

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced, stored, transmitted, or distributed in any form or by any means, whether electronic, mechanical, photocopying, recording, or otherwise, without prior written permission of the Managing Editor of the *International Journal for Legal Research & Analysis (IJLRA)*.

The views, opinions, interpretations, and conclusions expressed in the articles published in this journal are solely those of the respective authors. They do not necessarily reflect the views of the Editorial Board, Editors, Reviewers, Advisors, or the Publisher of IJLRA.

Although every reasonable effort has been made to ensure the accuracy, authenticity, and proper citation of the content published in this journal, neither the Editorial Board nor IJLRA shall be held liable or responsible, in any manner whatsoever, for any loss, damage, or consequence arising from the use, reliance upon, or interpretation of the information contained in this publication.

The content published herein is intended solely for academic and informational purposes and shall not be construed as legal advice or professional opinion.

**Copyright © International Journal for Legal Research & Analysis.
All rights reserved.**

ABOUT US

The *International Journal for Legal Research & Analysis (IJLRA)* (ISSN: 2582-6433) is a peer-reviewed, academic, online journal published on a monthly basis. The journal aims to provide a comprehensive and interactive platform for the publication of original and high-quality legal research.

IJLRA publishes Short Articles, Long Articles, Research Papers, Case Comments, Book Reviews, Essays, and interdisciplinary studies in the field of law and allied disciplines. The journal seeks to promote critical analysis and informed discourse on contemporary legal, social, and policy issues.

The primary objective of IJLRA is to enhance academic engagement and scholarly dialogue among law students, researchers, academicians, legal professionals, and members of the Bar and Bench. The journal endeavours to establish itself as a credible and widely cited academic publication through the publication of original, well-researched, and analytically sound contributions.

IJLRA welcomes submissions from all branches of law, provided the work is original, unpublished, and submitted in accordance with the prescribed submission guidelines. All manuscripts are subject to a rigorous peer-review process to ensure academic quality, originality, and relevance.

Through its publications, the *International Journal for Legal Research & Analysis* aspires to contribute meaningfully to legal scholarship and the development of law as an instrument of justice and social progress.

PUBLICATION ETHICS, COPYRIGHT & AUTHOR RESPONSIBILITY STATEMENT

The *International Journal for Legal Research and Analysis (IJLRA)* is committed to upholding the highest standards of publication ethics and academic integrity. All manuscripts submitted to the journal must be original, unpublished, and free from plagiarism, data fabrication, falsification, or any form of unethical research or publication practice. Authors are solely responsible for the accuracy, originality, legality, and ethical compliance of their work and must ensure that all sources are properly cited and that necessary permissions for any third-party copyrighted material have been duly obtained prior to submission. Copyright in all published articles vests with IJLRA, unless otherwise expressly stated, and authors grant the journal the irrevocable right to publish, reproduce, distribute, and archive their work in print and electronic formats. The views and opinions expressed in the articles are those of the authors alone and do not reflect the views of the Editors, Editorial Board, Reviewers, or Publisher. IJLRA shall not be liable for any loss, damage, claim, or legal consequence arising from the use, reliance upon, or interpretation of the content published. By submitting a manuscript, the author(s) agree to fully indemnify and hold harmless the journal, its Editor-in-Chief, Editors, Editorial Board, Reviewers, Advisors, Publisher, and Management against any claims, liabilities, or legal proceedings arising out of plagiarism, copyright infringement, defamation, breach of confidentiality, or violation of third-party rights. The journal reserves the absolute right to reject, withdraw, retract, or remove any manuscript or published article in case of ethical or legal violations, without incurring any liability.

RIGHT TO AUTONOMY AND REPRODUCTIVE RIGHTS IN INDIA: AN ANALYSIS

AUTHORED BY - DIVYA S

Abstract

In India, abortion under certain conditions was legalised by the enactment of Medical Termination of Pregnancy Act of 1971 (MTP Act) and although it was made a little more liberal with the 2021 amendment, women in India do not have an unconditioned right to terminate their pregnancy for any reason. The law allows for abortion only in specified situations, including risk to the woman's life, fetal abnormalities, or other humanitarian grounds. This framework grants significant authority to medical practitioners and legal systems, rather than empowering individual women to make their own choices.

In the wake of the landmark Puttaswamy ruling, judicial interpretations have established reproductive rights as an essential component of the right to privacy and dignity under Article 21 of the Constitution. However, the practical implementation of these rights remains restrictive and does not fully acknowledge women's agency in decision-making. Hence, we can say that women's autonomy and state regulation are underscored in India.

This paper seeks to explore the evolution of abortion laws in India, the constitutional foundations of reproductive rights, and the inconsistencies between legislative intent and individual autonomy. This research analyses the extent to which the Indian legal system is still entrenched in a paternalistic framework that favours the state's or society's interests over women's freedoms, despite its more progressive judgments and reforms. This study aspires to highlight avenues that remain missing in terms of reproductive justice through examination of statutory provisions and case law.

Keywords: Abortion, Reproductive Rights, Autonomy, Medical Termination of Pregnancy, (MTP Act, 1971), Article 21 and Reproductive Decisions.

1. Introduction

Although reproductive rights are recognised as part of the human rights debate, their application and regulation differ from society to society. At the centre of these rights is a woman's right to exercise choice,¹ and to make informed decisions about her body, her fertility, and her reproductive health. Abortion has become perhaps the most contested aspect of reproductive rights, considering all of the moral, ethical, religious, and legal issues it encompasses. While there appears to be a worldwide movement towards recognition of the autonomy of women to make choices on reproductive matters, there is still plenty of law, including in India, that inhibits the right to reproductive choices. This intersection of law, morality and autonomy creates a fertile area for exploring the Indian law of abortion. India's Medical Termination of Pregnancy Act, 1971 (MTP Act, 1971) was considered a progressive step in the liberalisation of abortion, when compared to many countries in the world at that time. The law was amended in 2021 to further liberalise abortion by extending gestational limits and including pregnancies that derive from changes in marital status and as a result of sexual assault. Nevertheless, it continues to remain conditional. Abortion is to be approved by a medical practitioner, and the law is still governed by medical standards and not a woman's independent choice.

The Constitution of India guarantees a right to privacy and personal liberty², and a right to an individual's reproductive autonomy has been derived by the judiciary. Even with a strong movement towards reproductive autonomy, the statutory framework leaves a woman in a paradox that is abortion is legal, but not inherently a right.

1.1 Background of the Study

The "Right to Autonomy and Reproductive Rights in India: An Analysis" is a crucial case study as it involves the intersection of women's rights, public health and judicial activism. Historically, abortion was viewed as a criminal offence under the IPC, 1860, with a narrow interpretation of saving women's lives, which increased unsafe abortions and maternal mortality. Hence, the MTP Act, 1971 was enacted, which provided legal abortions under specific medical conditions. However, it was provider-centric and doesn't recognise a woman's right to choose. Later, the Amendment led to the expansion of the gestational limit to 24 weeks for vulnerable groups and allowed unmarried women to come under the purview of abortion

¹ Suchitra Srivastava v Chandigarh Administration (2009) 9 SCC 1.

² India Const. art. 21.

laws. It was a transformative step, and the judiciary further reinforced the concept of reproductive rights as a fundamental right to life and liberty under Article 21 of the Constitution through landmark judgments. This study enables us to understand the complex social and legal elements of reproductive rights in India.

1.2 Statement of the Problem

The right of a woman to make choices concerning her body and her reproductive health has been the centre of debates on the issues of autonomy and gender justice. In modern societies, equality, personal liberty and bodily integrity are considered integral to reproductive freedom. However, in India, where significant progress has been made in women's rights recognition, the issue of reproductive decision-making is still contested. The question of the true rights of women to make decisions on abortion showcases the larger concern about the balance between individual autonomy, morality and state regulation. The statutory provisions and judicial trends are examined to highlight the extent to which the law restricts or empowers women's rights to reproductive decision-making. The purpose is to evaluate the adequacy of the current system rights and also to contribute to broader discussion on gender equality, reproductive justice and the need for reforms that ensure the rights of the women are fully realized.

1.3 Research Questions

1. What is the meaning of reproductive rights?
2. Whether the existing Indian legal framework adequate to protect the interests of women in matters related to abortion?
3. What are the judicial approaches in matters related to abortion?
4. What are the challenges that hinder women's reproductive rights?

1.4 Objectives

1. To examine the reproductive rights.
2. To analyse the existing constitutional law, criminal law and the Medical Termination of Pregnancy Act, 1971, in the issue of abortions in India.
3. To examine and analyse the judicial interpretation of Article 21 in matters related to abortion.
4. To examine the challenges and provide suggestions for the same.

1.5 Research Methodology

The research methodology employed in this study is doctrinal methodology, utilising an analytical research method, which enables the critical evaluation and examination of the abortion law framework in India. In this study, a systematic analysis and evaluation of primary resources, including the Indian Constitution, Legislative Acts related to abortion laws and Judicial precedents, is applied. The secondary resources consist of commentaries, journal articles and websites. The study critically evaluates the sufficiency and limitations of the current legal framework on abortion laws. The method aims to provide a comprehensive understanding of the abortion laws in India.

1.6 Scope and Limitation

The doctrinal methodology with an analytical research method is applied. However, the study is confined to doctrinal as it does not incorporate empirical data, as the topic is restricted only to the analysis of existing legal texts.

2. Literature Review

Priya Gautam, *Navigating the Legal Landscape: Challenges and Frameworks for Women's Reproductive Rights in India*, 3 INTERNATIONAL JOURNAL OF LEGAL STUDIES & SOCIAL SCIENCES 563 (2025).

The author examines the emergence and history of reproductive rights tracing from United Nations and its development in United States. The author examines the MTP Act, 1971 and Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 2003 (PC and PNDT Act, 2003) in the light of reproductive rights of women. Then provides for barriers in accessing reproductive health services and also provides specific issues in relation to India. Author later addresses the importance and aim of advocacy of reproductive rights. The author also highlights the challenges in reproductive rights of women.³

Rashika Bajaj & Hina Kausar, *Cultural Traditions and Women's Rights in India: Navigating CEDAW Principles with Respect to Reproductive Rights*, 7 INT'L J.L. MGMT. & HUMAN, 827 (2024).

The authors have analysed the influence of cultural traditions on the implementation of CEDAW principles, identified barriers and opportunities in the integration of CEDAW

³ Priya Gautam, *Navigating the Legal Landscape: Challenges and Frameworks for Women's Reproductive Rights in India*, 3 INTERNATIONAL JOURNAL OF LEGAL STUDIES & SOCIAL SCIENCES 563 (2025).

principles in India and evaluated existing legal measures in India in relation to protecting the reproductive rights. The authors have provided an in-depth analysis of CEDAW principles which protect and promote reproductive rights in India.⁴

Pankaj & Ajaz Afzal Lone, *Reproductive Rights in India: A Comprehensive Analysis of Laws and Policies*, 7 INT'L J.L. MGMT. & HUMAN, 2189 (2024).

The authors states that reproductive rights are essential for gender equality and public health. The authors have collated the meaning of reproductive rights. The authors have traced the history through various eras and examined the human rights convention related to reproductive rights. The authors have identified various problems in legal, societal and cultural contexts. Then the authors have analysed Indian laws such as IPC, MTP Act, 1971 and PC and PNDT Act, 2003.⁵

Christabell Joseph, *Indian Judiciary and the Ongoing Debate on Abortion*, 4 INDIAN J.L. & LEGAL RSCH. 1 (2022-2023).

The author has analysed the judicial growth in respect to abortion laws and has also given feminist and ethical aspects on the topic. The author has stated that in India the judiciary has been moving towards the pro-choice aspect of abortion and has given more autonomy to women.⁶

Dipika Jain & Brian Tronic, *Conflicting Abortion Laws in India: Unintended Barriers to Safe Abortion for Adolescent Girls*, 4 Indian J. Med. Ethics 310 (2019).

The authors have critically argued that the existing law is not clear concerning adolescent girls as MTP Act, 1971, the Juvenile Justice (Care and protection of Children) Act, 2015 and the Protection of Children from Sexual Offences Act, 2012 (POCSO Act, 2012) create conflict and unintended barriers to adolescent girls accessing abortion services. The authors have identified that obtaining guardian's consent may not be realistic and consensual sex criminalization violates autonomy of adolescents.⁷

⁴ Rashika Bajaj & Hina Kausar, Cultural Traditions and Women's Rights in India: Navigating CEDAW Principles with Respect to Reproductive Rights, 7 INT'L J.L. MGMT. & HUMAN, 827 (2024).

⁵ Pankaj & Ajaz Afzal Lone, Reproductive Rights in India: A Comprehensive Analysis of Laws and Policies, 7 INT'L J.L. MGMT. & HUMAN, 2189 (2024).

⁶ Christabell Joseph, Indian Judiciary and the Ongoing Debate on Abortion, 4 INDIAN J.L. & LEGAL RSCH. 1 (2022-2023).

⁷ Dipika Jain & Brian Tronic, Conflicting Abortion Laws in India: Unintended Barriers to Safe Abortion for Adolescent Girls, 4 Indian J. Med. Ethics 310 (2019).

3. Reproductive Rights

Reproductive rights are fundamental women's rights. These rights are guaranteed under the constitution, national legislation and international treaties. The rights are essential as they are necessary for the well-being of women, and to make informed and autonomous reproductive decisions. The decisions must be free from undue influence and coercion. The right also includes whether to become pregnant or not, to terminate a pregnancy or not, the number of children, access to reproductive healthcare services and information.

The reproductive rights are human rights that include the following:

Bodily Autonomy: The right to decide whether and when to have a child. The right to decide the number and spacing of children. To be free from all forms of reproductive coercion, such as forced sterilisation. Free from inhumane and cruel practices such as Female Genital Mutilation (FGM).

Non-discrimination: The right to equality and must not be discriminated against in access to reproductive rights, access to reproductive health services. Women must be free from coercion and violence when making reproductive decisions.

Access to Information and Healthcare: The right to have access to information and means, including family planning. Information and access to birth control. Access to reproductive healthcare services.

Maternity and Childbirth: The right to choose the method of childbirth and to receive standard care throughout pregnancy and delivery. The right to post-natal care.

These rights help to further the well-being and provide opportunities for women and their families. At the centre of these is the debate on abortion.

4. Abortion

In reproductive rights, abortion is one of the central issues. Black's Law Dictionary defines abortion as the artificial or spontaneous termination of a pregnancy before the embryo or the fetus can survive on its own outside the uterus.⁸ It is necessary for the well-being of the women and allows them to make future decisions. Abortion is a safe and non-complex process when

⁸ Black's Law Dictionary, 9th ed., 2009.

carried out using medication or a surgical procedure by someone who has the necessary skills and follows the guidelines.⁹ The WHO Abortion Care Guideline¹⁰ provides three cornerstones for an enabling environment in abortion care, which are

1. Respect for human rights and a supportive framework of law and policy;
2. Accessibility and availability of information, and
3. An affordable, supportive, universally accessible and well-functioning health care system.

5. Historical Evolution of Reproductive Rights

5.1 Reproductive Rights in International Declarations

International declarations have stressed and asserted the reproductive rights of women. It is a crucial fundamental human right. In 1994, the International Conference on Population and Development (ICPD) stated that the reproductive right rests on the recognition of all individuals to decide freely and responsibly the number, spacing and timing of their children, along with the right to information and means to do so, and the right to attain the highest standard of sexual and reproductive health.¹¹

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) held on 1981 provides for certain rights of women. It states that the state shall take appropriate measures to eliminate discrimination against women in the field of healthcare and access to health care, including family planning and services in relation to pregnancy, confinement and post-natal period.¹² Further states that rural women should also have access to family planning.¹³ The right to freely and responsibly decide the number and spacing of children is also provided.¹⁴

The Beijing Declaration and Platform for Action in 1995 recognised the significance of women's reproductive rights as a human right and broadened the scope. It acknowledges the

⁹ World Health Organization, *Abortion Care Guideline*, 2nd ed. 2024, (Jan. 17, 2025, 12:22 AM) <https://iris.who.int/server/api/core/bitstreams/dd3d3a9c-6446-4e79-a43c-093a41df46bd/content>

¹⁰ *Id.*

¹¹ Programme of Action adopted at International Conference on Population and Development, Cairo, Para. 7.3, 5-13, sept. 1994, (Jan. 17, 2025, 12:22 AM) https://www.unfpa.org/sites/default/files/event-pdf/PoA_en.pdf.

¹² Convention on the Elimination of All Forms of Discrimination against Women, Art. 12, 1981, (Jan. 17, 2025, 12:22 AM), <https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/cedaw.pdf>.

¹³ Convention on the Elimination of All Forms of Discrimination against Women, Art. 14(2)(b), 1981, (Jan. 17, 2025, 12:22 AM), <https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/cedaw.pdf>.

¹⁴ Convention on the Elimination of All Forms of Discrimination against Women, Art. 16(1)(e), 1981, (Jan. 17, 2025, 12:22 AM), <https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/cedaw.pdf>.

right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence.¹⁵

The United Nations along with 193 countries adopted the Sustainable Development Goals in 2015 and the 2030 Agenda, which included reproductive health under Target 3.7, which aims for universal access to sexual and reproductive healthcare.¹⁶ Goal 5 provides for gender equality and Target 5.6 aims to ensure universal access to reproductive health and rights.¹⁷

5.2 Reproductive Rights in the United States: From Constitutional Right to State Authority

It is necessary to study the United States, as it was the first democracy to liberalise and recognise reproductive rights. The US Supreme Court liberalised the use of contraceptives by striking down the state law that banned the use of contraceptives for married couples, and established the right to marital privacy.¹⁸ Further, it was also extended to unmarried individuals.¹⁹ In the landmark federal judgment of *Roe v. Wade*,²⁰ nationwide legalisation and liberalisation of restrictive abortion access were brought in. The right also includes whether or not to terminate the pregnancy. The right to abortion is not absolute, as the State also has a legitimate interest in protecting life.²¹ In *Planned Parenthood v. Casey*,²² the right to abortion was reaffirmed and established that there shall be no undue burden on the privacy of women. The decision to terminate or not to terminate shall be undue.²³

However, the US Supreme Court in *Dobbs v. Jackson Women's Health Organisation*²⁴ overturned *Roe v. Wade* and *Planned Parenthood v. Casey*, and returned the authority to ban or regulate abortion to individual states. The US has moved to regressive reproductive rights, especially in abortion rights. There is no federal legislation, and the individual states have the power to regulate access to abortion or can even completely ban it.

¹⁵ Beijing Declaration and Platform for Action, Para. 96, 4-15 Sept 1995, (Jan. 17, 2025, 12:22 AM), https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/CSW/PFA_E_Final_WEB.pdf.

¹⁶ https://www.un.org/ohrlls/sites/www.un.org.ohrlls/files/2030_agenda_for_sustainable_development_web.pdf (Jan. 17, 2025, 12:22 AM).

¹⁷ https://www.un.org/ohrlls/sites/www.un.org.ohrlls/files/2030_agenda_for_sustainable_development_web.pdf (Jan. 17, 2025, 12:22 AM).

¹⁸ *Griswold v. Connecticut* 381 U.S. 479 (1965).

¹⁹ *Eisenstadt v. Baird* 405 U.S. 438 (1972).

²⁰ *Roe v. Wade* 410 U.S. 113 (1973).

²¹ *Id.*

²² *Planned Parenthood v. Casey* 505 U.S. 833 (1992).

²³ *Id.*

²⁴ *Dobbs v. Jackson Women's Health Organisation*, 597 U.S. 215 (2022).

6. Reproductive Rights in India: Criminalisation to Liberalisation

6.1 Indian Penal Code

The Indian Penal Code of 1860 (IPC) addressed the issue of “miscarriage” in sections 312 to 316, and hence abortion has been criminalised.²⁵ Section 312 outlawed voluntary abortion unless in the instance in which the life of the woman was at risk.²⁶ Whereas, Section 313 barred any procedure that was performed without the consent of the pregnant individual.²⁷ Section 314, which is not related to the consent of the pregnant woman, however, it imposes liability on the person who murders the pregnant person.²⁸ Section 315, criminalises the act that prevents a child from being alive or dies after birth.²⁹ Presently, IPC has been replaced by Bharatiya Nyaya Sanhita, 2023 (BNS) and the same is provided under sections 88 to 91.³⁰

The punishment can be harsh, with potential sentences of ten years to life, including fines. Notably, these sections did not differentiate between abortion sought for personal reasons or humanitarian ones, or situations involving tragic circumstances such as rape or fetal anomaly. Both the pregnant person and the person aiding in the act would face criminal charges, leaving no space for autonomy, dignity, or privacy. However, increased numbers of abortions continued being performed, and in this situation, it was particularly dangerous and unsafe, leading to the mortality of many women or danger more broadly, demonstrating the lack of viability of a limited framework that relies solely on a punitive model.

6.2 Shah Committee

India's rapid population growth and significant maternal mortality rates highlighted the need for change. In 1964, during the 16th meeting of the Central Family Planning Board, members expressed concern about untrained providers performing unsafe abortions in an unhygienic setting. Government officials appointed a committee, chaired by Shantilal Shah, to determine whether India needed a law that decriminalized abortions.³¹ The committee examined abortion trends in other countries and concluded that legalizing abortions led to reduced maternal mortality rates associated with unsafe procedures.³² The committee also looked at the social

²⁵ Indian Penal Code, 1860, §§ 312 - 316.

²⁶ Indian Penal Code, 1860, §§ 312.

²⁷ Indian Penal Code, 1860, § 313.

²⁸ Indian Penal Code, 1860, § 314.

²⁹ Indian Penal Code, 1860, § 315.

³⁰ Bharatiya Nyaya Sanhita, 2023, § 88 - 91.

³¹ Report of The Committee To Study The Question of Legalisation Of Abortion, Ministry Of Health And Family Planning, 1964.

³² *Id.*

conditions that contributed to abortions in India, such as the failure of contraception, economic hardship, and the burden of raising another child.³³

The Shah Committee established that restrictive legislation was forcing women to receive unsafe, illegal abortions, and recommended liberalization.³⁴ The Committee recommended an to allow abortions to be performed in cases of serious risk to the mother's life or health, grievous mental or physical injury, pregnancies resulting from rape, pregnancies involving minors or mentally incapacitated women, and pregnancies in which the fetus was at risk of abnormality.³⁵ The Committee emphasized that abortions should only be performed by approved medical practitioners at legal places of practice. Some viewed it as family-planning component and population control but committee denied it.³⁶

6.3 Medical Termination of Pregnancy Act, 1971

Based on these recommendations, the Parliament of India enacted a statute on abortion the Medical Termination of Pregnancy Act, 1971, which became effective on April 1, 1972. Modelled on the United Kingdom's Abortion Act of 1967, the law was the first legal recognition of abortion as a procedure in India.³⁷ The objectives were public health-related and humanitarian.

The Act, by providing a legal justification for termination, was meant to reduce deaths from unsafe abortions, to assist in cases of rape and incest, and to permit termination where there was a high probability that the fetus would suffer from severe abnormalities.³⁸ The provisions of the law were limited by the duration of the term. Section 3 permitted termination by a registered medical practitioner if the pregnancy had not exceeded 12 weeks with the opinion of one medical practitioner, or by 20 weeks in the opinion of two medical practitioners.³⁹ Grounds included risk to the woman's life, grave physical or mental injury to the woman's health, fetal abnormality, or pregnancies that occurred as a result of rape or contraceptive failure in married women.⁴⁰ In spite of the Act liberalising abortion, as compared to the

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ Siddhivinayak S. Hirve, *Abortion Law, Policy and Services in India: A Critical Review*, 12 *Reproductive Health Matters*, 114, (2004).

³⁷ *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1.

³⁸ The Medical Termination of Pregnancy Act, 1971, § 3.

³⁹ The Medical Termination of Pregnancy Act, 1971, § 3.

⁴⁰ *Id.*

colonial IPC, the law nevertheless limited access, as it mandated the opinions of doctors, in lieu of access to termination at the request of women, which still made termination dependent on the necessity of legality.

The Medical Termination of Pregnancy (Amendment) Act, 2021 represents the largest expansion of accessibility since the initial law. The amendment raised the gestational limit for abortion for certain categories of women, such as survivors of rape, minors, and women with physical disabilities, from 20 to 24 weeks, as long as two medical professionals approved of it.⁴¹ The amendment further changed the language to replace the term “married woman or her husband” with the phrase “any woman or her partner,” granting unmarried women legal recognition of pregnancy and acknowledging social changes.⁴² In this reflection of a more liberal approach to abortion, stigma attached to pregnancies outside of marriage was also addressed.

In the case *X v. Principal Secretary, Health and Family Welfare*,⁴³ the Supreme Court clarified that unmarried women have equal rights to abortion under Section 3(2) and Rule 3B of the MTP Rules. The Court rejected the stigma attached to unmarried women and reinforced that reproductive rights are based on choice and not status.

6.4 Pre-Conception and Pre-Natal Diagnostic Techniques, 1994

PC & PNDT Act, 1994 aims to prohibit sex selection and prevent female foeticide by regulating diagnostics.⁴⁴ The Act makes sure that diagnostics are only used to detect genetic abnormalities and other disorders. The Act prohibits disclosure of the sex of the fetus by any medical practitioner, radiologist or staff. It makes offences cognizable and non-bailable. This Act aims to maintain gender equality.

7. Judicial Evolution in India

7.1 Reproductive Rights and Constitutional Law

In the sphere of reproductive rights, the judiciary’s interpretation has established that these rights are not only for survival but also necessary for the mental and physical well-being of

⁴¹ The Medical Termination of Pregnancy (Amendment) Act, 2021.

⁴² *Id.*

⁴³ *X v. The Principal Secretary, Health and Family Welfare Dept., Govt. of NCT of Delhi & Anr. Civil Appeal No. 5802 of 2022 (Arising out of SLP (C) No. 12612 of 2022).*

⁴⁴ Pre-Conception and Pre-Natal Diagnostic Techniques, 1994

pregnant women. Reproductive rights are guaranteed under Article 21 of the Indian Constitution and supported by the right to reproductive healthcare, well-being and dignity of women.⁴⁵

In *Laxmi Mandal v. Deen Dayal Harinagar Hospital*, the Delhi High Court found that a maternal death was a violation of Article 21 and pointed to the failure of implementing maternal health schemes that caused one of the Petitioners to give birth under a tree, while the other died as a result of being denied care.⁴⁶ As a result, the Court identified two survival rights related to Article 21, the mother had a right to health, meaning that she had a right to a minimum standard of care, and the mother also had the right to reproduce.⁴⁷ Similarly, *Sandesh Bansal v. Union of India*, the Madhya Pradesh High Court put the State under an obligation to remedy shortages in medical infrastructure and staffing that resulted in missed opportunities to keep mothers alive.⁴⁸ The High Court found that it was a violation of Article 21 and the State had a responsibility to keep pregnant women alive.⁴⁹

The courts have also applied this reading to abortion. In *X v. Union of India*, the Bombay High Court allowed a minor rape survivor to terminate a pregnancy of 25 weeks, holding that to compel her to continue such a pregnancy would pose a threat to her life and, therefore, violate Article 21.⁵⁰ Likewise, in *Meera Santosh Pal v. Union of India*, the Supreme Court found that the life-threatening nature of the facts gave the petitioner a constitutional right to protect her own life through terminating her pregnancy.⁵¹

Apart from mere survival, courts have broadened the scope of Article 21 to include richer dimensions of life and health. For example, the Allahabad High Court held in *Snehalatha Singh v. State of Uttar Pradesh* that the meaning of the right to life includes the development of the human personality with good health, and it is the duty of the State to provide reasonable obstetric care.⁵² Then, in the rather different context of abortion, the Rajasthan High Court in *Nand Kishore Sharma v. Union of India* affirmed the compatibility of the MTP Act with Article

⁴⁵ *X v. The Principal Secretary, Health and Family Welfare Dept., Govt. of NCT of Delhi & Anr.* Civil Appeal No. 5802 of 2022 (Arising out of SLP (C) No. 12612 of 2022).

⁴⁶ *Laxmi Mandal v. Deen Dayal Harinagar Hospital*, W.P.(C) 8853/2008 (Del. HC).

⁴⁷ *Id.*

⁴⁸ *Sandesh Bansal v. Union of India*, W.P. 9061/2008 (M.P. HC).

⁴⁹ *Id.*

⁵⁰ *X v. Union of India*, 2017 SCC OnLine Bom 9334.

⁵¹ *Meera Santosh Pal v. Union of India*, (2017) 3 SCC 462.

⁵² *Snehalatha Singh v. State of Uttar Pradesh*, W.P.(PIL) 14588/2009 (All.HC).

21, noting its objective is to safeguard women's physical and mental health.⁵³

Suchitra Srivastava v. Chandigarh Administration was the first Supreme Court case to acknowledge reproductive rights in constitutional terms. The Court found that the choice of not to reproduce which includes abortion, was a component of personal liberty under Article 21 of the Constitution of India.⁵⁴ Although the case in *Suchitra Srivastava* concerned the right to not undergo an abortion, the reasoning in that case placed the value of reproductive autonomy under the umbrella of constitutional liberty.⁵⁵

The protection of autonomy and broader concepts of privacy was extended in *Justice K.S. Puttaswamy v. Union of India*, where the Supreme Court articulated the right to privacy as arising under Article 21.⁵⁶ In that, decisional autonomy was described as protecting a person's capacity for self-determination in personal and intimate matters and includes decisions regarding reproduction and sexuality, like whether to terminate or continue with a pregnancy.⁵⁷

Moreover, courts have been reiterating that neither the State nor her family can compel a woman to abort or to continue a pregnancy. For example, the Punjab & Haryana High Court affirmed a woman's "exclusive and inalienable right" with respect to her body and reproductive decisions.⁵⁸

Recent Developments

In *A (Mother of X) v. State of Maharashtra*,⁵⁹ the Supreme Court stated that *the right to abortion is a concomitant right of dignity, autonomy and reproductive choice. This right is guaranteed under Article 21 of the Constitution. The decision to terminate pregnancy is deeply personal for any person. The choice exercised by a pregnant person is not merely about their reproductive freedom but also about their agency as recognised by this court in X v. State (NCT of Delhi). It is therefore imperative that the fundamental right of a pregnant person is not compromised for reasons other than to protect the physical and mental health of the pregnant person.* The court in this case held that 24-week limit as mentioned under MTP Act can't be

⁵³ Nand Kishore Sharma v. Union of India, RLW 2006 (4) Raj 2761

⁵⁴ Suchitra Srivastava v. Chandigarh Administration (2009) 9 SCC 1.

⁵⁵ *Id.*

⁵⁶ Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.

⁵⁷ *Id.*

⁵⁸ *R v. State of Haryana*, 2016 S.C.C. OnLine P&H 7425.

⁵⁹ *A (Mother of X) v. State of Maharashtra*, Civil Appeal No. 5194 of 2024.

used as an absolute bar to deny abortion in case if it causes grave mental and physical injury to the rape survivor.⁶⁰ The court further issued directive to medical boards that it can't merely look at the fetus but must look into the physical and mental well-being of the pregnant person and if the medical board change their opinion it ought to reexamine the patient.⁶¹ The court stated that when minor pregnant person and guardian have differing opinion then court must regard the opinion of the pregnant person as an important factor while deciding termination of pregnancy.⁶²

In *X.Y.Z v. The Dean of B.J. Government Medical College*,⁶³ the Bombay High Court held that social stigma of out-of-wedlock pregnancy and financial inability to raise child constitute grave injury and not restricted to sexual assault cases. Further stated that pregnant person has the sole right in deciding upon her bodily autonomy and her reproductive choice is hers alone and not based on her family or partner. Absence of fetal abnormalities for abortion beyond 24 weeks is no ground of defence if there is risk to mental health of the pregnant person.⁶⁴

In *A (Mother of X) v. State of Maharashtra & Others*⁶⁵ the Supreme Court held that right to choose is fundamental part of Article 21 and forcing motherhood on a person would cause mental trauma and social stigma. Justice Nagarathna noted that if safe abortions are not allowed then there will be illegal terminations and quackery which is even more dangerous.

8. Barriers in Reproductive Health Services

Social Stigma represents a significant obstacle, especially for unmarried women and minors. Women may worry about being judged or ostracized from their communities and families. Ultimately, many women end up getting an unsafe abortion from an untrained provider. Because of the stigma, there is also a large lack of awareness when it comes to the legality of abortion and the ins and outs of the MTP Act, 1971. In many instances, women are sent away from facilities or made to wait unnecessarily and complete steps that are unrelated to a legal process, due to misinformation about the legality and the steps involved with a legal abortion. Social and cultural differences combined with discrimination deter access to necessary

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *X.Y.Z v. The Dean of B.J. Government Medical College*, 2024: BHC-AS: 22704-DB.

⁶⁴ *Id.*

⁶⁵ *A (Mother of X) v. State of Maharashtra & Others* (SLP(C) No. 4774/2026)

services. Patriarchal norms and gender disparity also deter persons in need of reproductive healthcare. Rural women have less access to necessary reproductive services. These may lead pregnant persons to go for illegal abortions. These can prevent teenagers from seeking help when they commonly need it the most as they are deterred from seeking legal medical services due to the risk of placing control in law enforcement's hands and/or their families.

The expense of a safe and legal abortion can be financially impossible for women, especially lower-income women. However, even if they are able to cover the cost of an abortion, a woman may have to factor in the cost of travel and lost wages, as well as the cost of any additional tests or consultations. If a woman is required or simply chooses to obtain additional visits to doctors to confirm her pregnancy, this is an extra cost for her. If the woman receives approval for a legal abortion later in the pregnancy, delays can accrue high costs and may place her at risk.

9. Suggestions

- **Sexual Education:** Sexual education must be effectively and mandatorily provided in schools, which includes information on contraceptives, consent and body literacy, so that young adults and adolescents can make informed choices.
- **Male engagement and Shared Responsibility:** To develop programs that engage men in reproductive health discussions and emphasise the aspect of shared responsibility for contraceptives, birth spacing and the importance of supporting reproductive decisions of the partner.
- **Access to Contraceptives:** Awareness and access must be provided on contraceptive methods that are approved and to promote voluntary use in especially before or in the early stages of pregnancy. There must not be any coercive sterilisation processes that will be against reproductive rights.
- **To Eliminate or Simplify Mandatory Board Review:** In cases of fetal anomaly beyond 24 weeks, a single RMP opinion should be sufficient, which prioritises the health of the woman over bureaucracy.

10. Conclusion

Reproductive rights are crucial for the well-being and dignity of women. Article 21 of the Indian Constitution guarantees bodily autonomy and reproductive decision-making under

certain conditions. The rights are necessary for the individuals to make free and informed decisions about family planning, reproduction, sexuality and be free from discrimination. Based on the above study, we conclude that the Indian judiciary is moving towards reproductive autonomy of women. The right is conditional only upon the fulfilment of the criteria mentioned under the Act. The barriers still persist, however judiciary has been playing an important role in bridging the legal and policy gaps in reproductive rights. Reproductive rights are inalienable and foundational to human dignity and equality.

