T.K.Sundari Ravindran and U.S. Mishra, 'Unmet Need for Reproductive Health in India', *Reproductive Health Matters* 9, no. 18 (November 2001): 105–13.

According to Bang and Bang, following medical complications through improper insertion, women would spread by warnings by word of mouth advocating against their use. Rani Bang and Abhay Bang, 'Contraceptive Technologies', *Manushi* 70, no. May-June (1992): 26–31.

¹⁹⁴ Hartmann, *Reproductive Rights and Wrongs: The Global Politics of Population Control and Contraceptive Choice*.

¹⁹⁵ It was against this backdrop that Margaret Sanger (who Wilson describes as "an active collaborator with the eugenics movement") along with Lady Dhanvanthi Ramu Rau founded the International Planned Parenthood Federation (IPPF) in 1952 in Bombay. India's national family planning programme launched that same year receiving funding American corporations, including over US\$20 million from the Ford Foundation Kalpana Wilson, 'For Reproductive Justice in an Era of Gates and Modi: The Violence of India's Population Policies', *Feminist Review* 119, no. 1 (2018): 89–105.

¹⁹⁶ Karkal, 'Family Planning and the Reproductive Rights of Women'.

¹⁹⁷ Wilson, 'For Reproductive Justice in an Era of Gates and Modi', 92.

By 'improving the quality of the stock' also activated Hindu-nationalist ideology through promoting the health of the nation.

iii Implementation issues in state-led family planning programmes.

The modes of execution of the family planning strategy illustrate the willingness of the Indian government to sacrifice the individual interests of men and women in order to further their population control aims. Anticipating the mass sterilizations that took place during The Emergency 1976-77, Prime Minister Indira Gandhi publicly exhorted, "To bring down the birth rate speedily, to prevent the doubling of our population in a mere 28 years, we shall not hesitate to take steps which might be described as drastic."¹⁹⁸ The implementation of population control policies shrunk the individual reproductive autonomy exercised women as the range of contraceptive choices was driven by their utility to reduce the birth rate as efficiently as possible. According to Rani Bang and Abhi Bang, the choice of contraceptive was decided the government health workers rather than women themselves.¹⁹⁹ Sterilization was the preferred method of contraceptive administered to the public because it was effective and terminal,²⁰⁰ a strategy Karkal pointedly notes, coincided with the involvement of demographers in designing the family planning programme.²⁰¹ Originally men were the primary targets of sterilizations which were administered in a 'camp-like' approach,²⁰² however following male resistance incited by mass sterilizations and a vaginal tubectomy procedure was developed, the camps were used exclusively for female sterilizations.²⁰³

For Indian women, the instrumentalization of their bodies in the project of nationhood was in many cases detrimental to their reproductive health. In their study of administration of contraception in rural villages, Bang and Bang highlighted that women were given IUDs or underwent tubectomy procedures despite suffering from gynaecological diseases, which exacerbated them further.²⁰⁴ In other cases, IUDs were inserted by doctors and nurses eager to meeting their targets who lacked the medical

¹⁹⁸ Karkal, 'Family Planning and the Reproductive Rights of Women', 171.

¹⁹⁹ Bang and Bang, 'Contraceptive Technologies'.

²⁰⁰ Donaldson, 'The Elimination of Contraceptive Acceptor Targets and the Evolution of Population Policy in India'.

²⁰¹ Karkal, 'Family Planning and the Reproductive Rights of Women'.

²⁰² This approach to family planning is not relegated to history. As recently as 2014, sixteen women died in a sterilization camp in Bilaspur District, and several more were left in a critical condition. 'Robbed of Choice and Dignity: Indian Women Dead after Mass Sterilization', *Reproductive Health Matters* 22, no. 44 (November 2014): 91–93.

²⁰³ Karkal, 'Family Planning and the Reproductive Rights of Women'.

²⁰⁴ Bang and Bang, 'Contraceptive Technologies'.

knowledge to identify early pregnancy, thus resulting in a trend in which IUD insertion caused termination of pregnancy or bleeding. The indifference shown towards women's reproductive health is evident in the lack of precaution exercised by the government, who prioritized efficacy above women's welfare when selecting reproductive technology. In the late 1960s, the Indian government launched a large-scale, internationally funded campaign to promote the contraception 'Loop', which is known to cause heavy blood loss.²⁰⁵ Scant effort was made to inform women about its harmful side effect or provide medical aftercare, and the IUD was often inserted without prior medical examination. Other examples women's exposure to hazardous reproductive technology include the injectable contraceptive Net-en which was administered to women during a clinical trial without being informed of their side effects, and the non-sterilization technique Quinacrine which will be elaborated on in the following chapter.²⁰⁶

2.3 Reproductive Rights and the Project of Nationhood in Ireland

While the relationship between India's project of nationhood and birth control is at times elliptical, dealing with the concrete building blocks of nationhood (i.e. population control) alongside discourses of national identity, in Ireland the relationship between women's bodies and discourses of nationhood was explicit and actively debated in the public forum. As elucidated in the previous chapter, Ireland demonstrated its national exceptionalism through a prohibition against all forms of reproductive services. While the solidity of this position was chipped away at through contraceptive concessions following feminist agitations and legal cases brought against the state, abortion proved the most stubborn hurdle to overcome. As the West gravitated towards liberalisation of abortion, the urgency to solidify post-independent Ireland's theocratic conservatism and resist the wave of abortion became more acute; it is these circumstances that propelled PLAC to launch its campaign.²⁰⁷ According to Fletcher, "When abortion first came on the political agenda in the early 1980s it was debated less on its own terms and more in terms of the consequences it would have for Irish culture. Unless Ireland constitutionalized the right to life of the 'unborn', it would be unable to prevent the gradual acceptance of

²⁰⁵ Hartmann, *Reproductive Rights and Wrongs: The Global Politics of Population Control and Contraceptive Choice*.

²⁰⁶ Datta and Misra, 'Advocacy for Sexual and Reproductive Health'. Women's activists also successfully campaigned against the injectable contraceptive Depo-Provera and following a court case, the Supreme Court prohibited its inclusion in the national programme.

²⁰⁷ Smyth, *Abortion and Nation: The Politics of Reproduction in Contemporary Ireland*, 7.

abortion and consequent ‘Westernization’.”²⁰⁸ According to Smyth, the anti-abortion cohort framed abortion as a ‘moral panic’ by representing abortion as a force that would imperil national survival (articulated in Catholic terms) and modelling national morality on patriarchal familial values, especially in opposition to the practise of eugenics, to which abortion was a central component. “The specific focus on abortion can be read as symptomatic of a conservative anxiety about the impending transformation of hegemonic discourses of gender, sexuality, and reproduction, through which the project of nationhood and been constructed.”²⁰⁹ This formulation was further buttressed by reminding the public of their right as citizens of a democratic republic to exercise political sovereignty, often to the exclusion of feminist, pluralist, secular or non-Catholic voices.

That the 8th Amendment campaign was about much more than reproduction was obvious from the outset. To begin with, technically speaking the outcome of the referendum was “legally redundant” (to borrow the phrase from Conrad) because abortion was already prohibited by Irish law.²¹⁰ As a nation-state Irish society was in the throes of an existential crisis. In national terms the country envisioned itself as a self-determining, familial state²¹¹ imbued by Catholic ideology, sexual purity and Irish national identity,²¹² however this version of Irish exceptionalism was perceived to be under threat by the hedonistic modernism it saw gripping the rest of Europe,²¹³ and even the substance of which constituted Irishness was contested. Reproduction emerged as the channel through which these interlocking axes could converge. As Oak writes (quoting from Conrad), “in Ireland, reproduction is a medium through which competing national origin stories that focus on Irish national identity and cultural self-determination, indeed visions of ‘Irishness’ itself, are imagined and expressed”.²¹⁴ The ensuing debate was febrile and highly emotive, with men and women opposed to the amendment, “accused of being

²⁰⁸ Fletcher, ‘Post-Colonial Fragments’, 574.

²⁰⁹ Smyth, *Abortion and Nation: The Politics of Reproduction in Contemporary Ireland*, 7.

²¹⁰ Although constitutional protection did have the added advantage of preventing the legalisation of abortion without asking the Irish people first.

²¹¹ Smyth, *Abortion and Nation: The Politics of Reproduction in Contemporary Ireland*.

²¹² Kathryn Conrad, ‘Fetal Ireland: National Bodies and Political Agency’, *Éire-Ireland* 36, no. 3–4 (2001): 153–73, <https://doi.org/10.1353/eir.2001.0020>.

²¹³ Conrad. Referring to passage from Ailbhe Smyth, “‘And Nobody was Any the Wiser’: Irish Abortion Rights and the European Union,” in *Sexual Politics and the New European Union: The New Feminist Challenge*, ed. Amy Elman (New York: Berghahn Books, 1996), 119.

²¹⁴ Conrad, 155. Quoting from Laury Oaks, “Irishness, Eurocitizens and Reproductive Rights,” in *Reproducing Reproduction*, ed. Sarah Franklin and Helena Ragoné, 133.

murderers, criminals and hell-bound. It was like the civil war”.²¹⁵ According to Fletcher abortion was represented as an instrument of colonial dominance, inspiring the evocate slogan, “The Abortion Mills of England Grind Irish Babies into Blood that Cries out to Heaven for Vengeance”.²¹⁶ The motif of Ireland's independence movement was a common theme in the commentary at the time and shows how important it was for Irish identity. The internal polarization laid bare by the reproduction debate and its implications for the project of nationhood is captured by media representations of the pro-amendment and anti-amendment groups as being akin to the segregating of Ireland into the independent South and the British ruled North; the urge to rid Ireland of pro-choice values was deemed as imperative to the conservation of Irish culture as was to the splitting from the Protestant North. “The exclusion of pro-choice values from Irish law is depicted as a necessary measure for the maintenance of Irish national culture just as the exclusion of the Protestant North was necessary for the emergence of the Irish nation-state.”²¹⁷

The fierce resistance to legislate for birth control despite the desperate cries of Irish women also demonstrates the puritanical authoritarianism of the Irish state and its fierce resistance to modernity perceived as outside influence. This uncompromising position was justified on the grounds that women had “a natural vocation as housewives and mothers”.²¹⁸ Besides circumscribing Irish women to motherhood and marriage or a life of sexless singlehood.²¹⁹ women's powerlessness to negate ceaseless consecutive pregnancies often had grave implications for their health. In *Banshee*, an editorial published by the women liberationists group Irish women united, an anonymous contributor tells a poignant and emotive account of her experience being pregnant with her 11th child by the age of 32 and her lack of access to legal contraceptives, despite medical advice that further pregnancy could have grievous consequences for her health. In the story she mentions a neighbour who had given birth to eighteen children and subsequently died at the age of 45. Published in 1976 (by which stage contraceptives were tentatively available from private clinics using legal loopholes), the vignette is told retrospectively and harks back to a time when Irish women had no access to

²¹⁵ Conroy, ‘Dúirt Bean Liom....A Woman Told Me... Punishing the Productive and the Reproductive’, 44.

²¹⁶ Fletcher, ‘Post-Colonial Fragments’, 577.

²¹⁷ Fletcher, 574.

²¹⁸ Conroy, ‘Dúirt Bean Liom....A Woman Told Me... Punishing the Productive and the Reproductive’.

²¹⁹ ‘Banshee’, *Journal of Irishwomen United* 1, no. 2 (1976).

contraceptives.²²⁰ Her story speaks to the injustices against women and their powerlessness to resist the conscription of motherhood, even where it carried a death sentence. Stephanie Lord captures the resignation of women to a life of perpetual motherhood, whose ceaseless maternal duties denied them an active role in Irish social life: “Spending most of your adult life pregnant was not an unusual prospect for Irish women and the sheer volume of time spent being pregnant mean that the rates of women working outside the home in Ireland were very low.”²²¹ This also evinces the connection between motherhood and women’s overall lack of agency and power in society (which will be discussed further in chapter 3). This ensured that women remained in traditional, gendered roles, unthreatening to the Catholic patriarchy upon which the free state was founded.

i Women’s Bodies As the Physical Embodiment of State

The idea that women’s bodies symbolised the sovereign borders of the Irish state is echoed in the public backlash following the revelations of the X case. In this section I will expound upon this point, discussing the significance of the X case as a site of reconfiguration through which the Irish public could negotiate the relationship between abortion and national identity. The case concerned a fourteen year old girl who was impregnated as a result of rape and long-term sexual abuse by the father of her friend, who was also family friend of X’s parents.²²² Upon learning of their daughter’s rape and subsequent pregnancy, her parents agreed to bring her to England to obtain an abortion. Before leaving for England X’s parents contacted the Gardaí (police) to query whether the foetal tissue would be admissible in court as a form of DNA evidence during a rape trial. Seeking clarification on the matter the Gardaí contacted the Office of the Director of Public Prosecutions. Upon learning that the such evidence would be inadmissible the family departed for England, however that very day a temporary injunction was issued at the behest of the Attorney General, later to made permanent by the Court, preventing X from obtaining an abortion or leaving the country for nine months. Upon returning home in a state of deep distress X was diagnosed as suicidal, however in granting the injunction the High Court held that the risk to her life arising from her suicidal ideations, “is much

²²⁰ Until 1979 contraception remained illegal and those who were caught faced a fine of up to £50 and a six-month prison sentence.

²²¹ Stephanie Lord, ‘The Eighth Amendment: Planting a Legal Timebomb’, in *The Abortion Papers Ireland: Volume 2* (Cork: Attic Press, 2015), 92.

²²² Smyth, *Abortion and Nation: The Politics of Reproduction in Contemporary Ireland*.

less and is of a different order of magnitude than the certainty that the life of the unborn will be terminated if the order is not made.”²²³

As the facts of the case emerged the Irish public was horrified, inspiring massive demonstrations and public outcry.²²⁴ Much to the embarrassment of the Irish government the case international drew widespread international attention on and was reported on in abject condemnation.²²⁵ The case was covered extensively by the international media and Ireland was disgraced on the international stage.²²⁶ The extremity of the reaction was such that the government approach X’s family suggesting they appeal the decision and even went as far as offering to cover legal costs.²²⁷ In what Smyth describes as the first acknowledgement that Article 40.3.3° implied ‘due regard’ for the life of both the mother and the unborn, the Supreme Court decided 4:1 in favour of X and lifted the injunction.²²⁸ According to the ruling, a woman had the right to an abortion under Article 40.3.3° if there was a “real and substantial risk” to her life.

Following PLAC's success securing the passing of the 8th Amendment, the X case and its aftermath revealed to the Irish people the full moral implications of their decision to constitutionally prohibit abortion. The narration of the case as one of violation against X and her family affirmed a patriarchal familial representation of state,²²⁹ however abortion under these circumstances was reconstituted as serving rather than subverting the national interest. The shared experience of trauma in response to the X case jolted the consciousness of the Irish public and caused them to call into question the direction in which independent Ireland was leading itself. “The X case showed that the post-colonial Irish nation state had failed to live up to the political and legal responsibilities of its independence, and that it was capable of acting with as much oppression and authoritarianism as any colonial regime.”²³⁰

²²³ Smyth, 5. (Quoting from Costello, J., in *Attorney General v. X and the Others* [1992] Irish Law Reports Monthly: 140).

²²⁴ Smyth, *Abortion and Nation: The Politics of Reproduction in Contemporary Ireland*.

²²⁵ Jo Murphy-Lawless, ‘Fertility, Bodies and Politics: The Irish Case’, *Reproductive Health Matters* 1, no. 2 (November 1993): 53–64, [https://doi.org/10.1016/0968-8080\(93\)90007-G](https://doi.org/10.1016/0968-8080(93)90007-G).

²²⁶ Lisa M. Kelly, ‘Reckoning with Narratives of Innocent Suffering in Transnational Abortion Litigation’, in *Abortion Law in Transnational Perspective: Cases and Controversies* (University of Pennsylvania Press, 2014), 303–26.

²²⁷ Smyth, *Abortion and Nation: The Politics of Reproduction in Contemporary Ireland*.

²²⁸ Smyth.

²²⁹ Smyth.

²³⁰ Fletcher, ‘Post-Colonial Fragments’, 582.

The case also fomented fears that were voiced during the abortion debate in the early 1980s regarding the porousness of Irish borders, and fears that they were vulnerable to foreign European influence.²³¹ This is particularly pertinent in the concerted efforts of the Irish government to negotiate the inclusion of a Protocol in the Maastricht Treaty (a European Union treaty engineered to further European integration) that would ensure European courts could not interfere with Ireland's legal ban on abortion. Luibhéid purports that this was a further demonstration of 'Irish exceptionalism', allowing the nation-state to establish its distinct identity in an international context.²³² Conrad connects these fears to foetal construction of the state, purporting that, "there is more than a coincidental similarity between the rhetorical construction of Ireland and the rhetorical construction of the foetus; this similarity points to the necessary but often discursively obscured link between the "private" choices of women and the "public" interests of the Irish Nation/State."²³³ Returning to the motif of English mills grinding Irish babies, terminating the life of the foetus beyond Irish borders was akin to symbolically destroying Ireland's national identity, for which Irish women were responsible. The restriction on travel, therefore, was in response to a feeling of self-consciousness that the Irish state could not control its own borders, given the corridor of abortion migration to England. However, following the X case the implications of an endangered right to travel became clear, with women travelling to England potentially faced a situation whereby they would be physically examined at air and seaports. "The implication was that women now embodied the moral-legal boundary of the nation-state, and unacceptable situation from the perspective of democratic citizenship."²³⁴

Such consequences for Irish women were unacceptable to the public and in 1992 a flurry of referendums were held to deal with the issues raised in the fallout of the X case ruling, allowing the Irish people to slightly recalibrate their position on abortion. Three separate referendums were held to deal: the right to travel, information, as well as the crucial issue of access to abortion services within the State. Both the right to travel and information were accepted without much dispute. The third issue concerned a mother's right to procure an abortion in the case where pregnancy posed a risk to her life (as distinct

²³¹ Conrad, 'Fetal Ireland'.

²³² Eithne Luibhéid, 'The "Right to Life of the Unborn" and Migration Controls', in *Pregnant on Arrival: Making the Illegal Immigrant* (University of Minnesota Press, 2013), 125–47.

²³³ Conrad, 'Fetal Ireland', 154.

²³⁴ Smyth, *Abortion and Nation: The Politics of Reproduction in Contemporary Ireland*, 112.

from health), with death by suicide as its cause. This third proposal (the 12th Amendment) was the most contentious of all and concerned a woman's right to suicide and whether it should be excluded as sufficient legal reason for abortion. Pro-choice groups contended "the spurious distinction between life and health" too restrictive and the exclusion of suicide as legitimate grounds, while pro-life groups were against legalizing 'direct' abortion, regardless of the conditions.²³⁵ The 12th Amendment was rejected however in 2002, rather than legislate following the X case verdict the government held a further referendum to attempt to insert the 12th amendment, however this was once again rejected by the Irish electorate.²³⁶ The willingness of the Irish public to shift its absolutist position on abortion by allowing limited access to abortion amounted to a tacit admission of support for the 10-12 Irish women daily leaving Ireland to terminate their pregnancy.²³⁷ The softening of legal controls on reproduction also amounted to a revision of how the Irish nation-state envisioned itself, illustrating the significance of Irish women's bodies in achieving the project of nationhood.

Conclusion

In this chapter I have demonstrated the harnessing of Indian and Irish women's bodies to further the project of nationhood in the post-colonial period. 'Women as mothers' were ascribed a cultural ascendancy, which envisioned them as repositories of cultural heritage in the post-colonial era. Through the regulation of female sexuality and the circumscribing of fertility control, the newly Independent sought to reimagine its national identity. As a result of these policies, women were denied bodily autonomy and meaningful reproductive agency. Feminists in Ireland have responded by advocating on behalf of women's liberty through pro-choice discourse. In the following chapter I will evaluate the choice framework using the categories of respect, resources and power.

²³⁵ Smyth, *Abortion and Nation: The Politics of Reproduction in Contemporary Ireland*.

²³⁶ Goretti Horgan, 'Abortion: Why Irish Women Must Have the Right to Choose', *Socialist Workers Party*, January 2002.

²³⁷ Murphy-Lawless, 'Fertility, Bodies and Politics'.

3. Challenging the Choice Paradigm: Respect, Resources, Power

Introduction

In the previous chapter I outlined the exploitation of women's reproductive bodies as a response to the colonial histories of Ireland and India. Within these nationalist discourse women were denied their reproductive decision-making capacity, and suffered immensely at the hands of state machinery. In response to these experiences the choice paradigm, which emphasis privacy and individual liberty, resonated with Irish feminists and formed the theoretical basis of their campaigns on behalf of legal abortion. In this chapter I shall critically evaluate this choice rationale using the categories of respect, resources and power.

3.1 Understanding the Pro-Life/Pro-Choice Dichotomy

i The emergence of pro-life v pro-choice discourse

In Western societies such as the United Kingdom, the United States and Europe, the liberalisation of birth control, and abortion services in particular, was frequently the result of a hard won battle fought tooth and nail by women-lead grassroots movements and heated moral and political debate. Stemming from this context defined by complete denial of bodily autonomy, the struggle for reproductive autonomy and sexual liberty was refracted through the narrative of choice, and feminists and abortions rights mobilised under the 'pro-choice' banner.²³⁸ This position, informed by bourgeois notions of privacy, was founded on the principle that women were the sole owners of their own body, therefore controlling fertility was a woman's 'personal choice'.²³⁹ The initiatives and public demonstrations campaigning on behalf of reproductive rights were swiftly paralleled by a counter-movement of right-wing, predominantly religiously motivated organisations, who sought to restrict women's access to reproductive services by halting the introducing of family planning legislation. While birth control was gradually accepted as part of the social fabric, abortion was considered a much more contentious issue, warranting their sharpest and most enduring moral opprobrium. Representing themselves as advocates and defenders of the unborn, seeking to vindicate its right to life, they fashioned their anti-abortion campaign under the 'pro-life' slogan. This ideological delineation, between groups in favour of legalising abortion and those strictly anti-

²³⁸ Sambaraju et al., "Her Choice of Course".

²³⁹ Rosalind Pollack Petchesky, *Abortion and Woman's Choice: The State, Sexuality, and Reproductive Freedom*.

abortion under any circumstances, resulted in the bifurcation in abortion discourse along a pro-life/pro-choice cleavage.²⁴⁰

ii Pro-Life/Pro-Choice Discourse in an Indian and Irish Context

The emergence of pro-choice and pro-life campaigns followed a similar pattern in Ireland. In her account of the founding days of the WRCG, the first of its kind advocating for abortion in Ireland,²⁴¹ Mary Gordon explains the political motivations undergirding the choice of name, which allied the group with the international pro-choice movement: “[it] defined us as part of the international feminist movement, for which the slogan ‘a woman’s right to choose’ had always been a central rallying cry.”²⁴² The counter-movement, whose most visible agents included SPUC (Society for the Protection of the Unborn) and PLAC, was founded on right-wing Catholic ideology and saw themselves as the protectors of traditional Irish values.²⁴³ The formation of the WRCG intimated a promising start for Ireland’s pro-choice movement and in 1981 it published a campaign pamphlet titled, *‘Abortion: A Choice for Irish Women’*.²⁴⁴ This aligned Ireland with the Western feminist movement, for whom abortion was emerging as the most salient issue of the time.²⁴⁵ However, the announcement of the plebiscite on the 8th Amendment forced feminists to reconsider their official position in the interest of campaigning against the amendment.

Following these developments, in December of 1981 the WRCG held a conference to decide how they should proceed. According to Gordon some of the group regarded the situation created by PLAC as an opportune moment to launch a ‘right to choose’ campaign, while others felt that a pro-abortion stance was too risky. Openly advocating on behalf of abortion was perceived as being overly radical in light of PLAC’s conservative counter-position due to the lack of public consciousness of abortion issues, and it was feared that even the anti-amendment position would be perceived as radical by

²⁴⁰It is important to note that although the public debate and campaigning initiatives coalesced along a pro-choice/pro-life division, amongst ordinary members of the public there were all shades of opinion in between, including allowing abortion only under limited circumstances, such as rape, fatal foetal abnormality, or if the health or life of the woman is in danger

²⁴¹Before the emergence of pro-choice groups, there were numerous women’s groups and facilities such as the Irish Women’s Liberation Movement, Irish Women United and The Fertility Guidance Company (later the Irish Family Planning Association) that campaigned on behalf of access to contraceptives.

²⁴²*The Irish Feminist Review* ’84, 10.

²⁴³Randall, ‘The Politics of Abortion Ireland in Comparative Perspective’.

²⁴⁴*The Irish Feminist Review* ’84.

²⁴⁵Randall.

liberals.²⁴⁶ In March of 1982 this cleavage bifurcated the organisation which split into two factions, the Women's Right to Choose Campaign (WRCC) and the Anti-Amendment Campaign (AAC). While both groups would support one another in their mutual opposition to the proposed amendment, the AAC adopted a "broad-based, non-pro-abortion, anti-referendum"²⁴⁷ strategy, sidestepping the issue of abortion altogether and omitted a feminist reproductive perspective within the ensuing debate.²⁴⁸ While it was originally intended that both groups would support one another in their mutual opposition to the proposed amendment, fearing a lack of support the WRCC ceased campaigning and came to be subsumed into the AAC, suggesting weak leadership amongst the pro-abortion faction. Consequently, the AAC emerged as the leading feminist campaign countering SPUC and PLAC, whose official position did not endorse abortion despite this being the personally held belief of many of its members. No longer campaigning under the pro-choice mantle, for a period of time Ireland's official feminist standpoint fell out of step with Western feminism.

Indian feminists did not share the same relationship with the international pro-choice movement.²⁴⁹ The historical and social context shaping reproductive rights bred a complex array of issues that could not easily be situated within the pro-choice/anti-choice movement,²⁵⁰ nor did the demands of Western feminists provide solutions to the problems faced by women in India. According to Asha Moodley, women in low-income contexts such as India, Africa and certain states in Latin America have challenged the assumptions associated with choice and control.²⁵¹ Whereas Western women faced a situation defined by absence of access to reproductive services and a lack of state support, India's problem stemmed from over-zealous state enthusiasm that withheld reproductive autonomy from women through its coercive reproductive policies.

In a context in which moral condemnation for abortion was the most difficult barrier to overcome, the language of choice discourse is more palatable than the term 'abortion'. According to Marlene Gerber-Fried (quoting from Lisa Smyth), "Even using the word 'abortion' was considered too controversial. The movement favoured the more

²⁴⁶*The Irish Feminist Review* '84.

²⁴⁷*The Irish Feminist Review* '84, 14.

²⁴⁸Smyth, 'Introduction'.

²⁴⁹ Menon's article title, 'When Pro-Choice is Anti-Women' attests to this.

²⁵⁰Ahluwalia, *Reproductive Restraints: Birth Control in India, 1877-1947*.

²⁵¹Moodley, 'Defining Reproductive Rights'.

euphemistic notions of ‘choice’, ‘personal freedom’ and ‘privacy’,²⁵² in hopes that this was a discourse that even conservatives couldn’t find objectionable.”²⁵³ Such rhetoric make less sense in a climate where women are treated as second class citizens and their participation within the public sphere are severely curtailed by virtue of their gender. According to Rao, choice discourse, when applied in such a context, can actively harm women by serving the population control interests of a coercive state: “What does ‘empowerment’ or ‘reproductive choice’ mean to women from poor communities denied access to all other rights as citizens? These fashionable phrases are intrinsic to the language of coercive population policies.”²⁵⁴

Reproductive issues did not demand the same level of priority within the Indian women’s movement during the early 1960s and 1970s, whose preferred tactic was to subvert existing criminal law rather than seeking reform.²⁵⁵ Unlike Irish feminists who lobbied the government for legislative reform, Indian feminists were wary of demanding measures that would increase government control,²⁵⁶ and which in many cases failed to be implemented regardless. Specifically citing the X case and its implications for the Irish feminist movement, Jesani and Iyer point out that the activities of pro-life and anti-contraception counter movements in Western countries provided a focus for agenda-setting and consciousness-raising that shaped the women’s movement and imbued their activities with a sense of urgency.²⁵⁷ In the absence of a viable anti-abortion movement, agenda-setting in India was less reactive, giving activists more control in shaping the narrative when campaigning on feminist issues. The down-side of this however was difficulty of consciousness raising on matters such as sex-selective abortions, that were increasingly normalised by the narratives of multiple patriarchies.²⁵⁸ These campaigns

²⁵² Advancing their arguments on lofty, intangible philosophical concepts such as female bodily autonomy provided an antidote to graphic foetal imagery displayed by pro-life campaign groups, who preferred to emphasise the physical and procedural elements of abortion. One notable example of this is the anti-abortion educational movie ‘The Silent Scream’ released in 1984, which depicts an abortion taking place via ultrasound within the uterus, positioning itself (according to filmmaker Jack Duane Dabner) from the ‘victim’s’ point of view.

²⁵³ Smyth, ‘Abortion and Reproductive Freedom’, 25. Quoting from Gerber-Fried, Marlene (1997) ‘Abortion in the US: Barriers to Access’, *Reproductive Health Matters*, 9: 37-45.

²⁵⁴ Rao, ‘Female Foeticide: Where Do We Go?’

²⁵⁵ Jesani and Iyer, ‘Women and Abortion’.

²⁵⁶ Everett, ‘Indian Feminists Debate the Efficacy of Policy Reform’.

²⁵⁷ Jesani and Iyer, ‘Women and Abortion’.

²⁵⁸ The concept of multiple patriarchies will be elucidated later in the chapter.

received little public support,²⁵⁹ even amongst women. The lack of collaboration between the state and feminist organizations prior to the liberalization of birth control and abortion resulted in their classification as a medical service rather than a human rights issue, and prevented feminists from negotiating a female-oriented framework.

iii Bodily Autonomy, the X Case and Pro-Choice Discourse in Ireland

While the battle for reproductive rights, in particular the lengthy struggle to legalise abortion in Ireland, has ebbed and flowed across decades, a woman's right to bodily integrity has persisted as the most prominent and compelling argument when imploring the state and the Irish republic to legislate in favour of abortion. The pro-choice stance rests on the position that a woman's bodily autonomy is vindicated through because it allows her to realise her agency and autonomy by moulding her future in a meaningful way.²⁶⁰ Outspoken support for abortion even within a limited capacity was weak in Ireland for much of the 20th Century. Once the X case came along in 1992, however, abortion discourse in Ireland was transformed. The case concerned a fourteen year old girl who was impregnated as a result of rape and long-term sexual abuse by the father of her friend, who was also family friend of X's parents.²⁶¹ Upon learning of their daughter's rape and subsequent pregnant, her parents agreed to bring her to England to obtain an abortion. Before leaving for England X's parents contacted the Gardaí (police) to query whether the foetal tissue would be admissible in court as a form of DNA evidence during a rape trial. Upon being alerted of X's intention to terminate her pregnancy, a temporary injunction was issued at the behest of the Attorney General, preventing her from obtaining an abortion or leaving the country for nine months. Upon returning home in a state of deep distress X was diagnosed as suicidal, however the High Court held that the risk to her life arising from her suicidal ideations, "is much less and is of a different order of magnitude than the certainty that the life of the unborn will be terminated if the order is not made."²⁶²

The visceral reaction of the general public in response to the sordid details of the X case derailed the anti-abortion moral crusade and paved the way for a resurgence of pro-choice narrative. For the first time the implications of Ireland's restrictive abortion

²⁵⁹In fact, campaigns against sex determination test actively contravened mainstream public opinion, which will be explored further in Chapter 4.

²⁶⁰Sambaraju et al., "Her Choice of Course".

²⁶¹Smyth, *Abortion and Nation: The Politics of Reproduction in Contemporary Ireland*.

²⁶²Smyth, 5. (Quoting from Costello, J., in *Attorney General v. X and the Others* [1992] Irish Law Reports Monthly: 140).

laws were narrated from the female perspective. This permitted the Irish public the moral license to view abortion from a position of empathy for the first time, shifting the discourse from the moral terrain it had occupied until then. Younger women in particular were moved by the plight of X, and according to Smyth, "...responded in terms of identification with X herself."²⁶³ The welfare of women, previously overlooked, was attributed greater significance and media debates surrounding the 1992 referendum emphasised the bodily integrity of women and the right to travel and information.²⁶⁴ Sensing a change in temperature emboldened feminist activists remobilized, this time resolute in their commitment to abortion.²⁶⁵

The most recent iteration of the Irish pro-abortion movement in recent years, the first to successfully lobby the government's commitment to declare a referendum on the 8th Amendment, also adopted a narrative of bodily autonomy and female self-determination. The Irish Feminist Network (IFN) in their submission to the Citizens Assembly on the 8th Amendment of the Constitution stated, "The IFN advocates for the fundamental right of women to make their own choices in relation to their own healthcare and medical treatment. Making decisions about what happens to one's own body is part of the right to bodily autonomy. Women should be trusted with this right and responsibility."²⁶⁶ An Irish-based study conducted by Sambarja et al. found that online posts debating the merits of abortion oriented their arguments through the prism of choice, suggesting that the Irish public language of choice resonated with the Irish public.

Following the landslide victory in favouring of repealing the 8th Amendment, it is tempting to herald the choice paradigm as a resounding success. From a campaigning perspective, as discussed earlier, the pro-choice narrative certainly is compelling. But securing the legal right to abortion is only half the battle; the true marker of success is whether it guarantees women access to abortion in practise, particularly those who are

²⁶³Smyth, 'Abortion and Reproductive Freedom', 2.

²⁶⁴Smyth, 'Abortion and Reproductive Freedom'.

²⁶⁵ The mission statement of the Repeal the 8th Amendment Campaign Statement, published on 14th April 1992, read: This campaign asserts that the bodily integrity, freedom of movement, health and dignity of Irish women can never be guaranteed so long as the right to life of a pregnant woman is equated (in the Constitution) with the that of the foetus she is carrying. The rights of pregnant women must be strengthened, based on information and choice. Ailbhe Smyth, 'A Sadistic Force', in *The Abortion Papers Ireland* (Dublin: Attic Press, 1992), 19.

²⁶⁶Irish Feminist Network (IFN), 'Submission to the Citizens' Assembly on the Eighth Amendment of the Constitution'.

marginalised, and whether or not it stands the test of time.²⁶⁷ I will address these issues in the following section.

3.2 Evaluating the Choice Framework

In the previous chapter I demonstrated the ways in which women's bodies were exploited to further the project of nationhood in Ireland and India, practices which endured long after the establishment of an independent nation-state. Choice (as opposed to a pro-choice narrative) was a pivotal concern to feminists in both contexts, in Ireland because it was entirely absent, and in India because women were denied opportunities for meaningful reproductive decision-making. This leads one to ask the question, how should the quest for reproductive liberty be approached? The language of choice was heavily operationalised by Irish feminists during agitations in favour of abortion. In the second half of this chapter I will evaluate the choice framework as a proposed solution, specifically seeking to determine whether it effectively removes the obstacles that deny women in an Indian and Irish context from making meaningful reproductive choices. Before I explain my methodology in detail, some questions must be answered to justify this approach.

i What is the validity of applying a choice narrative in an Indian context?

Given that the pro-choice discourse was never dominant in India, neither advocated by feminists (who expressly railed against it) nor implemented in government legislation (where the final adjudication to provide an abortion lies with the doctor rather than the woman herself), it is appropriate to question the validity of applying a choice narrative in an Indian context. In the globalised, interconnected world in which we live today, it is important to take an inclusive, coalition-building approach when seeking to overcome modes of oppression experienced universally by women. According to Deepika Bahri, "Notwithstanding our differences and our political boundaries, within the context of transnationalism and its enhanced possibilities for the flow of culture, communication, labour, capital, and ideology, we live not in three worlds but one."²⁶⁸

While embracing this spirit of solidarity, within such a collaborative process one must be careful, as far as is possible, not to eradicate any differences, stereotype,

²⁶⁷This is particularly pertinent in light of contemporary abortion politics in the U.S., where the privacy dimension of the choice narrative is currently being used to dismantle access to abortion services.

²⁶⁸Bahri, 'Feminism and Postcolonialism in a Global and Local Frame', 204.

demonstrate bias, or speak on anyone's behalf. In North America and Europe, feminists have chosen to advance their reproductive campaigns within a pro-choice framework. To assess its value in a transnational context it is imperative that the experiences of non-Western women are incorporated within its evaluation, for which the analysis will be much more textured and thorough. bell hooks (quoting from Bahri) implores feminists to theorize shared through a more inclusive frame, exclaiming "white women who dominate feminist discourse today rarely question whether or not their perspective on women's reality is true to the lived experiences of women as a collective group".²⁶⁹

ii. Why is it appropriate to evaluate the choice framework as a solution to female reproductive oppression?

Although I chose to analyse feminist discourse using the choice paradigm, it would have been equally as valid to approach from a medical or rights-based perspective. I chose the framework of choice because I felt this was the dominant and most powerful discourse within Western feminism, and Irish pro-abortion activists located themselves within a pro-choice frame. Furthermore, absence of choice (expressed through coercive family planning policies) was a common theme within feminist reproductive discourse in India.

iii Methodology for Evaluating the Choice Framework

My objective in the second part of this chapter is to determine whether the choice paradigm provides a suitable framework to support women's reproductive freedom in an Irish and Indian context. Despite the popularity and appeal of choice narrative within abortion politics, it is equally lauded and lamented within feminist circles. According to Petchesky, approaching reproductive freedom from the perspective of choice demonstrates a level of myopia as it circumvents denser moral questions about decision-making, such as the conditions under which a decision is made, or for what purpose.²⁷⁰ She highlights the limitations of choice which are vulnerable to changing historical, political and legal circumstances, and operate only to give rights on an individual rather than a collective basis.

I shall evaluate the performance of the choice paradigm within three categories of equality borrowed from Baker et al.,²⁷¹ respect, resource and power. In this assessment I

²⁶⁹Bahri, 197. Quoting from hooks, bell. 1984 *Feminist Theory: From Margin to Center*. Boston: South End Press. 1994. *Outlaw Culture*. New York: Routledge, 3.

²⁷⁰Rosalind Pollack Petchesky, *Abortion and Woman's Choice: The State, Sexuality, and Reproductive Freedom*.

²⁷¹Baker et. al, *Equality: From Theory to Action*.

will seek to delineate the limitations of the choice framework within these categorisations. My considerations will include accessibility of services (especially for marginalised and underprivileged social groups), the degree of reproductive autonomy exercised by women, attitudes towards abortion and perceptions of motherhood. Given that reproductive access in India is not oriented according to a choice framework, nor have abortion services been operationalized in Ireland for a sufficient period to gather adequate data, I will be arguing from a purely theoretical perspective.

I believe the pro-choice narrative represents a parochial perspective towards fertility control that excludes the experiences of socially disempowered women in Ireland and India. Through an analysis of the reproductive issues in Ireland and India I hope to highlight the inadequacies of the pro-choice paradigm by colouring-in the unarticulated assumptions that bolster the choice framework. In doing so I hope to create a more inclusive narrative and also to demonstrate the necessity to take a broader perspective when identifying the supporting framework for reproductive freedom, a point which I will develop further in the final chapter.

Speaking specifically to an Irish context, the choice narrative was instrumental to lobbying the government and mobilizing public support. While this tells us little about the practical utility of a pro-choice paradigm, it nonetheless attests to its power to bring about legislative change. Within my analysis I will address the faithfulness of Irish abortion activists to the practical limitations of the choice framework. In countries such as the UK where the choice narrative has been popularised, abortion services are available for free under the National Health Service (NHS). In highlighting such discrepancies I will argue that value of pro-choice narrative lies predominately in its rhetoric. A further issue I seek to address is the over-simplification of the choice narrative, which rests on a foundation of assumptions that it fails to articulate and is too theoretically limited to encompass. As previously elaborated in the first chapter, the economic and social status of women in society was significantly lower than it is today when the Irish women's movement first began demanding access to abortion. Therefore, I wish to determine to what degree the success of the Irish pro-choice campaign should be attributed to the narrative of choice as opposed to its location within a specific historical context. I posit that it is the social rights and the empowering of women that occurred in the 35 year interlocutory period

between the referendum to insert the 8th amendment and the referendum, in tandem with the pro-choice narrative, that secured the liberalisation of abortion. The availability of reproductive services in absence of these adjacent social rights would likely look very different.

3.3 Evaluating the Choice Paradigm: Respect

In this paragraph I am going to evaluate the choice model through the categorisation of respect. According to Culhane, “With regards to respect, the choice paradigm has been both heralded and criticised by feminists.”²⁷² Access to abortion services may be available but this says little about the public opprobrium or social repercussions faced by women availing of these services.²⁷³

i Trust as an Expression of Respect

A woman’s decision to have an abortion is nuanced and multi-faceted, producing multiple consequences each with distinct moral and social implications which are viewed differently by society: her decision to terminate her pregnancy, therefore ending the life of the foetus, might appear cruel and heartless to those who believe all human life is equal, regardless how tenuous; the uncoupling of sex and motherhood may jarr with those who seek to police female sexuality; by choosing not to be a mother, she is subverting social norms that assign motherhood as a woman’s natural vocation. The response of society to these distinct elements of a woman’s decision-making pertain heavily to the overall status and role of women in public life: whether her autonomy is valued over the right to life of the foetus; whether she is free to enjoy the pleasures of sex without consequences in the same way men do; whether mothers and childless women are valued equally. The language of pro-choice discourse resonated with Irish women because it was through a framework of (absence of) choice that they narrated their collective history. For decades

²⁷²Leah Culhane, ‘Reproductive Justice and the Irish Context: Towards an Egalitarian Framing of Abortion’, 68.

²⁷³A woman’s ability to freely choose termination of pregnancy is severely undermined if the stigmatisation of abortion produces feelings of shame or guilt, and further denies her familial or community support. The prospect of carrying such an emotional burden may be severe enough to deter women from choosing to have an abortion, thus impairing her freedom of choice. While studies have shown that women who undergo abortion experience mental issues, studies have shown that it is stigma, rather than abortion itself that produces these negative feelings. Fear of stigma may also prevent women from seeking medical assistance following abortion, which could further endanger her health. See O’Donnell, O’Carroll, and Toole, ‘Internalized Stigma and Stigma-Related Isolation Predict Women’s Psychological Distress and Physical Health Symptoms Post-Abortion’.

Irish women felt like they had no choice, or only a limited choice to travel to Britain. Put bluntly by Ailbhe Smyth, “They go to Britain because they have no choice.”²⁷⁴

For Irish women travelling to England for an abortion, this practise was considered a shameful and subversive activity, one which they oftentimes kept secret even from their friends and family. According to Leslie Regan (quoting from Lisa Smyth), denying women reproductive autonomy attended to the misogynistic belief that women were seen as morally inferior and therefore deemed incapable of making a decision of such gravity: “...women cannot be trusted to make moral decisions about children and family, but must be overseen and regulated by men;”²⁷⁵ pro-creation is a state mandate not a choice; women’s lives, sexuality, and bodies are not their own.”²⁷⁶ Dolores Dooley echoes this sentiment, contending that the medical community were appointed as arbiters of women’s fertility control in Ireland, despite being, “strangers to the moral context of the woman’s life.”²⁷⁷ A salient example of this is the High Court’s dismissal of X’s suicidal ideations as sufficient grounds to warrant an abortion. The court’s failure to consider to consider this ‘a real and substantial threat’ to her life suggest that they did not take her account of her mental state seriously, perhaps discounting it as female hysteria. Irish feminist activists were keenly aware of the misogyny informing Ireland's restrictive abortion laws. In the 'Abortion: A Choice for Irish Women' pamphlet published by the Women's Right to Choose Groups, they countered this notion, exclaiming, “Contrary to popular belief, Irish women are not brood mares. We are intelligent human beings who are capable of making decisions for ourselves.”²⁷⁸ Respect for women’s decision-making capacity is an essential prerequisite to reinforce women’s reproductive autonomy.

Turning to an Indian context we can see that providing women with access to contraceptives does not in itself amount to a demonstration of her trust. From its beginnings, the provision of fertility control services was influenced by the intervention of Western birth control advocates, who projected Indian women was as “colonial representations of Indians as passive subjects in need of authoritative figures from the

²⁷⁴Smyth, ‘A Sadistic Force’, 20–21.

²⁷⁵Men in this instance most likely refers to doctors and politicians, who were doing the decision-making on behalf of women.

²⁷⁶Smyth, *Abortion and Nation: The Politics of Reproduction in Contemporary Ireland*, 27. Smyth Quoting Reagan – Reagan, Leslie J. (1997) *When Abortion Was a Crime: Women, Medicine and Law in the United State 1867-1973*, Berkeley: University of California Press, 253.

²⁷⁷Dooley, ‘Abortion and Moral Disagreement’, 173.

²⁷⁸ ‘Abortion: A Choice for Irish Women’, 24.

West to guide and provide a civilizing influence.”²⁷⁹ Ahluwalia comments on the patronizing and dismissive tone used by birth control proponents such as Margaret Sanger and Marie Stopes, who undermined the intellectual capacity of Indian women by suggesting that only contraceptives that were simple to use would be effective. Neither was India the state’s decision to give women access to birth control and abortion accompanied by a belief that women were morally and intellectually responsible, autonomous agents of their own fertility control. According to Ahluwalia, the Bhore Committee represented dysgenic use and feminine emancipation as two potentially evil outcomes of contraceptive usage among middle-class women. This wariness of female autonomy can partially be attributed to the liberalisation of reproduction occurring, according to Jesani and Iyer, “largely independent of the women’s movement”²⁸⁰, which had the effect of de-centring women from the state agenda. This distrust of women is evidenced in the procedural practices of the state who switched to one-time administered contraceptive devices such as intra uterine devices (IUDs), implants, vaccines or injectable hormones²⁸¹ and prioritized sterilization above all other services.

A similarity can be drawn between the attitudes of medical practitioners in Ireland and India. Both were gatekeepers of access to contraceptive use who regarded themselves as moral adjudicators of female patients, without much heed for the material, moral or social context of a woman’s reproductive or sexual life. In Ireland when contraception was first legalised it was available only to married women and had to be prescribed by a doctor. Similarly, the classification of abortion as a medical service in India leaves the final decision to carry out the procedure with the doctor, and the clause allowing abortion in the case of contraception failure is reserved exclusively for married women. A prevalence amongst abortion providers to seek consent of family members, despite no legal requirement (due to fears of later repercussions from the husband)²⁸² demonstrates the collusion of multiple patriarchies, whose interlocking axes severely impairs women’s bodily autonomy.

Despite operating in a clinical capacity, it is a confluence of political, cultural and moral beliefs that inform the decision-making of medical personnel when adjudicating on

²⁷⁹Ahluwalia, *Reproductive Restraints: Birth Control in India, 1877-1947*, 69.

²⁸⁰Jesani and Iyer, ‘Women and Abortion’, 2591.

²⁸¹Lingam, ‘Introduction’.

²⁸²Visaria et al., ‘Abortion in India; Emerging Issues from Qualitative Studies’.

a woman's right to abortion.²⁸³ In an article published by the *Indian Medical Record* written by the physician M. S. Nawaz (quoting from Ahluwalia), he contested the notion that women should gain freedom through using birth control by liberating themselves from the "hardships of pregnancy."²⁸⁴ A similar stance was taken by Margaret Balfour, a leading physician who worked in Punjab, who stated that women whose primary objective was to obtain bodily autonomy should not be deemed eligible to receive contraceptive information.²⁸⁵

In Ireland, the overt coding of religious morality (with racial undertones) into Ireland's abortion laws is revealed in the statement by a midwife to Savita Halappanavar, who told her that "This is a Catholic country",²⁸⁶ while justifying the repeated refusals of her request for an abortion. While it could be argued that the choice rationale avoids such issues, in reality the provision of abortion services in pro-choice countries such as the UK continues to be mediated by medical staff upon the satisfaction of legal conditions, meaning that the decision does not rest solely with women themselves. Therefore the realpolitik of pro-choice policies can be described as access to abortion that exists on a continuum between poles as more restrictive and less restrictive, rather than existing within a binary of choice or not choice.²⁸⁷ The implementation of 'choice' in Ireland includes legal barriers to abortion such as a three-day cooling period before an abortion procedure is carried out and a twelve week limit (beyond which abortions may only be carried out under limited circumstances requiring authorization by a doctor), which still leaves significant control in the hands of the medical community and state.

ii Motherhood, Female Sexual Liberty and Pro-Abortion

The position of Balfour and Nawaz express a belief that a woman's primary function is motherhood and that contraceptive use should not deviate her from this path. As demonstrated in the previous chapter, the belief that womanhood 'naturally' designated the vocation of motherhood was a widely held social fact in Ireland and India. According to Gupte, the design of the national health programme, "reflects social attitudes towards

²⁸³While abortion was illegal in Ireland doctors were also deterred from providing abortion due to a fear of facing leading proceedings if it was later determined that the woman's life was not in danger, producing what is referred to as a "chilling" effect. Erdman, 'Procedural Abortion Rights'.

²⁸⁴Ahluwalia, *Reproductive Restraints: Birth Control in India, 1877-1947*, 153.

²⁸⁵Ahluwalia, *Reproductive Restraints: Birth Control in India, 1877-1947*.

²⁸⁶Midwife Confirms "Catholic Country" Remark'.

²⁸⁷Canada is a rare example of a country where there are no legal barriers to abortion, regardless of gestational stage. Sachdev, 'The Abortion Battle'.

women that view them primarily as mothers or potential mothers.”²⁸⁸ If the choice paradigm is to satisfy the criteria of respect it must break down the rigid chains (social, cultural, moral and biological) that tether women to motherhood. Arguing from a socialist-feminist perspective, Petchesky locates the feminist struggle for abortion within the context of a political and moral battle, as opposed to a challenge mediated by exclusively material limitations such as science. She argues that the biological context of a woman’s pregnancy is over-ridden by social and cultural norms that ascribe motherhood to women. It is these forces that produce that material and social oppression experienced by women and determine whether a woman’s right to choose is meaningful or not.²⁸⁹ From Petchesky’s argument we learn that overcoming retrograde gender assigned roles and dismantling social structures that seek to determine the trajectory of a woman’s life according to her gender. Both India and Ireland are, albeit to differing degrees, shy of a state of equilibrium where women are valued equally whether or not they decide not to be mothers, and female sexual liberty is celebrated on an equal footing with men's.

The demand that women should have the freedom to be sexually fulfilled yet childless was a central component of the pro-choice debate in Ireland. In *Banshee*, the journal belonging to the Irish Women United organisation, their contraception campaign claimed, “We want *free and legal contraception now*. We demand that all our children if and when we decide to have them, be born free.” Echoing Leveller and Cornell's theory, this was based on the belief that a woman's bodily autonomy is violated if a woman is forced to carry a pregnancy to term against her wish, and furthermore, as women are usually the primary caregivers of children the decision to remain pregnant should lie with them.²⁹⁰ Similar to the familial construction of society in Ireland described in the previous chapter, there is an enduring tradition in India which fixes the family institution as the most powerful structure which shapes society at an individual and community level.²⁹¹ Most Indian families adopt patriarchal norms supported by the framework of marriage, whose unwritten, socially imposed contractual obligations imply a duty for the wife to

²⁸⁸Gupte, ‘Programming Reproduction? Maternal Health Services’, 133.

²⁸⁹Rosalind Pollack Petchesky, *Abortion and Woman’s Choice: The State, Sexuality, and Reproductive Freedom*.

²⁹⁰Petchesky challenges this latter justification as a further limitation of the choice argument: from a materialist perspective, the rationale for choice is predicated on the assertion that women will be responsible for childcare then if a scenario existed whereby the community collectively took responsibility for childcare, then by then it follows that the community should collectively be able to decide whether or not she bears the child. Rosalind Pollack Petchesky.

²⁹¹Mulatti, ‘Changing Profile of the Indian Family’.

bear children, preferably male.²⁹² While there is a growing trend amongst Indian women (usually educated, urban and English-speaking professional) who are choosing not to have children, this occurs against the backdrop of a society which “glorifies” motherhood.²⁹³ According to Amrita Nandy, who has researched motherhood and choice, “Traditionally, motherhood is considered to be the most fulfilling aspect of a woman's life”.²⁹⁴ The coercive impact of social and cultural pressures to conform to ideals of motherhood can inhibit women from realising the personal, economic and health benefits that are gained through autonomous reproductive decision-making, thus compounding the experience of oppression.

This is starkly underlined by Maya Unnithan who writes:

The framework of social relations is...grounded in strong ideological and local moral worlds that define social and cultural expectations, responsibilities, and claims related to maternal, sexual and reproductive care and health. For example, in rural Rajasthan, as in other settings with high maternal mortality rates, the cultural expectation around producing children (often referred to as a woman's “duty”) overrides a woman's “right” not to bear children. The idea of *individual* choice is complex and difficult to isolate in this context, as childbearing is intrinsic to the construction of women's personhood (in a structural sense) and their attainment of full adult social status as mothers and wives.²⁹⁵

Interrogating the social stigma against childless women, leading feminist writer Urvashi Butalia asks of her decision not to have children, “Why should I have to define it in terms of a lack? Am I a barren woman?”²⁹⁶ Can we really say a woman is a free and respected agent if she is devalued and degraded for her fertility control choice?

The circumscription of a woman's social utility to her role as mother found legal sanction in Ireland and until this day the Constitution designates that a woman's role is within the home.²⁹⁷ Article 41.2° states that, “by her life within the home, woman gives to the State a support without which the common good cannot be achieved”, therefore in order to support her in this role, mothers, “shall not be obliged by economic necessity to engage in labour to the neglect of their duties in their home”. While the historical

²⁹²Gulati, ‘Women and Family Life in India: Continuity and Change’.

²⁹³‘Indian Women Who Are Choosing to Be Child-Free’.

²⁹⁴‘Indian Women Who Are Choosing to Be Child-Free’.

²⁹⁵ Maya Unnithan, ‘What Constitutes Evidence in Human Rights-Based Approaches to Health? Learning from Lived Experiences of Maternal and Sexual Reproductive Health’, *Health and Human Rights* 17, no. 2 (December 2015): 51.

²⁹⁶ Livemint, ‘Urvashi Butalia | Childless, Naturally’, <https://www.livemint.com>, 25 March 2013, <https://www.livemint.com/Leisure/jEGOb5320WMOVIIboGOfGN/Urvashi-Butalia--Childless-naturally.html>.

²⁹⁷By contrast, the Indian constitution grants men and women equal status and also empowers the state to adopt measures of positive discrimination against women. ‘Important Constitutional Provisions For Women Rights In India’.

conditions that engendered this piece of legislation have evolved, the underlying belief that ‘women as mothers’ is the natural order of things persists. An analysis of status of motherhood in Ireland reveals contrary results.²⁹⁸ Similar to the veneration of motherhood in India, the “Irish Mammy” holds a revered position in Irish society, leading to a gendered social stigma against women who decide not to have children.²⁹⁹ A woman’s choice is not valued nor respected if she is penalised for making a decision that contravenes social norms.

3.4 Evaluating the Choice Paradigm: Resources

A significant piece of furniture supporting pro-choice paradigm is the premise that fertility control is a woman's private choice, therefore state notions of public morality should not interfere with her private decision-making capacities. It was using this line of argumentation that abortion was legalised in the US in the landmark *Roe v Wade* case. However the Achille’s heel of the privacy rationalisation is that it facilitates the abdication of state responsibility to legally endorse and fund abortions services.³⁰⁰ Reflecting on this weakness Leah purports that, “The institutionalisation of 'choice' in the US context embodies this criticism by failing to provide women with material access in many places.”³⁰¹ The *Roe v Wade* verdict bestows on the government a negative obligation preventing it from erecting legal barriers that would outright prohibit the provision of abortion services. According to Petchesky this move within the US reflects a mode of thinking that translates “individual privacy” into “individual responsibility”. Its major issue however, is that it does not confer any positive duty to remove physical barriers, such as economic, transportation or uneven distribution, that might prevent socially disempowered women from exercising her private choice in practise. Nor does it inhibit the government from actively erecting barriers that would curtail access, such as restricting public or private funding, restricting insurance coverage, imposing waiting periods, setting gestational limitations, and introducing strict medical requirements.³⁰² This year in the U.S. lawmakers in sixteen states have attempted to dismantle *Roe v Wade*

²⁹⁸ On one hand, 2016 statistics reveal that Ireland had the highest birth rates amongst European Union countries,²⁹⁸ however on the flip side, almost 18% of women over 40 had no children. ‘Baby Boom Puts Ireland Top of EU Birth Rate Table’, accessed 23 July 2019, <https://www.irishtimes.com/news/ireland/irish-news/baby-boom-puts-ireland-top-of-eu-birth-rate-table-1.3150045>.

²⁹⁹ ‘Judging the Childless: “When I Say I’ve No Kids, People Look at Me Sadly”’.

³⁰⁰ Leah Culhane, ‘Reproductive Justice and the Irish Context: Towards an Egalitarian Framing of Abortion’.

³⁰¹ Leah Culhane, 69.

³⁰² ‘An Overview of Abortion Laws’.

by introducing measures restricting abortion access,³⁰³ including four states, (Georgia, Mississippi, Ohio and Kentucky) which have passed embryonic bills that prohibit abortion after six to eight weeks.³⁰⁴ In essence, choice logic falls in line with neo-liberal ideology that dictates market rule, thus reproducing the structural inequality that exists in the market place.

In Ireland, the limitations of abortion as a private choice have been glaringly obvious to feminists throughout the decades which witnessed thousands of Irish women exercise their private, limited choice to avail of abortion through passage to the UK. The total absence of state support created a situation where the responsibility for accessing these services lay squarely with women. The burden of this responsibility was disproportionately felt by certain social groups depending on their unique positionality within Irish society. Ivana Bacik, a prominent Irish Senator and Professor of Law, has highlighted the “inequality of access to abortion” this situation produced:

Irish women who are disadvantaged economically or socially face added significant difficulties in seeking abortion in what is already a crisis situation for them. We should not forget the situations of young women, women in remote and rural areas, women in care, asylum seekers, women with learning disabilities – any legal solution must offer a solution that meets their needs.³⁰⁵

With travel and medical fees having averaged at around €1000,³⁰⁶ the cost of travelling overseas for an abortion posed an economic and class barrier for socially disadvantaged women. Migrants and asylum seekers with travel restrictions, such as Miss Y, or girls and women in state care, such as Miss C, were also actively hindered by the state in their efforts to terminate their pregnancy. According to the IFN, “Irish abortion legislation has created a fundamentally unequal situation where abortion is accessible for privileged, middle-class women, who can afford to travel abroad, but not for poor or migrant women.”³⁰⁷ Without state funding to stabilize market produced inequality, the experience of Irish women accessing abortion was shaped by her social and economic circumstances. Irish feminist organizations such as the IFN responded to this historical context by

³⁰³‘Roe v. Wade at Risk’.

³⁰⁴Scheidlin, ‘If Roe v Wade Is Overturned, We Should Worry about the Rule of Law | Shira A Scheindlin’.

³⁰⁵Smyth, *Abortion and Nation: The Politics of Reproduction in Contemporary Ireland*, 123. Quoting from public Hearings on Abortion 24 May 2000

³⁰⁶This figure does not include other associated costs such as loss of earnings, childcare costs ‘Psychological, Physical and Financial Costs of Travel | Irish Family Planning Association’.

³⁰⁷Irish Feminist Network (IFN), ‘Submission to the Citizens’ Assembly on the Eighth Amendment of the Constitution’.

adopting the slogan “free, safe and legal” when campaigning for the legalisation of abortion services.

The requirement that abortion be free and legal, as opposed to merely decriminalised, exceeds the theoretical limitations of the pro-choice model. It asks the state to go beyond the stance of non-interference and actively support the administration of abortion services using legal instruments and through the provision of government funding.³⁰⁸ In doing so it represents a tacit admission on behalf of Irish feminist activists that the privacy rationale actively disadvantages women by reproducing structural inequality, thus creating a financial barrier for women who lack sufficient resources. In essence, the choice framework only provides access to women who can already afford it.

Despite state-funded abortion services existing in India, as mentioned in the first chapter a total 78% of abortions are performed outside of medical facilities. This staggering figure suggests that at least four out of every five women are exercising their right to abortion in a private capacity without state support under similar conditions as that prescribed by the pro-choice model. Given that unsafe, illegal abortions are one of the leading causes of maternal death, this number would surely rise if state funding was pulled in its entirety. This demonstrates the unsuitability of the pro-choice model in low-income countries such as India, where many women lack the financial resources to pay for the costs attached to registered health facilities. Malini Karkal cautions against evaluating the liberalization of abortion from stance of health or increasing a woman's choice. The legalisation of abortion, she posits, is only the first step. Jesani and Iyer voice similar concerns, positing “Legality provides only a thin cover, a kind of political legitimacy that is necessary but not sufficient to change the material conditions of women's lives.”³⁰⁹ Their assessment points to the dissonance between well-intentioned legal instruments drafted by lawmakers and the lived realities of women on the ground. Echoing the cries of Irish feminists, Nivedita Menon advocates assessing the efficacy of reproductive policy by asking whether legalisation is accompanied by free, safe and legal abortion services.³¹⁰ Legal abortion on its own makes little difference to the lives of women, in particular those operate at the margins of society.

³⁰⁸Abortion in Ireland is free for Irish residents under the Health Service Executive and is anticipated to cost between €300-450 for non-residents

³⁰⁹Jesani and Iyer, ‘Women and Abortion’, 2596.

³¹⁰Nivedita Menon similarly argues, “...the right to ‘choose’ makes little sense in the context of economic and cultural constraints that limit women’s possibilities of choice. Abstract ideals of individual self-

The high mortality rate attached to illegal abortions also points towards the associated dangers when the provision of healthcare is left to the free market, an inevitable consequence in the absence of state funding. Historically, Indian women (and men) have been vulnerable to exposure to unsafe contraceptive technology pushed by the Indian state and Western population control lobbyists. One such example is the case of the medical trials of the chemical sterilisation drug Quinacrine, which took place in India in the beginning in 1979³¹¹ until 1998 when the All-India Democratic Women Association successfully petitioned the Supreme Court to ban its use for female contraception.³¹² A report by the Indian feminist organisation Saheli described the international research process underpinning these trials as “incredibly unscientific”.³¹³ Trials took place in sixteen countries described as having “Third World” status, with the participants being mostly illiterate women from socio-economic disadvantaged backgrounds. The “trials”³¹⁴ are characterised by lack of informed consent, “shoddy and unscientific” application of research protocols and “a glaring lack of adequate follow up.”³¹⁵ According to the report the efforts to promote Quinacrine were not isolated incidences attributable to a few rogue groups or individuals but rather, “They are part of the population control lobby that seeks to control the population of developing countries at any cost to the health and well-being of their peoples, especially women.”³¹⁶ Despite the death of a woman during trials in Chile (which was covered-up) trials continued and later were brought to India, where they were conducted in defiance of permissions or licenses. The promoters of Quinacrine rationalized the shoddy and unethical trials by arguing that, “the gap between developing and developed nations is so wide in terms of health and contraceptive prevalence, that it is inappropriate to apply a single standard for clinical trials to both”.³¹⁷ Although its proponents advocate birth control as an female empowerment enhancing technology, the disparagement of and utter disregard for the health and welfare of Indian

determination unaccompanied by any obligation on the part of the state to secure these can leave women without the institutional support necessary to realise their support.” (67)

³¹¹Quinacrine is “a corrosive agent [to] be used to create a scar tissue in order to effect sterilisation”.

Risks include: higher risk of ectopic pregnancy, mutagenicity, carcinogenicity, effects on the foetus and a higher failure rate than previous surgical methods that were used. The Saheli Collective, ‘Quinacrine: The Sordid Story of Chemical Sterilisations of Women’ (New Delhi, 11 July 1997).

³¹²Rao, ‘Quinacrine Sterilisations Banned’.

³¹³The Saheli Collective, ‘Quinacrine: The Sordid Story of Chemical Sterilisations of Women’.

³¹⁴*Quotations not added by me

³¹⁵The Saheli Collective, ‘Quinacrine: The Sordid Story of Chemical Sterilisations of Women’, 20.

³¹⁶The Saheli Collective, 15.

³¹⁷The Saheli Collective, 41.

women displayed by avaricious corporations evokes neo-colonial associations, recasting them as subaltern than rather autonomous. While the Quinacrine trials demonstrate an extreme version of how state abdication through a pro-choice model could manifest, it raises the questions regarding the suitability of the free market as the main provider of women's reproductive healthcare. On this issue Upendra Baxi submits that, “this discourse regards women as *objects* rather than *subjects* of governance and development policy”.³¹⁸ If the provision of reproductive services is left solely to private market, it opens up the possibility that concerns for women's health will be displaced by concerns for cost-efficiency.³¹⁹ By designating fertility control a woman's private responsibility, the choice paradigm devolves power to the marketplace and fails to provide meaningful choice from women who lack financial resources.

3.5 Evaluating the Choice Paradigm: Power

To examine power in the context of choice is to ask, 'What is the agency of the person exercising the 'power to choose'? Can we really say they are free agents in making this decision or are there powerful external factors at play? Culhane asks, “The ‘freedom to choose’ is problematized when it is exercised in a position of oppression: can an option to which there is no viable alternatives truly count as ‘free’ choice?”³²⁰ Such exigencies could be determined by a person's social circumstances, such as not having the financial resources to raise a child,³²¹ or result from the deliberate actions designed to curtail a woman's reproductive choices. It could be a subtle form of coercive pressure exerted through compelling social norms, or it could be overt, exercised via powerful state institutions. As a subordinate class, women operate within oppressive social structures which are heavily determined by the social relations of reproduction. Therefore when we ask, “Who holds the power?” in the context of reproductive decision-making, it is important that we take a broad view of this framework rather than isolating the individual ‘choice’ of fertility control. This reflects the reality of a woman's choice as an interconnected web of decision-making. Such threads could include whether the sexual intercourse was consensual and uncoerced, or encompass the broader factors, such as

³¹⁸Baxi, ‘Gender and Reproductive Rights in India: Problems and Prospects for the New Millenium’, 14.

³¹⁹The Saheli Collective, ‘Quinacrine: The Sordid Story of Chemical Sterilisations of Women’.

³²⁰Leah Culhane, ‘Reproductive Justice and the Irish Context: Towards an Egalitarian Framing of Abortion’, 71.

³²¹Leah Culhane, ‘Reproductive Justice and the Irish Context: Towards an Egalitarian Framing of Abortion’.

financial pressures, or an abusive partner, that she considered when choosing not to continue her pregnancy. By identifying the causative factors we can more authentically determine whether the decision was really hers.

Multiple Patriarchies

Due to structural inequalities women find their freedom of choice constricted patriarchal power which operates at multiple levels, producing multiple patriarchies. In the following section I will elucidate on this further by analysing how interlocking patriarchal structures within the private and public sphere deny women their reproductive freedom.

i Power within the Domestic/Private Sphere

In this section I will contest the assumption that women can make free reproductive choices within the private sphere, a central component of the choice paradigm. Upendra Baxi argues that while reproductive rights are formed and realised at multiple levels (state, international treaties, pharmaceutical industry), the “constitutive *places of violation*”³²² exist at the local level, in sites he terms “micro-fascism”, such as the home, workplaces etc. By simultaneously framing reproduction as a woman’s private choice and a vehicle for bodily autonomy, the choice paradigm assumes that women are free agents within the domestic sphere. The bodily autonomy of Irish and Indian women is undermined through their associations with maternal duties, sexual obligations and notions of familial honour within their communities. This representation of women as the repositories of familial honour within their community reflects the complicity between multiple patriarchies, who mutually affirm and reinforce one another.³²² I will discuss this in more detail below.

The distinct categorisation of ‘marital rape’, which only became a crime in Ireland under section 5 of the *Criminal Law (Rape) (Amendment) Act 1990*,³²³ and which is still not considered a crime under Indian law, attests to a wife’s duty-bound obligation to sexually service her husband willingly or unwillingly. In addition to gender, caste, class and location play a large role in determining an Indian woman’s sexual liberty. According to Chandiramani, only upper class urban, educated women have the luxury of partner choice and consensual sex. “A married woman’s sexuality is viewed as part of her

³²²*The phenomenon of women as holder of their family honour is analogous to the identification of women as holders of national purity, suggesting the expansive breadth of patriarchal norms permeating each level of society.

³²³News, ‘Irish Legal Heritage’.

husband's proprietary right, over which the woman herself has little control."³²⁴ In Ireland, the interlocking axes of patriarchal control at state and domestic level was grievously dangerous for women's health due the physical toll of childbirth and rearing children. As demonstrated by the earlier story of Mrs. Smith in *Banshee*, women who had neither the autonomy to refuse their husband's sex nor access to contraceptives had few options to prevent becoming pregnant against medical advice. The prohibition of contraception by the government and a husband's unchallenged expectation of sex (widely reinforced by society), mutually reinforced one another to consign women to a lifetime of motherhood.

Simply giving women the 'choice' to access contraceptives fails to solve this problem if she lacks the autonomy with her sexual partnerships to use them. In her article "Mapping the Contours", Chandiramani begins by telling a vignette about a woman who is petrified of getting infected with HIV because her husband is having sex with other women. Although she is aware of condoms, she fears that by asking her husband to use them he will assume she is unfaithful and beat her up. Her story demonstrates the futility of giving women access to contraceptives, without empowering them within their intimate relationships to use them.³²⁵ Karkal criticizes India's family planning programme for failing to account for women's lack of agency within their domestic sphere. "The programme completely ignored the influence of patriarchal nature of society and the issues concerning the status of women and their helplessness in decision-making in family matters."³²⁶ She blames this for the low response to contraceptive services in the execution of the Third Plan, a time when the family planning programme was non-coercive aimed towards improving women's health (the closest India has come to a pro-choice model), despite indications that women wanted smaller families. This clearly demonstrates the limitations of the pro-choice model: giving women the 'choice' to use contraception in absence of any real agency to exercise this decision, fails to empower women in any meaningful way.

In Ireland the interlinkages between state, Church and familial powers often operated in collusion with one another to regulate women's sexual and reproductive lives.

³²⁴Chandiramani, 'Mapping the Contours: Reproductive Health and Rights and Sexual Health and Rights in India', 129.

³²⁵Chandiramani, 'Mapping the Contours: Reproductive Health and Rights and Sexual Health and Rights in India'.

³²⁶Karkal, 'Reproductive Health and Women: A Review of Literature', 167.

Women that were deemed sexually deviant or found guilty of committing sexual transgressions (such as becoming pregnant out of wedlock) were sent by their families to Church run, state funded reformatory institutions such as mother and baby homes and Magdalene Laundries, where they were imprisoned, forced to do unpaid labour, and their children were forcibly taken from them and put up for adoption (sometimes for monetary gain).³²⁷ The vilification of promiscuous, unchaste women produced immense feelings of shame and Catholic guilt for her family, accompanied by loss of standing within the community. This fear of social denunciation was so powerful, families willingly institutionalized their own daughters, thus normalizing the cruel, inhumane treatment to which they were subjected.³²⁸ These institutions, which were in operation from 1922 to 1996 (when the last Magdalene Laundry was closed), were “hiding in plain sight”³²⁹ and received the tacit support of the state and the Irish public.³³⁰ Smith argues that Church and the Free State worked together to build a new national identity founded on moral virtue, which heavily relied on the regulation of women’s sexual practices to achieve this aim.³³¹ Intertwining familial honour, hegemonical Catholic morality and the Free State’s emerging national identity, women’s bodies became a site of preservation for the sexual purity and moral virtue that embodied the nation.

ii State Power

When Irish feminists first began tentatively campaigning for increased fertility control through access to contraceptives, women were not considered as equal citizens of Irish society. According to Lisa Smyth, “...the historical disqualification of women from citizenship has relied on a double move. Firstly, women are associated with the private, non-political, familial and domestic sphere. Secondly, women ontologically failed to qualify as citizens by virtue of their reproductive capacity. In other words, the ‘maternal function’ excludes women from the category of ‘individuals’ to whom citizenship is granted.”³³² In the intervening years, the Irish feminist movement has fought and won many battles to secure the equal participation of women in Irish society. While the social

³²⁷O’Rourke, ‘Ireland’s Magdalene Laundries and the State’s Duty to Protect’.

³²⁸A comparison can be drawn between the practise of honour killing in India, in which women and men are killed for engaging in pre-marital or inter-caste relationships, although it is not within the scope of this paper to elucidate this further. Deol, ‘Honour Killings in India: A Study of the Punjab State’.

³²⁹‘The Truth about the Magdalene Laundries Was Hiding in Plain Sight’.

³³⁰O’Rourke, ‘Ireland’s Magdalene Laundries and the State’s Duty to Protect’.

³³¹Smith, ‘The Politics of Sexual Knowledge’.

³³²Smyth, *Abortion and Nation: The Politics of Reproduction in Contemporary Ireland*, 31.

and economic status of women has greatly improved, Irish feminists maintained that as long as women were treated as “chattel” through the privileging of the foetus’s life above her own, she would continue to have a subordinate status in Irish society and was denied her full citizenship rights.³³³ According to Attracta Ingram (quoting from Smyth), the 8th Amendment rendered Irish women “less than fully human”: “a woman who becomes pregnant has to forfeit her claims as an equal citizen to determine for herself the sacrifices she will make for the sake of another.”³³⁴ As long as the 8th Amendment was in place, pregnant women in Ireland were treated as second-class citizens.

Irish women experienced this diminishment of citizenship rights most profoundly with regards to healthcare. Due to the equal protection of life owed to mother and the unborn, Irish law precluded women from having an abortion even if her foetus had fatal foetal abnormality,³³⁵ or it poses a danger to her physical or mental health provided it is not life-threatening.³³⁶ Besides the X case, Ireland has a grim and cruel history of denying its women basic healthcare in the interest of protecting the life of the foetus. One of the earliest cases was that of Sheila Hodgers, which occurred in the run up to the 8th referendum.³³⁷ Shortly after becoming pregnant Sheila, who had previously been given the all-clear, was told her cancer had recurred. Medical staff refused to give her any treatment for the cancer as this would harm the foetus, and performing an abortion was also ruled out as this was against Irish law. In the account told by the Irish Feminist Review ‘84, her husband recounted that the pain endured by Sheila was so extreme he could hear her screaming on the third floor, yet she wasn’t even receiving painkillers. Her death was not widely reported at the time, only reported on in one national newspaper despite its informative value for the repercussions of the 8th amendment, reflective of the low regard for the welfare of women in Ireland at the time.³³⁸ The case of Savita

³³³Similarly, Linda Horgan’s comments on women being referred to as ‘the carrier’ saying, “[it] serves to obscure the complexity of the ethical dilemma, and indeed it also harkens back to the days (which we are assured have long passed) in which women were primarily empty receptacles, mobile, wombs, valuable for our reproductive capacities. Hogan, ‘Procreative Choice: A Feminist Theological Comment’.

³³⁴Smyth, *Abortion and Nation: The Politics of Reproduction in Contemporary Ireland*, 153.

³³⁵‘Fatal foetal abnormality’ is not a medical term but it is frequently used within the Irish abortion debate to refer to “a medical condition suffered by a foetus such that it is incompatible with life outside the womb”. “‘Fatal Foetal Abnormality’ Is a Loaded and Misleading Term’.

³³⁶Lord, ‘The Eighth Amendment: Planting a Legal Timebomb’.

³³⁷*The Irish Feminist Review* ‘84.

³³⁸The case was prophetic in its similarity to the case of Michelle Harte, whose cancer treatment in Ireland was halted in 2010 when she became pregnant. An ethics committee determined that the threat the pregnancy was not deemed life-threatening and refused her an abortion in Ireland under the 8th Amendment. Her gynaecologist argues that the intervening weeks before she was able to travel to

Halappanavar validated the long-held fears of Irish feminists by demonstrating that the life of women was less valid than that of the foetus. Her tragic death shook the Irish public for its unvarnished illustration of how the brutal coercive power of the Irish state operated in practice. It also showed the vulnerability of minorities and immigrant women³³⁹ who may have been unaware of Ireland's restrictive abortion laws, and whose economic and legal status may have inhibited them from travelling abroad for a termination.³⁴⁰ The huge outpouring of public grief following the death of Savita is attributed to raising public consciousness on the mortal danger the 8th amendment posed to the life of women in Ireland. The narration of Savita's death, which saw her repeated requests for abortion denied, demonstrates why the language of the pro-choice movement was compelling to Irish people as it emphasised a woman's ability to exercise her personal liberty.

The disparity between the media treatment and public reaction gendered by the death of Savita Halappanavar and the death of Sheila Hodgers despite their parallels pays testimony to the huge shift in mind-set towards the value of women in Irish society. Irish feminists and abortion activists recognised that it was an increased intolerance towards the consequences of the 8th Amendment for women³⁴¹ rather than an increased tolerance towards abortion itself, that tipped the scales in favour of the repealing the 8th Amendment.³⁴² The pro-choice argument endured, however the social and economic status of women transformed immensely.³⁴³ While abortion activists failed to incorporate this social restructuring into their pro-choice discourse, I posit that this was the crucial

England and get an abortion were fatal, and had she been able to have an abortion in Ireland she might still be alive. 'Mother Might Still Be Alive but for Eighth Amendment – Gynaecologist'.

³³⁹I will explore this topic in more detail in the final chapter.

³⁴⁰In an Irish Times article an Irish woman recounts her story of being denied an abortion in Ireland despite experiencing symptoms of septicaemia. Unlike Savita who had died two years previously, she was able to travel to England for a life-saving abortion. Anonymous, "My Circumstances Were the Same as Savita Halappanavar's".

³⁴¹Amongst other issues, the latest iteration of the repeal campaign highlighted the tragic cases of pregnant women dying in Ireland, the health risks posed to Irish women who couldn't get an abortion in Ireland (and received no aftercare following an abortion abroad), and the harrowing prospect of enduring an unwanted pregnancy, especially following a diagnosis of fatal foetal abnormality. See Together for Yes, 'Briefing on the Proposal to Regulate Termination of Pregnancy in Early Pregnancy (12 Weeks): Medical Abortion'.

³⁴²This reflects Nivedita Menon's assessment of the pro-choice movement within Western feminism: "The slogan that was adopted was that of 'choice', thus emphasising autonomous decision-making rather than abortion itself. The movement generally focused on legal barriers to the realisation of individual liberty and thus implicitly denied the validity of any social regulation of reproduction." Menon, 'Abortion: When Pro-Choice Is Anti-Women', 67.

³⁴³O'Brien, 'Ireland Moves up Rankings of Women in Workplace'.

missing piece that secured the success of the Irish abortion movement at this point in history rather than any other.³⁴⁴ As women grew to play an increasingly active role in society, occupying positions of power and exerting increased influence on the shaping Irish public life, the people of Ireland were no longer willing to tolerate women's second-class citizenship. Crucially, Irish women themselves were empowered to advocate on their own behalves and begin dismantling the patriarchal structure undergirding the ban on abortion. Ailbhe Smyth acknowledges the central role of male power in the abortion struggle: "It [abortion] is about power. Specifically, it is about the exercise of male power. It is about men's obsession with ownership and control of 'their' seed, not one precious drop of which must be wasted. It is about their overriding desire for dominance and their identification of reproduction as a primary site of the control of women."³⁴⁵ Unacknowledged within pro-choice discourse, it is the battles Irish women fought on other fronts such as equal employment rights and equal pay for women,³⁴⁶ equal status within marriage, equal status within the constitution, illegitimacy laws,³⁴⁷ divorce, and reductive gender norms, that paved the way for the legalisation of abortion.

Despite the gains made by Irish feminism, the fruits of their labour are not enjoyed equally by all women in Ireland. The pro-choice model which seeks to privatise a woman's reproductive decision-making fails to acknowledge that the personal liberty of individual women is in large part determined by their social positionality. Certain Irish feminists however, such as Porter, have identified this issue: "The defence of abortion as a woman's private right to her body reinforces individualistic views of rights as autonomous, personal property. This defence invokes images of a woman isolated from social context."³⁴⁸ Returning to the case of Savita, the event of her death is highly contextualised by her migrant status which prevented her travel to the UK, thus leaving

³⁴⁴Another significant factor is dwindling power of the Catholic Church in Irish society, whose influence over public life diminished following an outpouring of child sex abuse scandals and the modernisation of Ireland.

³⁴⁵Smyth, 'A Sadistic Force', 145–46.

³⁴⁶*The Irish Feminist Review* '84.

³⁴⁷It wasn't until 1987 under the Status of Children Act that the status of illegitimacy was abolished. Finn, 'Haughey Warned about Possible International Law Breach with "illegitimate" Children and Divorce'. "One of the cruellest punishments inflicted by Society on the woman in this situation is society's punishment of the child. The child is described as illegitimate. In Law she/he is described as *filius nullius* (child of no one). The child has no legal right to a name at birth; the mother's name may be acquired only by usage. The "illegitimate" child enjoys almost none of the rights or privileges of the "legitimately" conceived child."

³⁴⁸Porter, 'Culture, Community and Responsibilities', 279.

her at the mercy of Ireland's anti-abortion law. Similarly the case of Miss Y, which will be discussed in more detail in the following chapter, concerned an immigrant woman who was forced to carry her pregnancy until 26 weeks.³⁴⁹ In both cases, their immigrant status of women prevented them from accessing services available to Irish or European women. The pro-choice model denies the experiences of women such as Savita and Miss Y whose positionality, be it caste, class, race, or religion, impairs their personal autonomy by unnaturally isolating the decision of fertility control from the social structures that define their reality.

Turning towards an Indian context, Indian feminists have criticised the liberalisation of reproduction in the absence of a genuine and meaningful effort to empower women, arguing that the government only sought to 'empower' women to the extent that it furthered their own ends. Highlighting the state's hijacking of the language of empowerment in its family planning programmes, Datta and Misra conclude that, "Empowerment, however, is also a much-mangled term."³⁵⁰ Their critique positions these programmes within the network of policies implemented by the government to improve the welfare of women: "Going to school, being sterilized, and weaving baskets do not necessarily add up to an empowered woman, although they are enabling mechanisms. What is crucial – and often overlooked – in the process of empowerment is what lies at its centre."³⁵¹ Their exhortations for genuine empowerment that regards women as, "as active subjects, determinants and agents, not as passive objects or pawns of social change"³⁵² strikes a similar note to that of Nirmala Banerjee, who interrogates the dysmorphia between the equal status of women within the Indian Constitution following independence, and the national policies implemented by the government in the Nehruvian era. In the late 1930's a document entitled 'Women's Role in Planned Economy' (WRPE) was prepared on behalf of the government, which gave police recommendations for improving the status of women once India gained its independence. One of its guiding principles was that in order to be an independent agent, women must be financially secure regardless of marital status. In this vein it recommended that women should get 'equal pay for equal work', receive compensation for work done within the home and the common practise of expelling women from their jobs once they were married was

³⁴⁹Holland, 'Timeline of Ms Y Case'.

³⁵⁰Datta and Misra, 'Advocacy for Sexual and Reproductive Health', 28.

³⁵¹Datta and Misra, 'Advocacy for Sexual and Reproductive Health'.

³⁵²Datta and Misra, 28.

discredited. According to Banerjee, policy-makers of the Independent state, “firmly left out the more radical and therefore dangerous sounding recommendations of the WRPE document. Instead, it concentrated on issues that were of interest to men who obviously formed the mainstream.”³⁵³ An earlier commitment to transform the lives of women was replaced by policies that affirmed regressive gender roles, casting women either as housewives or supplementary earners whose purpose derives from serving others. Banerjee partially lays blame at the feet of the women’s movement who failed to mobilise against these decisions, in particularly elite women activists who had forgotten about the condition of poor women now that the unifying nationalist movement no longer bound them together. “Poor women, who had briefly emerged during the freedom struggle, were by then once again firmly back within the confines of their households. Their concerns were distant and unfamiliar. The prizes of power, on the other hand, were alluring and at hand, if only one toed the party line. The choice would not really have been a hard one.”³⁵⁴ The category of woman was as fractured as ever.

It was these poor women who were denied a fair share³⁵⁵ of the ‘spoils of war’ following Independence that were most vulnerable to India’s coercive, incentive-based family planning programme. Although officially it was defined and promoted as voluntary, this doublespeak cloaked its unofficial strategy of “coercive persuasion”.³⁵⁶ According to Lingam, the gradual transition from distributing single use, ‘user-controlled’ contraceptives such as jelly, foam, tablets etc. to more permanent, ‘provider-controlled’ fertility technology such as IUDs and implants, “underlines the change in ‘who controls contraception’”.³⁵⁷ The state exercised this coercive power to reach targets by denying grants to farmers in rural areas unless they were sterilized³⁵⁸, debarring individuals with more than two children from panchayat elections or from government jobs in Rajasthan, and even having lottos where entry criteria was determined by family size and fertility control in Maharashtra.³⁵⁹ Lingam argues that rather than seeking to undo the social inequalities of certain social groups, the government exploited their very powerlessness,

³⁵³Banerjee, ‘Whatever Happened to the Dreams of Modernity? The Nehruvian Era and Woman’s Position’, WS-3.

³⁵⁴Banerjee, WS-6.

³⁵⁵The WRPE document made clear that it was against reservation of seats within the Indian government, which would have open more channels to political power for lower caste, lower class women. Banerjee.

³⁵⁶Gupte, ‘Programming Reproduction? Maternal Health Services’.

³⁵⁷Lingam, ‘Introduction’, 124.

³⁵⁸According to Chandiramani, sterilization rates were higher in rural areas, while reversible contraceptive methods were higher in urban areas.

³⁵⁹Rao, ‘Population Policies: States Approve Coercive Measures’.

recognizing that, “coercion thrives on these very conditions”: “Under the guise of giving us choice, we are made spectators of our own oppression, be it through dangerous contraception, female foeticide, sex selection, surrogate motherhood or the perpetual tight-rope walk where our productive and reproductive duties are concerned.”³⁶⁰ From population control lobbyists and patriarchal societies to wealthy women with fertility issues,³⁶¹ the marginalized woman’s womb is vulnerable to exploitation.

Conclusion

The exploitation of women at the hands of the Irish and Indian state demonstrates the inherent weakness and danger of the pro-choice paradigm when applied in a context of unequal power imbalance, such as that which exists between state and citizen, or consumer and corporation. By defining fertility control as a private right and abdicating the government of any positive responsibility, any action taken by the government which supports access to reproductive services is technically a voluntary extension of this negative obligation. In the absence of a reproductive framework that defines the perimeters of state’s obligations to its citizens, it becomes more difficult to hold the government accountable when their voluntary actions are morally questionable. The pro-choice movement in most countries have implicitly recognized these limitations and have lobbied the government on behalf of their positive obligations to women’s reproductive healthcare. This tells us that the pro-choice movement is choice-oriented in little but name. In the following chapter, I will suggest that reproductive justice provides a better framework to achieve the reproductive aims of the feminist movement, one that is inclusive, strives for equality and genuine empowerment by collapsing the artificial barrier between the public and private sphere.

³⁶⁰Lingam, ‘Sex-Detection Tests and Female Foeticide: Discrimination before Birth’, 143.

³⁶¹Bhattacharjee, ‘Commercial Surrogacy in India: Bans, “Altruism” and the Women Involved’.

4. Moving Towards a Reproductive Justice Framework

Introduction

My aim in this chapter is to impress upon the reader the paramount importance of adopting a reproductive framework that positions the intersectional needs of women at its core. To begin with, I shall present two case-studies which demonstrate the tragic outcomes that can occur when legal access to abortion is isolated from broader social justice concerns. In the case of India, I shall analyse the phenomenon of selective abortion of female foetuses. Relying on this analysis, I will argue that the narrow vision of the choice paradigm is inimical to meaningful reproductive liberty. Turning to Ireland I shall explore the Miss Y case, specifically examining the role her being a migrant played in barring her access to abortion services to which she was legally entitled. In the second half of the chapter I shall present the reproductive justice model as a solution to these issues. I will argue that its focus on overcoming the discrimination experienced by women leads to more genuine reproductive liberty.

4.1 Why choice rationale makes bad feminist theory: a case-study of sex-selective abortions in India

In this section I will be using the phenomenon of selective abortions of female foetuses as a case-study to demonstrate the misalignment of the choice rationale with feminist principles. Borrowing from legal theory and relying on the legal maxim ‘Hard cases make bad law’, I will treat sex selective abortion as a ‘hard case’, which is legal terminology for an extreme example of a case. The logic of the maxim is that extreme cases should not be used as the blueprint for a general law that would bring a wide range of less extreme cases within its purview. The maxim encourages embracing the spirit of the law, rather than seeking to satisfy the theoretical limitations of its written format. Similarly, I intend to demonstrate that although the narrowness of the choice paradigm permits the selective abortion of foetuses as an expression of a woman’s ‘choice’, the spirit of reproductive feminist discourse does not support this practise. Therefore, we should not be blinded by the rhetorical appeal of ‘choice’ discourse, nor should we abstract from this a general model that is suitable for all cases. I will suggest that the integrated and broader scope provided by a reproductive justice framework is a more suitable model for feminists as it captures the unseen inequalities that influence a woman’s ‘choice’.

Ever since reproductive technology permitted the gender identification of foetuses, Indian feminists have struggled to counteract the widespread and culturally sanctioned practise of gender selective abortions.³⁶² Their difficulty stems largely from the fear that their protests could provoke the unintended reprisal of endangering women's access to safe and legal abortions, According to Patel, feminists had to proceed cautiously: "It is a major challenge to fight against discriminatory abortions of female foetuses and use of pre-selection techniques for son-preference within the matrix of gender justice and without jeopardising women's right to safe abortion."³⁶³ Delineating the moral distinction that encompasses the discriminatory practice of aborting of female foetuses without unintentionally ensnaring access to safe abortion proved tricky from a campaigning perspective (emotive language such as "foeticide", "murder" and "slaughter", often employed to great effect by pro-life campaigners, could jeopardise a right to safe abortion in the case of unwanted pregnancy³⁶⁴), and additionally poses a philosophical conundrum for feminists. Menon captures this when she claims, "...there is a profound philosophical incoherence involved in arguing for abortion in terms of the right of women to control their bodies and at the same time, demanding that women be restricted by law from choosing specifically to abort female foetuses."³⁶⁵ This impulse lead feminist organisations such as the Forum Against Sex Determination and Sex Pre-selection (FASDSP) to oppose initiatives that restricted the right to abortion.³⁶⁶ When the Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act was finally passed in 1994, it restricted pre-selection techniques and allowed for their regulation in the future.

Anchoring our justifications for abortion choice discourse creates an ethical dilemma for feminists; the internal logic of the choice paradigm works very well as a rationale to support, or at the very least justify, the practise of sex selective abortions. For starters, the majority of the Indian population (women included) are expressly in its favour. The FASDSP, which first began campaigning in 1986, experienced this quandary when the mounted protests outside a clinic providing sex-determination tests. This put them in the unusual position of imploring the state for additional restrictions on abortion

³⁶² The terms 'female foeticide' and 'femicide of foetuses' were used in earlier feminist campaigns. However since then feminists have distanced themselves from this terminology as it implies the personhood of the foetus and therefore can result in the narrowing rather than the enhancing of reproductive freedoms. Menon, 'Abortion: When Pro-Choice Is Anti-Women'.

³⁶³ Patel, 'A Long Battle for the Girl Child', 20.

³⁶⁴ Patel, 'A Long Battle for the Girl Child'.

³⁶⁵ Menon, 'Abortion: When Pro-Choice Is Anti-Women', 72.

³⁶⁶ Menon, 'Abortion: When Pro-Choice Is Anti-Women'.

while acting against majority opinion. In a paper published in 1989 their members voiced their discomfort: “So, here we have the unpleasant option of going against what the majority of people seem to believe in and collaborating with the state which most of the time is anti-people.”³⁶⁷ This put feminists in the unnerving position of seeking to circumvent the articulated desires of Indian women regarding their personal fertility control, a manoeuvre which feels distinctly anti-feminist.

Given the strong cultural slant towards male preference (or what Sangari terms ‘daughter-dispreference’³⁶⁸) in Indian society, a woman’s motivation for desiring a son over a daughter is grounded in rational argument. This preference articulates itself through gendered social norms that economically disempower women and their families: custom dictates that the maternal family must pay a dowry and for marriage costs,³⁶⁹ women are severely underrepresented in the workplace,³⁷⁰ and cultural (and previously legally prescribed) barriers that exclude women from benefitting in the family inheritance.³⁷¹ Wealthy families are also discouraged from passing on land to their daughters as it would result in the splintering of the family estate.³⁷² According to Sangari these financial considerations indicate a “women-as-property” designation of daughters within her maternal family; due to their preoccupation with arranging her marriage (therefore alleviating themselves of her financial ‘burden’), this view manifests through the regulation of her sexuality and reproduction.³⁷³ She says, “At one level, “women-as-property” denoted natal family control of daughters’ sexuality, and hence, their reproductive capacities – i.e. a form of propertarianism hooked to “conservation” until the “proper” denouement of marriage followed by marital family control of the sexuality and reproductive capacities of wives/daughters-in-law.”³⁷⁴ Upon marriage, these ‘property rights’ devolve to the paternal family and encompass the foetus and her

³⁶⁷ J. Everett, ‘Indian Feminists Debate the Efficacy of Policy Reform: The Maharashtra Ban on Sex-Determination Tests’, *Social Politics: International Studies in Gender, State & Society* 5, no. 3 (September 1989): 320, <https://doi.org/10.1093/sp/5.3.314>.

³⁶⁸ Kumum Sangari, ‘Settled Alibis and Emerging Contradictions: Sex Selection, Dowry and Domestic Violence’, *Economic & Political Weekly* 47, no. 34 (25 August 2012): 39–48.

³⁶⁹ Suchitra S Dalvie, Alka Barua, and Hemant Apte, ‘Safe Abortion as a Woman’s Right: Perceptions of a Law Enforcement Professionals’, *Economic & Political Weekly* L, no. 33 (15 August 2015): 61–66.

³⁷⁰ Kishwar, ‘When Daughters Are Unwanted: Sex Determination Tests in India’.

³⁷¹ Rina Chandran, ‘As Property Prices Rise, More Indian Women Claim Inheritance - Reuters’, accessed 27 July 2019, <https://www.reuters.com/article/india-landrights-women/as-property-prices-rise-more-indian-women-claim-inheritance-idUSL8N20Z4XO>.

³⁷² Sangari, ‘Settled Alibis and Emerging Contradictions: Sex Selection, Dowry and Domestic Violence’.

³⁷³ Sangari.

³⁷⁴ Sangari, 40.

reproductive organs.³⁷⁵ By compelling a women to undergo a sex-selective abortion her family inscribes their ownership on her body and by extension, that of the foetus too.

Kishwar also attributes son preference to the psychological conditioning of women to subordinate their own interests to that of the family's (read as male) interests, a view they internalise and later attach to their daughter. For many women, their status and respect within the family is only secured through the birthing of a male heir (satisfying the requirements of 'respect' and 'power'), and failure to meet this condition could result in the end of their marriage³⁷⁶ or leave them vulnerable to abuse. Kishwar says, "Their own status in the family is downgraded and they become vulnerable to more abuse every time an unwanted daughter is born to them or if they fail to produce a son."³⁷⁷ Under such conditions, compounded by the government's two-child policy and their tacit acquiescence of sex selection practices, it may seem antiethical to ascribe 'choice' to such a scenario.

The effect of these structural inequalities places a far higher value on the 'financial return' of birthing a son. In a study conducted in slum areas in Mumbai, women who discovered they were carrying a female foetus underwent abortions in the 18th or 19th week of pregnancy. According to their reasoning it was better to spend a few hundred rupees on an abortion than incur thousands of rupees of costs down the line on her marriage.³⁷⁸ This logic was mirrored in the "spend now, save later" marketing campaigns launched by private clinics advertising their sex selection services.³⁷⁹ Doctors would drum up business through "spend now, save later" advertisements, alluding to the hefty dowry costs and lack of earning capacity associated with daughters.³⁸⁰ In 1994 a newspaper reported that after the ban the Pearl Centre Clinic in Bombay continued to provide SD services however at twenty times the price it has been before the legislation was introduced.³⁸¹ It was also rumoured that doctors were falsely reporting that the foetus was female in order to capitalise from the request for an abortion.³⁸² They justified the

³⁷⁵ Sangari, 'Settled Alibis and Emerging Contradictions: Sex Selection, Dowry and Domestic Violence'.

³⁷⁶ Leela Visaria et al., 'Abortion in India; Emerging Issues from Qualitative Studies', *Economic & Political Weekly* 39, no. 47-47 (20 November 2004): 5044-5042.

³⁷⁷ Kishwar, 'When Daughters Are Unwanted: Sex Determination Tests in India', 87.

³⁷⁸ Patel, 'A Long Battle for the Girl Child'.

³⁷⁹ Maya Unnithan-Kumar, 'Female Selective Abortion – beyond "Culture": Family Making and Gender Inequality in a Globalising India', *Culture, Health & Sexuality* 12, no. 2 (February 2010): 153-66.

³⁸⁰ Unnithan-Kumar.

³⁸¹ Everett, 'Indian Feminists Debate the Efficacy of Policy Reform'.

³⁸² Everett.

ethics of these services by regarding it as humanitarian work as it rescued desperate women from the oppression they would suffer at the hands of their in-laws should they give birth to an undesired daughter,³⁸³ and worked in favour of over-arching population control policies.³⁸⁴

Staunch pro-choice advocates argue against undermining the integrity of a woman's decision-making capacity even if that means she chooses to undergo sex selective abortions. We see this in the argument of Sarah Dictum (quoting from Gupta) who acknowledges the existence of violent circumstances, "where a livid patriarch deprived of a male heir could turn his fury on both mother and daughter", however believes that, "In those situations, a woman wouldn't just be justified in seeking sex selection abortion; she'd be thoroughly rational to do so."³⁸⁵ Her argument suggests that this avenue enhances the agency of women. Feminists who oppose sex selection tests are also wary of the inherent dangers of representing women as lacking in capacity to make such decisions independently.³⁸⁶ We cannot easily sidestep this by concluding that women acted under duress, and therefore lack decision-making capacity; investigations have shown that many women themselves elected to undergo sex detection tests and were not directed under coercion.³⁸⁷

Women may themselves elect to undergo sex selection tests, but does this amount to a genuine expression of the free will? Patel challenges the claim that women endorse sex determination technology by asking, "But are these choices made in a social vacuum?"³⁸⁸ The myopia of the choice paradigm function performs a logical sleight of hand by excluding the powerful social and cultural forces at play that exert pressure on a woman's judgement. While a woman's decision to abort her female foetus can amount to an expression of autonomy and improve her material and social circumstances, the site of choice is mediated by a lopsided power imbalance. Sangari refutes the notion that women exercise meaningful autonomy in such circumstances, arguing, "even when a woman

³⁸³Unnithan-Kumar, 'Female Selective Abortion – beyond "Culture"'.
³⁸⁴Sayeed Unisa, Sucharita Pujari, and R Usha, 'Sex Selective Abortion in Haryana: Evidence from Pregnancy History and Antenatal Care', *Economic & Political Weekly* 42, no. 1 (6 January 2007): 60–66.

³⁸⁵ Rahila Gupta, 'Pro-Choice: All the Way to the Sex-Selection Gallows', *Feminist Review* 107 (2014): 86. Quoting from Dictum, S. (2013) 'Why woman have a right to sex-selective abortion' *The Guardian*, 19 September.

³⁸⁶ Menon, 'Abortion: When Pro-Choice Is Anti-Women'.

³⁸⁷ Kishwar, 'When Daughters Are Unwanted: Sex Determination Tests in India'.

³⁸⁸ Vibhuti Patel, 'Sex-Determination Tests and Sex Preselection Tests in India: Recent Techniques in Femicide', *Bulleting of Concerned Asian Scholars* 21, no. 1 (January 1989): 7.

takes the decision herself, she practices a relayed misogynistic agency, but one that is always self-destructive in the sense that she cancels her own reproduction as a “sex” and as a “gender”.”³⁸⁹ Under these conditions it is difficult to say assert that a woman ever ‘chooses’ sex-selective abortions. Visaria et al. comments on the “helplessness” of women who struggle under the internalized pressure from family and society to produce a son.

This raises questions about the quality of the ‘freedom’ gained by women thanks to sex determination technology. According to Petchesky working-class women in the nineteenth and early twentieth centuries were conscious that, “women must have the freedom of her body”. Her analysis of this is useful in the context of sex-selective abortions. She posits that the freedom they were referring to was a ‘negative freedom’: “the freedom these women were seeking was a (negative) freedom *from** unwanted sex and unwanted childbearing, from what they saw as a sexual and biological abuse of their bodies.”³⁹⁰ An analogy can be drawn between the ‘freedom’ gained by Indian women electing to have a gender selective abortion. We see this in the quote from one mother who chose to abort her female foetus, stating, “Tomorrow my daughter will be sad.”³⁹¹ The freedom gained by Indian women was a (negative) freedom in the sense that it freed them (and their daughter) *from* the social and familial repercussions of giving birth to an undervalued daughter.³⁹² It did not constitute a (positive) freedom from the responsibilities of motherhood because a son was still desired, and in all likelihood submitted her to a cyclical process of pregnancy followed by abortion until interrupted by the birth of a male heir. Sex-selection tests may have allowed women to navigate from their position of unequal power, but it does not amount to a genuine expression of choice or the meaningful exercise of agency.

³⁸⁹ Sangari, ‘Settled Alibis and Emerging Contradictions: Sex Selection, Dowry and Domestic Violence’, 44.

* Italics not added by me.

³⁹⁰ Rosalind Pollack Petchesky, *Abortion and Woman’s Choice: The State, Sexuality, and Reproductive Freedom*, 54.

³⁹¹ Unnithan-Kumar, ‘Female Selective Abortion – beyond “Culture”’.

³⁹² Chhachhi and Sathymala have responded to the arguments that aborting an unwanted female foetus spares her from later suffering, and that the status of women will rise with fewer women. Writing in 1983 they argue that the decline of the female population in India since the 20’s has not produced a corresponding transformation of social attitudes of women. Chhachhi and Sathyamala, ‘Sex Determination Tests: A Technology Which Will Eliminate Women’. Patel makes a similar point when she highlights the sharing of wives between brothers and cousins in communities with skewed gender ratio in favour of men. Patel, ‘Sex-Determination Tests and Sex Preselection Tests in India: Recent Techniques in Femicide’.

The privatization of sex selection tests hints at potentially negative outcomes that could arise when reproductive services are confined to the private domain and therefore become subject to market rules. When the PCNDT rendered sex selection tests illegal, in effect this only drove the services underground. The government's implementation of the law ranged from dismal to entirely absent and according to Kishwar, "the law remained a dead letter and the clinics continued to mushroom and thrive in all these states."³⁹³

As government regulations no longer applied, entrepreneurial doctors were able to take advantage of the weakened position of patients (read 'consumers'). According to Patel, 'This perverse use of modern technology is encouraged and boosted by money-minded private practitioners who are out to make Indian women "male-child-producing machines."³⁹⁴ Dictated to by rules of supply and demand, the cost of procedures increased exponentially and left patients vulnerable to exploitation.³⁹⁵ The influence of market rules on sex-selective abortions is not incidental, but goes a long way to explaining its prevalence in modern Indian society. In *Solid:Liquid*, Sangari delineates the influence of neoliberal ideology imbibed by the cultural phenomenon of daughter dispreference: government financial incentives to bear a girl-child (a reification of dowry), population control policies, laws to allow women inheritance rights and the two-child policy are considered by parents when reaching the decision to undergo sex-selective abortions following a calculated cost-benefit analysis.³⁹⁶ She argues (quoting from Rao), "At one level, sex selection too partakes of the reconfiguring of the female body as a new type of reproductive resource; the female body may not reproduce itself, but it may produce what are seen to be productive resources: sons."³⁹⁷ Therefore its framing as a 'traditional' practise, she argues, is misguided. In its place she suggests the term 're-traditionalization', which refers to the foreground and backgrounding of certain cultural behaviours embedded in the fluctuating market.³⁹⁸ The neoliberal market narrative is complimented by the feminist logic of choice, which frame sex-selective abortion as the object of women's desire. In *Settled Alibis and Emerging Contradictions* Sangari posits:

³⁹³Kishwar, 'When Daughters Are Unwanted: Sex Determination Tests in India'.

³⁹⁴Patel, 'Sex-Determination Tests and Sex Preselection Tests in India: Recent Techniques in Femicide'.

³⁹⁵Patel, 3.

³⁹⁶ Mohan Rao, 'Reviewed Work(s): Solid: Liquid: A (Trans)National Reproductive Formation by Kumkum Sangari', *Social Scientist* 44, no. 3/4 (April 2016): 101–4. Referencing, Kumkum Sangari, 2015. *Solid:Liquid: A (Trans)National Reproductive Formation*, New Delhi: Tulika Books. xii + 264 pp.

³⁹⁷ Rao, 102. Quoting from, Kumkum Sangari, 2015. *Solid:Liquid: A (Trans)National Reproductive Formation*, New Delhi: Tulika Books, 88.

³⁹⁸ Asha Achuthan, 'Politics of the Womb', *Economic & Political Weekly* 51, no. 26–27 (25 June 2016).

“Women’s agency and choice are simultaneously being revamped by the market, and new patriarchal practices are often represented as images of women’s own desire. Those who favour sex selection, repackage a series of compulsions into a free, informed, rational and individual choice on market principles of a pre-designed and “costed” product and consumer empowerment. Medical discourse collaborates in the attribution of consent and agency to pregnant women, gives the justification of “demand”, posits women as clients”.³⁹⁹

Sangari’s analysis speaks to the complex arrangement of forces sustaining the practise of sex-selective abortion, and thus warns against reductive solutions.

Thus far I have underlined the rationality underpinning the decision of sex-selective abortions. In ‘Settled Alibis and Emerging Contradictions: Sex Selection, Dowry and Domestic Violence’, Sangari probes the logic of this reasoning more deeply. An argument often offered by women in defence of sex-selective abortions asserts that aborting a female foetus is more merciful than bringing her into a world where she will undervalued and overworked. Contemplating this Sangari argues that it reflects women’s “absence of belief in social transformation”. She also contents the validity of some of the arguments used to rationalise sex selective abortions. She argues that the nullification of women’s economic value depends upon the erasure of women’s unpaid labour and potential earning capacity. Regarding dowry, she asserts that in anticipating these monetary demands the practise of sex-selection affirms their legitimacy, thus leading to an increase rather than an eliminating of dowry: “...even as sex selection is posited as an escape from dowry by the propertied, it protects investment in dowry and all that the practice signifies. The increase in sex selection and dowry can thus be read as interlocking.”⁴⁰⁰ The persistence of sex-selections implies a resignation to the (perceived) immutability of women’s subordination. This points to the urgent need to locate reproductive rights within the nexus of the broader feminist movement.

Indian feminists recognized that focusing on the legal right to abortion on its own obfuscated the wider issues linked to the selective abortion of female fetuses. In the case of the FADSP, this prompted a more expansive, integrated and inclusive approach to their campaigning. Reflecting on their lack of public support they commented, “Being forced into living with this dilemma our efforts have always been towards seeing this issue in a wider context and linking this campaign with the larger women's movement so that we

³⁹⁹ Sangari, ‘Settled Alibis and Emerging Contradictions: Sex Selection, Dowry and Domestic Violence’, 44.

⁴⁰⁰ Sangari, 40.

can move towards a society where such kinds of forced control would not be needed at all.”⁴⁰¹ Menon locates the dialogue about the selective abortion of female foetuses within the wider abortion debate, arguing that the cultural phenomenon of male preference is just one of the many compulsions that impair women from exercising autonomous fertility control. She says:

The assumption seems to be that decisions to abort taken in other circumstances, based on any other consideration than the sex of the foetus, reflects the woman’s ‘free will’, unmediated by social or cultural pressures. However, decisions to abort are almost always shaped by factors like the stigma of illegitimacy, lack of social facilities for childcare, economic constraints and so on. Under such circumstances decisions to abort are no more reflective of a woman’s autonomy than her decision to abort a foetus because she is female.⁴⁰²

This move by Menon is valuable for its illustration of the highly contextualised nature of a woman’s reproductive decision-making. This conceptualisation of a woman’s fertility control as being partially a response to the impulses of her social setting can be traced far back. According to Gupte, women’s reproduction was mediated according to market compulsions: when physical labours were high in demand, women were promoted to give birth to more children; the shift to the capitalistic, organised labour market emphasised the quality rather than the quantity of labourers, and the families responded accordingly.⁴⁰³ Similar dialogues are raised today in the context of environmental discourse. In a slight reworking of the Malthusian argument they assume an anti-natalist position by suggesting having less children in order to reduce the amount of human-produced waste that is destroying the planet.⁴⁰⁴ The voluntary sterilization⁴⁰⁵ of Western women in the interests of saving the planet has amassed significant media attention, and with bitter irony it is noted the difficulty they have encountered availing of these services as part their national health service.⁴⁰⁶ Considering these contemporary narratives as part

⁴⁰¹Everett, ‘Indian Feminists Debate the Efficacy of Policy Reform’, 320. Quoting from FASDSP (Forum Against Sex Determination and Pre-selection). 1989. “Campaign against Sex Determination and Sex Pre-Selection in India – Our Experiences”, 12. Paper presented at the Feminist International Network of Resistance to Reproductive and Genetic Engineering (FINRRAGE), Bangladesh March.

⁴⁰²Menon, ‘Abortion: When Pro-Choice Is Anti-Women’, 95.

⁴⁰³Manisha Gupte, ‘Programming Reproduction? Maternal Health Services’, in *Understanding Women’s Health Issues* (New Delhi: Kali for Women, 1998), 133–44.

⁴⁰⁴ Amy Fleming, ‘Would You Give up Having Children to Save the Planet? Meet the Couples Who Have | World News | The Guardian’, 20 June 2018, <https://www.theguardian.com/world/2018/jun/20/give-up-having-children-couples-save-planet-climate-crisis>.

⁴⁰⁵ Elle Hunt, ‘BirthStrikers: Meet the Women Who Refuse to Have Children until Climate Change Ends | Life and Style | The Guardian’, *The Guardian*, 12 March 2019, <https://www.theguardian.com/lifeandstyle/2019/mar/12/birthstrikers-meet-the-women-who-refuse-to-have-children-until-climate-change-ends>.

⁴⁰⁶ It is unclear whether the media’s attention towards female sterilizations is indicative of women bearing the responsibility of the environmental antinatalist movement, however this framing of the discourse

of a pattern suggests a trend historical trend of constructing women's fertility as serving wider social needs.

In this chapter and the previous chapters I have demonstrated, by no means comprehensively, some of the ways in which women's reproductive bodies are instrumentalized by multiple, layered patriarchies to sustain their grip on power. I have also elucidated the abject unsuitability of the choice paradigm to reinstate women's agency in a meaningful way. By artificially isolating a woman's decision to have an abortion or use a contraceptive, it ignores the nexus of choices and restrictions guiding a woman's decision-making capacity. Petchesky employs a similar line of argument contesting the 'right to choose' as a genuine expression of reproductive freedom:

Yet the idea of a "woman's right to choose" as the main principle of reproductive freedom is insufficient and problematic at the same time as it is politically compelling. For one thing, this principle evades moral questions about when, under what conditions, and for what purposes reproductive decisions should be made.⁴⁰⁷

Her argument reveals that by ignoring the external forces that shape a woman's experiences, feminists were able to construct a theoretical framework that superficially collapsed bodily autonomy and control into the narrow structure of 'choice'.

4.2 Choice Discourse in Ireland: Case-Study of Migrant Women

In Ireland, the pro-choice narrative proved compelling enough to convince the Irish public to vote in favour of de-criminalizing abortion during the referendum to repeal the 8th amendment in 2018. This paved the way for the government to legislate on behalf of abortion and in 2019 the Health (Regulation of Termination of Pregnancy Act) came into effect, which defined the legal limitations for the provision of abortion services in Ireland. While this legislation classifies abortion as a legal right rather than a medical service (as is the case in the UK for example), it does not give Irish women an absolute right to abortion: abortion past twelve weeks is only permitted when the health or life of the women is at risk, or in the case of fatal foetal abnormality as determined by two medical practitioners; furthermore, there is a three day 'cooling' between a woman's initial request

suggests that within the movement women are perceived as the main target, while mainstream society question her rejection of motherhood.

⁴⁰⁷Rosalind Pollack Petchesky, *Abortion and Woman's Choice: The State, Sexuality, and Reproductive Freedom*, 6–7.

for an abortion and the initiation of the abortion procedure. These services are also engaged through government directed and funded health schemes, with local GP's signing up to provide abortions up to nine weeks, and later abortions up to 12 weeks carried out in hospitals. The government's intervention through provision and financing of services, while welcome, and legal restrictions on abortion (less welcome), hardly correspond to the tenants of individual liberty and privacy, which are the cornerstones of the choice paradigm.

Looking back at Ireland's recent history of limited abortion access, it becomes clear that a plurality of factors such as race, immigrant status, ethnicity, religion, mental health, medical diagnosis and socio-economic status have produced inequalities for women seeking to terminate their pregnancy,⁴⁰⁸ even in the cases where there is legislation in place designed to secure these services. The case of Miss Y illustrates the tragic consequences that can arise through discriminatory interpretations of the law, which in her case resulted in her being denied access to a lawful abortion. Miss Y was a migrant woman seeking asylum in Ireland, having escaped from her country of origin where she was suffering violence, persecution and rape.⁴⁰⁹ She was residing in a Direct Provision⁴¹⁰ centre when she learnt that she was pregnant as a result of rape and became suicidal as a result. Despite meeting the criteria for abortion access under the PLDPA, Miss Y's requests for abortion were repeatedly refused, during which time she was subject to humiliating, degrading and inhumane treatment. Upon discovering that she was pregnant she initially followed the well-trodden path of many Irish women before her and travelled to the UK for an abortion, however this was prevented by UK authorities.⁴¹¹ She was referred to the Health Service Execution (Ireland's national health service provider) but it wasn't until 12 weeks later, by which stage Miss Y was twenty weeks pregnant, that the panel adjudicated that her life was at risk. Despite this verdict the panel refused to authorize an abortion for Miss Y under the PLDPA instead ordering a court order for

⁴⁰⁸Leslie Sherlock, 'Towards a Reproductive Justice Model in Ireland', in *The Abortion Papers Ireland: Volume 2* (Cork: Attic Press, 2015), 80–89.

⁴⁰⁹ Amnesty International, 'Ms. Y's Case: Denied a Lawful Abortion in Ireland', *Amnesty International Ireland* (blog), 21 March 2016, <https://www.amnesty.ie/ms-ys-case/>.

⁴¹⁰ Direct provision is a means of meeting the basic needs of food and shelter for asylum seekers directly while their claims for refugee status are being processed rather than through full cash payments. Direct provision commenced on 10 April, 2000 from which time asylum seekers have received full board accommodation and currently, personal allowances of €21.60 per adult and €21.60 per child per week. Reception and Integration Agency (RIA), 'Direct Provision', accessed 28 July 2019, http://www.ria.gov.ie/en/RIA/Pages/Direct_Provision_FAQs.

⁴¹¹Ruth Fletcher, 'Contesting the Cruel Treatment of Abortion-Seeking Women', *Reproductive Health Matters* 22, no. 44 (November 2014): 10–21, [https://doi.org/10.1016/S0968-8080\(14\)44818-3](https://doi.org/10.1016/S0968-8080(14)44818-3).

a forced caesarean. In her vehement efforts to resist delivery, Miss Y denied food and water however a court order was issued for forced hydration, with the further threat of a court order for a forced caesarean. To save herself the ordeal of a caesarean under duress, she acquiesced and her son was delivered. It is irrefutable that Miss Y was hugely disempowered by her migrant status. Her painful story tells us two things, firstly, that Miss Y's migrant status directly debarred her from accessing abortion services, and secondly, that her legal entitlement to access abortion through approved channels was thwarted by a panel of medical professionals who acted gatekeepers to these services. Miss Y's situation is marked by vulnerability and defencelessness against state and medical institutions, and a struggle to exert agency over the outcomes of her own life. Her powerlessness is demonstrated through her resorting to a hunger strike, which Fletcher describes as, "a means of making herself heard."⁴¹²

Miss Y's case is not an outlier but one of many in Ireland's deplorable track record for denying minority women access to abortion and victimizing pregnant women, in particular migrant women. According to Lentin, "Ireland has a long history of maltreating birthing women."⁴¹³ Looking at some of the more recent incidences reminds us that injustices towards pregnant women are still part of contemporary Irish society, particularly for those who are most vulnerable. In 2016 a young girl who was at risk of self-harm and suicide as a result of pregnancy was detained in a psychiatric unit when she had understood she was transferred for an abortion procedure.⁴¹⁴ In the case of Savita Halappanavar, Ronit Lentin emphasizes her migrant status describing her as, "a migrant woman who died in the heteronormative racial state of Ireland".⁴¹⁵ She contextualises this against the climate of migration politics in Ireland at the turn of the millennium, which saw pushback against the number of migrants settling in Ireland. This consternation manifests itself through a circumspect revisiting of the *jus soli* citizenship established by the 1937 Constitution and the 1956/1976 National and Citizenship acts, which granted automatic citizenship to anyone born on the island of Ireland. Following concerns that

⁴¹²Fletcher, 14.

⁴¹³ Ronit Lentin, 'After Savita: Migrant m/Others and the Politics of Birth in Ireland', n.d., 180. She refers to the 1,500 pregnant women who underwent symphysiotomy (most of the women incurred permanent injuries, with incontinence and walking difficulties), the 129 women that underwent unnecessary caesarean hysterectomies between 1974 and 1998.

⁴¹⁴Cliodhna Russell, 'Girl Seeking Abortion Held in Psychiatric Unit When She Thought She Was Going for Termination', TheJournal.ie, accessed 15 July 2019, <https://www.thejournal.ie/girl-seeking-abortion-detained-psychiatric-unit-3439161-Jun2017/>.

⁴¹⁵ Lentin, 'After Savita: Migrant m/Others and the Politics of Birth in Ireland', 180.

pregnant migrant women were exploiting its legal possibilities by applying for citizenship through their citizen children, in 2003 the minister for justice cancelled this process which resulted in the deportation of candidate parents and at least 20 citizen children.⁴¹⁶

Luibhéid explores the increasingly racialised nature of abortion politics in this anti-immigration climate through the case of Ms. I.A.O., a 32-year-old Nigerian migrant woman who came to Ireland in January 2002 seeking asylum in argument as she feared persecution if she returned home.⁴¹⁷ Her requested was denied and upon receiving a deportation order Ms. O sought to challenge it on the basis that she had become pregnant and therefore was entitled to protection under Art 40.3.3. Her challenge asserted that as infant mortality in Nigeria was 90 per 1,000 in contrast with 7 in 1,000 in Ireland, the deportation effectively endangered Baby O's right to life, however the Supreme Court rejected her case. Reflecting on abortion and reproductive politics as a site for regulating national borders, Irishness and transnational mobility, Luibhéid underlines the implications for women's reproductive sexuality within these negotiations: "So what is additionally important about the X and O cases is the ways that they highlight women's reproductive sexuality as a critical element in these developments. In both X and O, the question arose as to whether the Irish government could or should inquire into women's pregnancy status, and regulate their mobility accordingly."⁴¹⁸ Ethnic Irish minorities are also vulnerable to exclusion in this negotiation of Irish identity as demonstrated by the Miss C case, a thirteen-year-old Irish Traveller⁴¹⁹ who was a victim of rape who was pregnant and under the care of health board.⁴²⁰ In accordance with her wish, the board had sought permission from the District Court to take her to England to procure an

⁴¹⁶ This was followed by a 2004 Citizenship Referendum in which 78.9% of the population voted in favour of *jus sanguinis* citizenship which only grants citizenship to children born in Ireland if one of their parents is an Irish citizen.

⁴¹⁷ Eithne Luibhéid, 'Sexual Regimes and Migration Controls: Reproducing the Irish Nation-State in Transnational Contexts', *Feminist Review* 83, no. 1 (August 2006): 60–78, <https://doi.org/10.1057/palgrave.fr.9400281>.

⁴¹⁸ Luibhéid, 74.

⁴¹⁹ "Travellers are an indigenous minority who, historical sources confirm, have been part of Irish society for centuries. Travellers' long shared history, cultural values, language, customs and traditions make them a self-defined group, and one which is recognisable and distinct. Their culture and way of life, of which nomadism is an important factor, distinguishes them for the sedentary (settled) population. Irish Travellers Movement, 'Irish Travellers', *Irish Travellers Movement* (blog), accessed 28 July 2019, <https://itmtrav.ie/what-is-itm/irish-travellers/>. In 2017 they were recognised as an ethnic minority. Sorcha Pollak and Kitty Holland, 'What Does Ethnic Recognition Mean for Irish Travellers?', *The Irish Times*, 1 March 2017, <https://www.irishtimes.com/news/social-affairs/q-a-what-does-ethnic-recognition-mean-for-irish-travellers-1.2993526>.

⁴²⁰ Erdman, 'Procedural Abortion Rights'.

abortion, however her parents who initially had approved her decision, changed their mind and appealed to the High Court. In his judgement Justice Geoghegan accepted psychiatric evidence that she was pregnant, therefore to continue the pregnancy would constitute a ‘real and substantial risk’ to her life. According to Luibhéid the media framing of the Miss C case was heavily influenced by her Traveller status.⁴²¹ This leads Luibhéid to ask,

How may we extend antisexist, antiracist, and antipoor reproductive politics so we can better address the anticolonial and transnational dimensions of reproductive struggles? What kind of activism, coalition-building, and social transformation are needed to enable both migrant women...and diverse citizen women to exercise control over their bodies?⁴²²

By framing this question from multiple positionalities, Luibhéid acknowledges the disparity in power between social groups and complicates the singular, linear categorisation of woman posited by the choice paradigm.

While Ireland has succeeded in securing women access to free, safe and legal abortion there continues to remain grave areas of concern, particularly when other axis of discrimination overlap with gender. Ireland’s abortion legislation guarantees free abortion services for people residing in Ireland but migrants and asylum seekers living in Direct Provision face additional barriers due to multiple forms of discrimination, which make it extremely difficult for them to access abortion services. The de-centralised location of direct provision centres makes it awkward for migrant women to reach abortion providers and result in high public transport costs which they must pay for with their paltry weekly allowance.⁴²³ Other issues include difficulty accessing medical cards, lack of knowledge about their rights which might cause delay, language barriers, special transportation requirements for those with disabilities and inadequate accommodation.⁴²⁴ These issues are further compounded by the three day ‘chill period’ and the 12 week limit on abortions.⁴²⁵ As a result of these issues, the Abortion Rights Campaign Group (ARC) fear

⁴²¹Eithne Luibhéid, ‘The “Right to Life of the Unborn” and Migration Controls’.

⁴²²Eithne Luibhéid, 147.

⁴²³Abortion Rights Campaign, ‘Submission to the Oireachtas Committee on Justice and Equality on the Urgent Need to Abolish Direct Provision and Promote the Health and Human Rights of People Seeking Asylum’, 31 May 2019.

⁴²⁴Abortion Rights Campaign.

⁴²⁵Abortion Rights Campaign.

that it may be “simply too difficult” for people living in Direct Provision or emergency accommodation to access abortion services in Ireland.⁴²⁶

4.3 Moving Towards a Reproductive Justice

In the second half of this chapter I will argue that the reproductive justice model modelled by The SisterSong Women of Color Reproductive Justice Collective,⁴²⁷ is a more suitable theoretical framework to support women’s access to abortion and contraception. In the above analysis both Indian and Irish feminists have called for a broader reproductive framework that encompasses the imbalances of power within the category of woman. Their exhortations illustrate the significance of this theoretical structure, which shapes the realities of women seeking to access contraceptive services. Unless careful efforts are made to construct an equitable model, structural inequality will be replicated in feminist demands for reproductive services, thus impeding access for certain women (which is quickly becoming the new reality for many women in the US) and leaving others vulnerable to coercion.

The concept of reproductive justice first emerged in 1994 amongst black women in the US in the aftermath of the International Conference on Population and Development in Cairo.⁴²⁸ Collectively, they expressed their dissatisfaction with the limitations of a reproductive rights framework and a wariness towards a pro-choice movement that appeared to be motivated by population control.⁴²⁹ The framework evolved to represent an integrative articulation of the impact of race, class and gender on black women with regards to reproductive health.⁴³⁰ According to Loretta Ross writing on behalf of SisterSong,⁴³¹ “It is based on the understanding that the impact on women of color of race and gender are not additive but integrative, producing this paradigm of sexuality.” Mirroring Kimberlé Crenshaw’s theory of intersectionality, the reproductive justice framework views the different modes and sources of oppression in a woman’s life as cumulative, which accrue to impede her ability to realise her reproductive rights.

⁴²⁶Abortion Rights Campaign, 2.

⁴²⁷ SisterSong describes itself as, “a Southern based, national membership organization; our purpose is to build an effective network of individuals and organizations to improve institutional policies and systems that impact the reproductive lives of marginalized communities.” ‘SisterSong’, Sister Song, accessed 28 July 2019, <https://www.sistersong.net/mission>.

⁴²⁸Loretta J. Ross, ‘Understanding Reproductive Justice’.

⁴²⁹ According to Fried, pg.6, “The women’s movement has a history of trading away the rights of women of color and working-class women in favour of gains for more privileged women.”

⁴³⁰Loretta J. Ross, ‘Understanding Reproductive Justice’.

⁴³¹ Loretta J. Ross.

According to Luna and Luker, “Part of the intervention of the RJ [Reproductive Justice] movement and its framework was to integrate analysis of race, class and immigration status into analysis of reproductive politics, thereby better illuminating multiple power structures that prevented the realization of reproductive rights and the achievement of broader reproductive justice.”⁴³² This marked a shift from dealing with distinct categorisations of oppression exclusively; it acknowledged that the category of woman itself was stratified, rendering access to reproductive rights less accessible for those at the lower stratum. This was a turning point in feminist attitudes towards reproductive rights. As the term ‘reproductive justice’ became more popularised it was adopted by different feminist organisations and its meaning became more expansive. The Asian Communities for Reproductive Justice (ACRJ) define reproductive justice as:

the complete physical, mental, spiritual, political, economic and social well-being of women and girls, and will be achieved when women and girls have the economic, social and political power and resources to make healthy decision about our bodies, sexuality and reproductive for ourselves, our families and our communities.⁴³³

The holistic approach of the reproductive justice model acknowledges that true reproductive freedom is only achieved if we eradicate all forms of oppression in a woman’s life.

i How does reproductive justice differ from the choice model?

In this chapter and the previous chapter I argue that by framing fertility control as a private choice confined to the realms of personal liberty, the choice paradigm only divests legal access to abortion for women who have the social currency to realise these rights. Marlene Gerber Fried,⁴³⁴ an American academic and activist who has written extensively about reproductive freedom, sums this up eloquently when she says, “the decision to fight for choice rather than justice is itself a decision to appeal to those who already have choices.”

435

The reproductive justice model redefines the operationalization of fertility control and reproductive decision-making. According to Ross, a woman’s ability to control her

⁴³²Zakiya Luna and Kristin Luker, ‘Reproductive Justice’, *Annual Review of Law and Science* 9 (2013): 335.

⁴³³Asian Communities for Reproductive Justice, A New Vision for Advancing Our Movement for Reproductive Health, Reproductive Rights and Reproductive Justice’, 1, accessed 16 July 2019, <https://forwardtogether.org/wp-content/uploads/2017/12/ACRJ-A-New-Vision.pdf>.

⁴³⁴ Marlene Gerber Fried, *From Abortion to Reproductive Freedom: Transforming a Movement* (Boston MA: South End Press, 1990).

⁴³⁵Marlene Gerber Fried, 6.

own fertility is not a matter of exercising personal choice but it is predicated by her social environment.⁴³⁶ Critically, she re-imagines the problem as one of *reproductive oppression*, which they define as, “the control and exploitation of women, girls, and individuals through our bodies, sexuality, labor, and reproduction.”⁴³⁷ Unlike choice rationale, the reproductive justice framework recognises that there are multiple, intersecting social barriers that prevent access to reproductive rights, therefore a woman’s ability to realise her reproductive rights is heavily influenced by her position in society and not merely the legal status of reproductive technology.

Proponents of reproductive justice are cognisant of the embeddedness of female reproduction in a hierarchy of social relations that can both compel and constrict a woman’s maternal function depending on which social group to which she belongs. In addition to compelling a woman to be pregnant against her will, denying a woman’s fertility control can also take the shape of preventing access to motherhood. On this basis SisterSong’s formulation of reproductive justice incorporates the right to have, or not to have, children. Through this step the reproductive justice framework distances itself from the pro-choice model by actively supporting women to realise these rights, rather than resigning this as a private responsibility.⁴³⁸ The “right to parent with dignity” takes into consideration a broad scope of factors ranging from the circumstances surrounding pregnancy, including the treatment of women by medical staff, the environment and conditions of raising children amongst others.⁴³⁹

Remedying these issues assumes state level responsibility. One of the key elements of the reproductive justice framework that differentiates it from the pro-choice movement is that it ascribes the government a proactive duty to ensure that all women can exercise reproductive freedom. According to Luna and Luker, “RJ [Reproductive Justice] simultaneously demands a negative right of freedom from undue government interference and a positive right to government action in creating conditions of social justice and human flourishing for all.”⁴⁴⁰ Reproductive justice adopts a three-pronged approach by interlocking abortion access with reproductive health and reproductive

⁴³⁶ Loretta J. Ross, ‘Understanding Reproductive Justice’.

⁴³⁷ Loretta J. Ross, 2.

⁴³⁸ Loretta J. Ross, ‘Understanding Reproductive Justice’.

⁴³⁹ Zakiya Luna and Kristin Luker, ‘Reproductive Justice’.

⁴⁴⁰ Zakiya Luna and Kristin Luker, 328.

rights, none of which are indispensable.⁴⁴¹ According to Marlene Gerber Fried⁴⁴² the fragility of the pro-choice movement stems from its conflation of “choice” with legal abortion, which silos it from other pertinent factors: “The pro-choice movement is more vulnerable when abortion is isolated from other issues.”⁴⁴³ She envisions reproductive decision-making as two-tiered; the legal right to choose abortion on the top level, which is propped up by corollary rights underneath. The intactness of both is vital, as is being borne out by the fervent efforts of the pro-life movement to dismantle the support systems which facilitate American women’s access to abortion. SisterSong criticize previous reproductive models as their framework fail to tackle the plurality of systems that produce reproductive oppression, thus reproducing oppression against historically disenfranchised groups. Through its intersectional approach, reproductive justice encourages meaningful and inclusive coalition building that can have a positive and decisive impact on the operations of state machinery.

4.4 Bringing Reproductive Justice to Ireland and India?

The main thrust of this thesis has been to demonstrate the multitude of ways in which women’s bodies have been rendered sites of invasion where cultural wars are fought and political goals are realised. Having established the inadequacy of the choice paradigm to protect women from exploitation, I believe that the reproductive justice framework, through its emphasis on female oppression, can countervail the dominant forces that control women’s lives and reinstate their reproductive freedom. In their account of reproductive justice, the SisterSong organisation states that the reproductive justice framework is not a universal solution but rather a U.S. specific response to revise, complicate and add to the Cairo and Beijing agreements. While this might be true in the case of their specific model, I believe that the intersectional ethos underpinning the reproductive justice framework provides an elasticity that allows it to be reformulated according to the needs of a specific context. An infographic used by the ACRJ envisions reproductive justice as the hub of a spokes wheel which intersects crucial social and economic justice issues specifically facing Asian-Pacific Islander (API) women with the United States. In the context of API women these encompass queer rights, worker’s rights, violence against women and immigrant rights amongst others. A similar approach

⁴⁴¹‘Asian Communities for Reproductive Justice, A New Vision for Advancing Our Movement for Reproductive Health, Reproductive Rights and Reproductive Justice’.

⁴⁴² Marlene Gerber Fried, *From Abortion to Reproductive Freedom: Transforming a Movement*.

⁴⁴³Marlene Gerber Fried, 9.

could be adopted in Ireland and India to positive effect, which I will demonstrate in the following section.

i Envisioning Reproductive Justice in an Indian Context

In this section I will argue that the central values of the reproductive justice model are highly amenable to an Indian context. To begin with, there are many co-relations that can be drawn between the experiences (both historic and contemporaneous) of lower-caste, lower-class Indian women and black women in the U.S. The conditions which gave birth to the reproductive justice movement in the U.S., i.e. the stratification and varying degrees of oppression experienced by women (and the persistent risk that these differences will be whitewashed through an over-simplification of the category of woman), also exist in India due to the stratification of Indian's society according to caste, class, religion, and ethnicity amongst other factors. The deployment of reproductive services exacerbated the subordination of subaltern women in both countries as the advantages of reproductive technology were overshadowed by eugenics, population control and health risks through exposure to dangerous and harmful products. Through the reconfiguration of reproductive rights around experience of oppression as opposed to legal access to abortion, the reproductive justice framework enables the unravelling of the conditions that lead to the exploitation of Indian women's bodies. Critically, the reproductive justice model accommodates the experiences of women whose subordination was reified through access to reproductive services.

It is only by interrogating the conditions under which Indian women's reproductive decision-making takes place that we can remove the barriers to reproductive freedom; the wider lens of the reproductive justice framework makes this possible. The necessity of this endeavour is drawn out by Anandhi in her case-study of analysing the practices surrounding abortion in Tamil Nadu.⁴⁴⁴ Her study revealed a high engagement of abortion services amongst women who worked in the precinct's pharmaceutical companies; due to the arduous and physical nature of the work, those who became pregnant or were married (viewed by the company as synonymous) were automatically disqualified from employment. The company took strict measures to police its female employees and interaction between employees of the opposite sex were strictly prohibited, forcing female employees to conduct their intimate relationships subversively

⁴⁴⁴S Anandhi, 'Women, Work and Abortion: A Case Study from Tamil Nadu', *Economic & Political Weekly* 42, no. 12 (24 March 2007): 1054–59.

and to select partners from other companies. Many of the younger unmarried workers would engage in sexual relationships with male superiors as a strategy to curry favour, and those who were impregnated were forced to have an abortion if they wished to keep their jobs. While these acts “informed by the interplay of complicity and resistance”⁴⁴⁵ helped them negotiate the precarious and labour-intensive conditions of their work environment, employing such ‘weapons of the weak’ failed to earn them any meaningful authority with the factory hierarchy. Reflecting on this Anandhi surmises that, “While abortion by unmarried girls may signify subtle sexual and reproductive strategies or even a “counter hegemonic morality” to the existing social conditions, it also simultaneously indexes women’s lack of control over the oppressive work conditions and social norms.”⁴⁴⁶ Through a nuanced and integrated account of these women’s lives’, her study reveals how disparate modes of oppression coalesce into a singular experience of being unfree: the financial strain on her family, her parent’s rigid control, and the patriarchal organization of the factories interlock and consolidate her experience of victimization, leaving her little manoeuvring room to overcome the abominable conditions of her work. It is under these unfree conditions that the ‘choice’ to abort is made. Moving towards a reproductive justice model with its multi-dimensional framework accounts for the interlocking axes of these disempowering conditions, and thus stresses an integrated and coalition-building approach between different affiliations within the feminist movement to overcome reproductive oppression. Applying this to the context of Anandhi’s case-study, overcoming the reproductive discrimination she describes would require the allying of groups concerned with women’s labour rights, female sexual exploitation, women’s domestic rights, securing female education, together with women’s health and reproductive rights activists.

It is worth returning to some of the earlier issues discussed in the thesis using the lens provided by reproductive justice to understand how their combined effect debilitates women’s reproductive liberty. The coercive and top-down nature of India’s family planning programme fails to recognize the requirements of Indian women, whose reproductive needs often continue to go unmet even after they have accessed these services.⁴⁴⁷ Her reproductive difficulties are compounded by her low status within the domestic sphere, which makes it challenging for her to discuss contraceptive-use with her

⁴⁴⁵ Anandhi, 1059.

⁴⁴⁶ Anandhi, 1059.

⁴⁴⁷ Ravindran and Mishra, ‘Unmet Need for Reproductive Health in India’.

husband and is a source of pressure to birth a son.⁴⁴⁸ As a result, in addition to sex selective abortions, many women use abortion services as a proxy for reversible contraceptives,⁴⁴⁹ increasing the number of risky abortions (attributable to dismal maternal healthcare) and resultant maternal deaths. The subordination of women is the common thread that ties these events together; their interplay tells us that solving the more ‘superficial’ issues (i.e. improving the quality of family planning services) without ‘substantive’ change (i.e. raising the status of women) is unlikely to transform the reproductive health of Indian women (providing women with contraceptive technology that their husbands refuse to use is of little use meet to their reproductive needs). The Indian government has announced a shift in objectives from population control to reproductive health.⁴⁵⁰ However, unless this is accompanied by initiatives to empower women, as envisioned by the reproductive justice movement, it is unlikely to produce the desired results. According to Wang and Pillari, “An increase in women’s status is generally accompanied by an improvement in women’s health.”⁴⁵¹ By alleviating economic, social and cultural barriers, women can be fully free agents of their fertility control. Areas that could be looked at in an Indian context include equal access to education and the labour market, worker’s rights, violence against women, rural development, supporting scheduled castes, inheritance, environmental justice, queer rights etc.

ii Envisioning Reproductive Justice in an Irish Context

The securing of free, safe and legal abortion for residents of Ireland achieves a significant portion of the reproductive justice framework’s objectives, however the above account of issues facing migrant women tells us there is still more work to be done. In this section I will analyse the current situation of abortion access in Ireland, seeking to determine

⁴⁴⁸ Unnithan-Kumar, ‘Female Selective Abortion – beyond “Culture”’.

⁴⁴⁹ Unnithan-Kumar.

⁴⁵⁰ At this juncture it is worth pausing to heed the warning of Jesani and Iyer, who argue that the liberation interpretation of India’s abortion law which is grounded in the government’s population control interests could become more restrictive if the government’s interests change: “Ironically, the current preoccupation with population control and the somewhat dubious motivations of the medical profession have engendered a liberation interpretation of the law. However, the danger that this liberation interpretation could become a restrictive one without a single word of the text being altered remains. This could easily happen under different socio-economic and demographic compulsions.” Jesani and Iyer, ‘Women and Abortion’, 2592.

⁴⁵¹ Guang-zhen Wang and Vijayan K Pillai, ‘Women’s Reproductive Health: A Gender-Sensitive Human Rights Approach’, *Acta Sociologica* 44, no. 3 (2001): 232.

whether the current abortion law adequately meets the reproductive demands of all women.

As of the writing of this thesis Ireland's abortion legislation has been in effect for seven and a half months. Since coming into practice serious concerns have been raised in relation to the three day 'cooling off' period and the 12-week upper limit. Their existence suggests a lingering distrust of women's ability to be free, moral agents of their own bodies, and presumes that abortion is a decision they may later come to regret. The operationalization of these limitations, in conjunction with the procedural duration of an abortion spanning several days, creates a barrier to women being granted an abortion past 11 weeks of gestation.⁴⁵² Furthermore, women have encountered difficulty accessing abortion beyond 12 weeks, and there have been reported cases in which women had to travel abroad for a termination despite a diagnosis of severe foetal abnormality.⁴⁵³ Once again, this positions doctors as gatekeepers to women's access to abortion services. The institutional authority of doctors is also exercised through their capacity to exercise conscientious objection, with up to two regional hospitals abstaining from abortion services on this basis.⁴⁵⁴ Women in rural areas seeking abortions may also face difficulties if their local GPs have opted out of providing abortion services.

Such barriers to access are felt more keenly by people experiencing imbricating forms of discrimination. According to Sherlock, vulnerable social groups include migrants, the trans community,⁴⁵⁵ young people, the differently abled community, those experiencing intellectual disabilities, Irish Traveller communities and LGBTQIA+⁴⁵⁶ communities.⁴⁵⁷ Although it is not within the scope of this paper to elucidate this discrimination in detail, her examination of these issues reveals that discriminatory practices arise when the letter of the law is infused with moral interpretation or a lack of cultural awareness. Through its broad approach the reproductive justice acknowledges

⁴⁵²Jennifer Bray, 'Abortion in Ireland: Four Weeks in, How's It Working?', The Irish Times, accessed 18 July 2019, <https://www.irishtimes.com/life-and-style/health-family/abortion-in-ireland-four-weeks-in-how-s-it-working-1.3770442>.

⁴⁵³'Irish Women "Still Being Forced Abroad for Abortions" despite New Laws', Independent.ie, accessed 18 July 2019, <https://www.independent.ie/breaking-news/irish-news/irish-women-still-being-forced-abroad-for-abortions-despite-new-laws-37832216.html>.

⁴⁵⁴Saturday, June 22, and 2019-07:45 Am, 'Kilkenny Hospital Unsited to Abortions, Say Medics', 22 June 2019, <https://www.irishtimes.com/breakingnews/ireland/kilkenny-hospital-unsited-to-abortions-say-medics-932314.html>.

⁴⁵⁵ Transgender men are not included in the abortion legislation. 'Abortion Legislation Will Not Mention Transgender Men', GCN, 25 October 2018, <https://gcn.ie/abortion-legislation-trans-men/>.

⁴⁵⁶ LGBTQIA+ stands for Lesbian Gay Bisexual Trans Queer Intersex Asexual.

⁴⁵⁷Leslie Sherlock, 'Towards a Reproductive Justice Model in Ireland'.

that additional measures, beyond the mere legalisation of services, must be put in place to ensure that minority groups can realise their reproductive rights. Looking specifically at the case of migrants and asylum seekers in Ireland, the ARC group has expressed concern that the case involving Miss Y could repeat itself.⁴⁵⁸ The Irish government has yet to address the specific implications of Ireland's abortion law for residents of Direct Provision. The ARC has called on the Irish government to issue assurances that measures will be put in place to provide for transportation and associated costs and to ensure the dignity, respect and anonymity of migrants seeking abortion care.

Two salient impressions emerge from this analysis of legal abortion access in Ireland. Firstly, women's access to abortion continues to be restricted due to the moralizing behaviours of the medical community⁴⁵⁹ and the state, and secondly, structural inequality continues to be reproduced within a reproductive framework. Women and minorities, therefore, continue to have their reproductive wishes mediated by government and medical institutions. This was seen recently in the 2018 Cervical Cancer scandal in Ireland in which women who were told their smear tests were clear were later diagnosed with cervical cancer.⁴⁶⁰ Blame was attributed to the government for prioritizing cost-saving over women's reproductive health as they had transferred cervical screening tests to a less expensive laboratory in the U.S.⁴⁶¹ The reproductive justice framework seeks to restore imbalance of power by envisioning women as the sole adjudicators of their fertility control and casting the state and the medical community as facilitators of these wishes. Culhane posits, "In a reproductive justice framework, women remain central to the decision, the state remains a central actor in supporting and enabling the decision, and medical intervention is seen as technically necessary for implementing the decision."⁴⁶²

A vital component of this is taking deliberate measures to overcome the barriers of access experienced by disenfranchised communities. According to Sherlock, "Reproductive

⁴⁵⁸ Abortion Rights Campaign, 'Submission to the Oireachtas Committee on Justice and Equality on the Urgent Need to Abolish Direct Provision and Promote the Health and Human Rights of People Seeking Asylum'.

⁴⁵⁹ With regard to the moralizing behaviours of the medical community this refers specifically the conscientious objection by doctors and hospitals. The refusal of abortion beyond 12 weeks is

⁴⁶⁰ Fergal Bowers, 'What Is the CervicalCheck Controversy About?', 28 April 2018, <https://www.rte.ie/news/analysis-and-comment/2018/0427/958788-cervical-cancer-q-a/>.

⁴⁶¹ Michelle Hennessy, 'Scallly: Price for Cervical Screening Tender "became a Much More Important Factor" than Quality', *TheJournal.ie*, accessed 30 July 2019, <https://www.thejournal.ie/cervicalcheck-scallly-health-committee-4710675-Jul2019/>.

⁴⁶² Leah Culhane, 'Reproductive Justice and the Irish Context: Towards an Egalitarian Framing of Abortion', in *The Abortion Papers Ireland: Volume 2* (Cork: Attic Press, 2015), 79.

justice deliberately names and recognizes the intersectional ways in which aspects of positionality and identity such as race, religion, gender, class, economic status, marital status, sexuality and nationality are connected to the control, regulation and stigmatization of bodies in a reproductive context.”⁴⁶³ While meaningful progress has been made, Ireland has yet to fully relinquish its control of women’s bodies. Through its focus on the needs of women, the reproductive justice model can lead the way there.

Conclusion

In this chapter I have elicited the inadequacies of the choice paradigm using sex-selective abortions in India, and the reproductive experience of migrants in Ireland as a case-study. My analysis affirms that the oppression of marginalised women is reproduced through the choice framework. I have argued that the intersectional lens of the reproductive justice framework is better suited to meet the reproductive needs of Irish and Indian women. By understanding reproductive decision-making as occurring within a nexus of choices, we can see more clearly the discrimination experienced by disenfranchised women seeking to access reproductive services. The reproductive justice model overcomes this by demanding of the state a positive duty to help women realise their reproductive rights.

⁴⁶³Leslie Sherlock, ‘Towards a Reproductive Justice Model in Ireland’, 84.

Conclusion

This thesis has advanced the argument that reproductive justice is the more suitable framework to support women's realisation of their reproductive rights. This has been contextualised against the history of reproductive oppression experienced by women in Ireland and India. I began by demonstrating ways in which women's bodies and maternal functions were exploited in the interest of advancing the project of nationhood in Ireland and India following their independence, in particular examining the role of reproductive technology in facilitating this exploitation. It has been shown that nationalist discourse during this era relied heavily on the establishment of women as an icon of national identity, which emphasised the purity and chastity of women expressed through motherhood. This thesis revealed how this image of women as the embodiment of the nation-state shaped the state position towards reproduction in contrary ways in Ireland and India, exposing Indian women to harmful reproductive technology through coercive family planning programmes, and denying Irish women fertility control due to the criminalization of abortion and contraception. I have demonstrated the unsuitability of the choice paradigm as a theoretical framework to support women's access to reproductive services due to its narrow lens, which fails to account for the lived reality of women. Finally, I have proposed that the intersectional and comprehensive design of the reproductive justice framework might be a better framework through which to approach and understand the reproductive needs of women and plan and implement interventions to meet the same

Drawing heavily on the work of feminist sociologist Lisa Smyth⁴⁶⁴ and women's historian Sanjam Ahluwalia,⁴⁶⁵ this thesis expounds upon the circumscription of female sexuality to a woman's maternal function, which attained symbolic status during the struggle. In chapter two I show how this nationalist discourse did a disservice to women during the formative years of the nation-state, as this patriarchal ideology informed a familial construction of state which tethered women to traditional, gendered roles, despite the active participation of women within the freedom struggle. My findings show how these impulses lead the Irish and Indian state to control women's fertility, however these

⁴⁶⁴Smyth, *Abortion and Nation: The Politics of Reproduction in Contemporary Ireland*.

⁴⁶⁵Ahluwalia, *Reproductive Restraints: Birth Control in India, 1877-1947*.

articulated themselves in unique ways. In demonstrating the atrocities endured by Indian women arising from India's coercive fertility control programmes I present a counternarrative to the hardships of Irish women, whose suffering was caused by an absence of these same services. Accessing reproductive services under coercive conditions inhibits women from exercising meaningful fertility control and can reinforce the maternal associations of motherhood. This thesis demonstrates how both denial and access to reproductive services can produce these experiences of oppression and thus problematizes the assumption that reproductive freedom is gained through reproductive technology.

This thesis is heavily influenced by the work of Indian and Irish feminists in its analysis of the social mechanisms that drove official state policy towards reproduction. My thesis contributes to existing bodies of feminist scholarship by exploring this subject through a comparative analysis of Ireland and India, building on the work of Suruchi Thapar-Bjorkert and Louise Ryan.⁴⁶⁶ My analysis shows that both countries were driven by post-colonial public consciousness, however in the case of Ireland this expressed itself as moral discourse interwoven with nativist, traditionalist sentiment, whereas India was more open to modernity and was willingly steered and funded by foreign powers. Through my analysis of feminist discourse, this thesis traces the agitation and acts of resistance undertaken by feminists in Ireland and India,.

My evaluation of the choice paradigm in the context of reproduction draws inspiration from the work of Marlene Gerber Friend and Rosalind P. Petchesky. By contextualising this within an Irish and Indian context I highlight its inadequacies, illustrating the theoretical limitations of the privacy rationale upon which the choice framework is founded. I argue that by focusing its demands on legal access to abortion, the choice paradigm only expands the decision-making capacity of the privileged to the exclusion of marginalised women. In response to the issues raised, this thesis advocates the reproductive justice framework popularised by the African American feminist Loretta Ross⁴⁶⁷ as a more suitable support structure for reproduction, which strives to overcome reproductive oppression through coalition building and focusing on the needs of disenfranchised minorities.

⁴⁶⁶Thapar-Björkert and Ryan, 'Mother India/Mother Ireland'.

⁴⁶⁷ Loretta J. Ross, 'Understanding Reproductive Justice'.

The research design utilised within the thesis, a thematic comparative analysis between Ireland and India, proved a highly effective tool to reveal the powerful impact of a woman's socio-cultural environment in mediating the conditions of her access to reproductive services. By positioning both countries as foils to one another, this strategy highlighted their shared and dissimilar trajectories. Due to their colonial history, the analysis brought into clear focus the influence of post-colonialism in shaping the nation-state's attitudes to women's bodies. However, some difficulties emerged due to the excess of background information that was collected during the research period, which at times distracted from the main focus of the thesis and created difficulties with regards to length. At times it was also challenging to identify appropriate themes to facilitate cohesive critical discourse. Furthermore, the requirement to anchor discussion within a shared foundation inhibited comprehensive exploration of certain topics such as the practise of sex selective abortions in India, and the institutionalisation of Irish women in Magdalene Laundries, in addition to restricting the overall level of detail.

Other limitations encountered during my research included a disparity between the available body of feminist work, which abounded in the case of India while sourcing Irish feminist texts was more challenging. I resolved this, however, by reaching out to Irish feminist academics who provided hard copies of work unavailable online. I also expanded my research to include Irish legal feminist discourse which was more easily accessible. Prior to writing the thesis I was apprehensive of exhibiting a bias towards Ireland due to my Irish nationality. Upon writing the thesis, however, the lopsided body of background material in favour of India resulted in a slight bias towards the length of text it was allocated. Nonetheless, I posit that was necessary due to India's highly diversified reproductive discourse.

Due the narrow scope of this these, further limitations included unexplored channels of research that would have facilitated more robust discussion of the thesis topic. This includes commercial surrogacy, which was a highly valuable industry in India due to its overseas customers until it was outlawed by the Surrogacy (Regulation) Bill 2016, although it is fear the industry will now become underground.⁴⁶⁸Currently Ireland has no

⁴⁶⁸Saptarshi Ray, 'India Bans Commercial Surrogacy to Stop "rent a Womb" Exploitation of Vulnerable Women', *The Telegraph*, 20 December 2018, <https://www.telegraph.co.uk/news/2018/12/20/india-bans-commercial-surrogacy-stop-rent-womb-exploitation/>.

surrogacy regulation and Ireland has the second highest surrogacy rates globally.⁴⁶⁹ As discussed by Bhattacharjee⁴⁷⁰ issues of ‘choice’ and exploitation are highly relevant, therefore exploring the feminist ethics of commercial surrogacy in a transnational context using neo-colonial concepts would be highly pertinent to the research of this thesis. I would also have liked to discuss in more detail the divergences between the quality and access to reproductive services in urban and rural India, and the influence of religion regulating female sexuality.

In my discussion of sex selective abortions, I touched briefly on the use of new reproductive technology to reproduce embedded social norms and the ineffectiveness of the law to challenge these developments. It is currently anticipated that parents will shortly be able to genetically engineer the gender of their child,⁴⁷¹ and even allow parents to ‘design’ their baby, avoiding diseases and illnesses, improving intelligence, and even selecting skin colour or hair.⁴⁷² Although still in the future, the potential of these technologies poses serious ethical questions. According to Hercher, “We risk creating a society where some groups, because of culture or geography or poverty, bear a greater burden of genetic disease.”⁴⁷³ Its potential to exacerbate pre-existing social discrimination and calcify oppressive social structures portends reproductive injustice of concerns demands urgent feminist attention. A further relevant area of research includes the structurally inequality against poor women with fertility issues as discussed by Ross⁴⁷⁴, who are unable to access assisted reproductive technology used for infertility treatment.

To conclude, this thesis demonstrated that women’s bodies have been exploited in Ireland and India. This stemmed from the identification of women as the nation’s physical embodiment during the independence movement, whose legacy shaped reproductive statutory discourse into the 21st century. In Ireland, Irish feminists advocated for increased access to reproductive rights, supporting their arguments using the

⁴⁶⁹Brian Tobin, ‘Opinion: Long-Awaited Surrogacy Laws Still Won’t Recognise Many Parents’, TheJournal.ie, accessed 26 July 2019, <https://www.thejournal.ie/readme/opinion-long-awaited-surrogacy-laws-still-wont-recognise-many-parents-4513551-Mar2019/>.

⁴⁷⁰Dali Bhattacharjee, ‘Commercial Surrogacy in India: Bans, “Altruism” and the Women Involved’, *Economic & Political Weekly*, Readings on the economy, polity, and society, 51, no. 14 (2012): 27–29.

⁴⁷¹S Matthew Liao, ‘The Ethics of Using Genetic Engineering for Sex Selection’, *Journal of Medical Ethics* 31, no. 2 (2005): 116–18, <https://doi.org/10.1136/jme.2003.005983>.

⁴⁷²Laura Hercher, ‘Designer Babies Aren’t Futuristic. They’re Already Here.’, MIT Technology Review, 22 October 2018, <https://www.technologyreview.com/s/612258/are-we-designing-inequality-into-our-genes/>.

⁴⁷³Hercher.

⁴⁷⁴Loretta J. Ross, ‘Understanding Reproductive Justice’.

reproductive choice framework. By delineating the theoretical limitations of the choice model when applied in an Indian and Irish context, I have argued that it is an unsuitable model to support women's reproductive freedom due to its narrow vision. This thesis posits that the intersectional approach of the reproductive justice framework is more suited to meet the reproductive needs of Irish and Indian women.

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List of Abbreviations

AAC	Anti-Amendment Campaign
ACRJ	Asian Communities for Reproductive Justice
AIIMS	All India Institute of Medical Science
AIWC	All India Women's Conference
API	Asian-Pacific Islander
ARC	Abortion Rights Campaign
CWDS	Centre for Women's Development Studies
EPW	Economic and Political Weekly
FASDSP	Forum Against Sex Determination and Sex Pre-selection
IFPA	The Irish Family Planning Association
IWLG	Irish Women's Liberation Group
IWLM	Irish Women's Liberation Movement
LGBTQIA	Lesbian Gay Bisexual Trans Queer Intersex Asexual
MTP	Medical Termination of Pregnancy
PCPNDT	Pre-Conception and Pre-Natal Diagnostic Techniques
PLAC	Pro-Life Amendment Campaign
PLDPA	Protection of Life During Pregnancy Act
RCH	Reproductive Child Health
SDT	Sex-Determination Tests
SPUC	Society for the Protection of Unborn Children
WIA	Women's Indian Association
WRCC	Women's Right to Choose Campaign
WRCG	Women's Right to Choose Group
WRPE	Women's Role in Planned Economy

