

**INTERNATIONAL JOURNAL OF LAW  
MANAGEMENT & HUMANITIES**  
**[ISSN 2581-5369]**

---

**Volume 6 | Issue 1**

---

**2023**

© 2023 International Journal of Law Management & Humanities

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

---

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact [Gyan@vidhiaagaz.com](mailto:Gyan@vidhiaagaz.com).

---

**To submit your Manuscript** for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to [submission@ijlmh.com](mailto:submission@ijlmh.com).

---

# Right to Abortion in India: A Critical Appraisal of Legislative and Judicial Initiatives

---

DR. JASWINDER KAUR<sup>1</sup> AND CHITRAREKHA BHARDWAJ<sup>2</sup>

## ABSTRACT

*Abortion rights have been a controversial topic in India for several decades. The debate centers on the right of a woman to make a choice about her body and the authority of the State to regulate the reproductive rights of women. In India, abortion is legal under certain circumstances, but the process of accessing safe and legal abortions remain a challenge for many women. This research paper delves into the complex and fascinating history of abortion rights across the globe, with a particular focus on the United States and India. Through a meticulous examination of landmark cases, including the highly influential Roe v. Wade presents a comprehensive overview of the evolution of abortion rights in America. Additionally, the recent Dobbs v. Jackson Women's Health Organization (2022) case and the contentious impact of political strife on women's rights are explored in detail. In the Indian context, this paper provides an in-depth analysis of Medical Termination of Pregnancy (MTP) Act (1971), and the latest MTP Amendments Act (2021). The 2022 Supreme Court judgment in X v. Principal Secretary, Health and Family Welfare Department, Govt of NCT of Delhi is also dissected, lending new insights into the current state of abortion rights in India. The conclusion offers valuable insights and recommendations for the advancement of women's reproductive rights in both countries.*

## I. INTRODUCTION

There are numerous rights of which not many people are aware of, one of which is the reproductive right of women. We are all conscious of the responsibilities and obligations that our Indian Constitution imposes upon us. One of a woman's most significant rights is her ability to exercise her reproductive options. The reproductive rights of a woman have been acknowledged by the Indian courts in a number of recent cases and notable rulings, which are explicitly secured under the fundamental right to life and are non-negotiable rights that cannot

---

<sup>1</sup> Author is an Assistant Professor at Rajiv Gandhi National University of Law, Punjab, Patiala, India.

<sup>2</sup> Author is a LL.M. student at Rajiv Gandhi National University of Law Punjab, Patiala, India.

be compromised<sup>3</sup>.

It is doubtful that a woman can actively participate in decision-making, whether at the micro- home level or the macro- societal level, while one lacks bodily autonomy, her body is invaded against her consent, and when her choices are shaped by social standards rather than personal desire. The quest for women's rights has indeed been ongoing throughout human history. The knowledge of women's sexuality and their role in reproduction is one of many conflicts that must be overcome in order to secure women's rights and independence. The relationship between these extremely personal and delicate issues and the socio-economic and political framework of the society must be addressed and explored<sup>4</sup>.

The framework for reproductive rights ensures a potent tool for improving women's health and giving them the authority to address the societal issues affecting their lives and health as there are still many instances of violence against women in society and because there are insufficient legal protections for women from such abuse. Although there has been a long-standing movement for women's rights, the idea of reproductive right is relatively new. In India's legal system, the problem of women's reproductive right is not particularly evident. There is no system in place to assess and balance new reproductive procedures, thus a clear legal framework is urgently needed.

At the conclusion, it is praised that the virtue of motherhood has been observed and that there is still hope that it will be seen as a gift from God that is "a blessing and not a curse". In fact, the time has come for women to make a significant reaffirmation in the heart of humanity, where policies and ideas are changing to give them a new destiny, and where women live with dignity and respect. The time has arrived for women to assert their right to self-respect and autonomy. In order to claim that they are women of the highest level of their womanhood and glad to be female and must make an effort to resolve this issue.

#### **(A) Meaning of Reproductive Rights**

Women's rights, reproduction, and health are always interconnected. Women's rights and independence have thus been defined by their participation in all areas of life. Despite the fact that women have been involved in shaping governance, prejudices about women have not shifted. Women's status is marginally better now, although there is still a long path to go.

---

<sup>3</sup> Sofia Bhambri, *Reproductive Rights of Women - In Indian Context*, S. Bhambri & Associates (May 25, 2021), <https://www.sbhambriadvocates.com/post/reproductive-rights-of-women-in-indian-context>.

<sup>4</sup> Imrana Qadeer, *Reproductive Health – A Public Health Perspective*, *Economic & Political Weekly* (Oct. 10, 1998), <http://www.jstor.org/stable/4407272>.

Women's reproductive health is vital to the drive for women's rights and equal liberation<sup>5</sup>.

In simplest terms, the reproductive rights of women refer to their ability to participate completely in social and economic life as well as to achieve highest level of reproductive health. This covers a range of women's human rights including right to autonomy over her own body, right to abortion, right to have safe sex, right to procreation, right to life etc.

### **(B) Right to Abortion**

Feminists and socialists started promoting the right to reproductive freedom as a cornerstone of women's political and personal liberation in the middle of the nineteenth century. The sensitive problems of women's rights, their autonomy, and their right to make decisions about their bodies are inextricably linked to reproductive rights. Reproductive rights have been acknowledged as a component of human rights in all liberal democracies<sup>6</sup>.

The acknowledgement for the reproductive rights of women can be traced in various already existing human rights instruments which are women centric. Reproductive rights are of utmost importance in the era of the ongoing fight for women's rights, both internationally and domestically. Article 6(1) of the International Covenant on Civil and Political Rights forbids arbitrary and unreasonable deprivation of right to life. The right to life and personal liberty is supreme right and is inalienable. However, there are several contentious concerns surrounding this greatest privilege. The right to abortion is one such issue. Every mother has a fundamental right to an abortion and this should be balanced in society as the debates are going on that such right of a mother infringes the right to life of an unborn.

Additionally, it has been established that Indian courts have contributed to the expansion, protection, and encouragement of right to abortion of woman in India. However, the recent decision of United States Supreme Court sparked the debates around the world on the sanction of right to abortion.

### **(C) United States of America**

However, unfortunately developed countries like United States of America at present is facing serious criticism due to the recent decision of Supreme Court of USA which overturned the landmark case of 1973 which established a woman's constitutional right to abortion before fetal viability<sup>7</sup>. In the case of *Dobbs v. Jackson Women's Health Organization*<sup>8</sup>, J. Samuel Alito

---

<sup>5</sup> Id.

<sup>6</sup> Dr. Seema Rani, *Reproductive Right of Women in India: an Overview*, International Journal of Creative Research Thoughts (March 3, 2022), <https://ijcrt.org/papers/IJCRT2203416.pdf>.

<sup>7</sup> *Roe v. Wade*, 410 U.S. 113 (1973).

<sup>8</sup> *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022).

upheld the constitutional validity of Mississippi law that bans abortion after a period of 15 week of gestation and said that “the Constitution of United States of America makes no reference to abortion”.

This judgment reversed a half a century of settled and revered precedent. Overturning of Roe judgment denied reproductive rights to about 40 million women of reproductive age in United States of America<sup>9</sup>. Due to this, the States might start imposing stricter restrictions on abortion. However, there are few States that do not even provide exception to the cases of rape, fatal health risks to woman and incest, also making reproductive choices difficult for low income and rural women. It will also create problems of open and honest counseling of patients which can result into force decision making under the threat of prosecution.

Such steps on behalf of government violate autonomy, bodily integrity and results into inequitable effects. This new instance of judiciary on abortion fall disproportionately on young women, women of color, women from low income background or living in rural areas and those who are the victims of abusive relationship.

Following Roe Many of the rights enjoyed by vulnerable groups may not be welcome in America. The disparity is worse because Medicaid, a government-funded health care program for low-income people, is not allowed to cover abortion procedures, and because the US does not ensure health services. Without the legal protection offered by Roe v. Wade, many disadvantaged women will be forced into unintended pregnancies, and the incidence of pregnancy related deaths is predicted to rise by at least 20%<sup>10</sup>.

In the movement to advance women’s reproductive rights and the right to health, the US is quickly becoming an aberration and oddity. It is the high time to take a toll and recognize the reproductive rights of women around the world. Reproduction is the gift of nature, this right is already embedded by the nature to the women, still women around the world are asking for the recognition of those rights which are already theirs.

## II. CONSTITUTION VIS-À-VIS REPRODUCTIVE RIGHT

Reproductive right is crucial in determining the scope of all civil liberties and human rights because they encompass a variety of civil, social, economic, and political rights, such as the

---

<sup>9</sup> M.C. Chakrabarti, *Organizing for reproductive and birth justice: "fund us like you want us to win"*, Nonprofit Quarterly (2022), <https://nonprofitquarterly.org/organizing-for-reproductive-and-birth-justice-fund-us-like-you-want-us-to-win/>.

<sup>10</sup> Gostin, L.O., *The US turns its back on women's reproductive rights*, The British Medical Journal Publishing Group (2022), <https://www.bmj.com/content/377/bmj.o1206>.

right to equality and the prohibition of discrimination, the right to life and health, the right to privacy and information, and the right not to be tortured or treated cruelly.

India has ratified a number of international agreements that uphold reproductive rights, including the International Covenant on Civil and Political Rights (ICCPR), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Convention on the Rights of the Child (CRC), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), and the. The judiciary and Article 51(c) of the Indian Constitution have established the government's constitutional duty to uphold treaty and international law responsibilities.

The Constitution, as the protector of a republic, expresses grave concern for the protection of women's rights. The many unfinished clauses of the Indian Constitution control a woman's right to abortion. The Human Rights Instruments had a significant impact on the Constitutional framers who drafted the Indian Constitution, who then included such clauses in the document<sup>11</sup>; the right to good health has been recognized as a fundamental right.

#### **(A) Fundamental Rights**

The Indian Constitution recognizes a number of rights as fundamental rights in Part III, including the right to equality under **Articles 14**. Equal protection under the law is guaranteed by Article 14. Further, **Article 15** forbids discrimination against citizens based on their race, religion, caste, sex, or place of birth, and ensures that they are given equal chance when applying for public employment (Article 16). The state may therefore establish particular arrangements for the welfare of women and children, according to Article 15(3) of the constitution. Further, under **Article 21**, which states that "no person shall be deprived of his life or personal liberty except in according to the procedure established by law", and ensures the right to life.

The right to life entails the liberation from all forms of exploitation and the ability to live with dignity. The abundance of rights provided under Article 21 of the Indian Constitution has grown over time as a result of the liberal interpretation given to the right to life.

The ability to procreate and have control over one's reproductive system gives rise to the right to abortion. The specific issue of balancing the freedom and life of the born and the unborn is now raised. One of the fundamental human rights recognized by the Indian Constitution, the right to privacy, has emerged as a result of judicial activism. The status of women has improved as an outcome of Justice Subba Rao's ruling that the right to privacy is a crucial component of personal liberty<sup>12</sup>.

---

<sup>11</sup> Supra Note 4

<sup>12</sup> Kharak Singh v. State of Uttar Pradesh, AIR 1963 SC 1295.

Further, to justify this, reference can be made to the case of *Suchita Srivastava and Anr. v. Chandigarh Administration*<sup>13</sup>, where the Apex Court opined that the reproductive right is the facet of the personal liberty as provided under the Article 21 of the Constitution. According to the Supreme Court, it is critical to note that procreative decisions can be used to both reproduce and not procreate. The most important thing is to respect the right to privacy of women, decency, and autonomy over her own body. This indicates that there must not be any limitations on a woman's ability to practice her reproductive choices, like her ability to decline sexual activity or, instead, to persist on using contraceptives.

Contrarily, despite equal rights as provided by the Constitution, women in India continue to be a vulnerable group. The underlying cause for this is primarily social and cultural attitudes of the civilization. The Supreme Court has also frequently recognized an individual's right to medical assistance<sup>14</sup>. Health is a fundamental human right that is also provided to Indian citizens by the constitution, although its achievement is only incidental. In addition to this, the Indian Constitution emphasizes the prohibition of gender discrimination and imposes a duty on every citizen to repudiate behaviors that are disrespectful to women's dignity.

### **III. LEGISLATIVE FRAMEWORK OF REPRODUCTIVE RIGHT: CRITICAL APPRAISAL**

Women's rights and freedoms are worthless lacking access to reproductive health care, which is an essential component of women's lives. Without the ability to reproduce, one cannot fully exercise their right to life, privacy, health, etc. Women's health, particularly reproductive health, has been neglected in India. The present health laws, programmes, and policies in India need to be given a critical examination.

It is necessary to address the problems with women's reproductive health by modifying the laws and health care programs to suit the requirements of Indian women. The ability to reproduce, become pregnant, and give birth safely is ensured by reproductive health. It also stipulates that there must be a provision for medical treatment in the event of any gynecological or other disease.

#### **(A) The Medical Termination of Pregnancy Act, 1971**

By liberalizing the provisions of Section 312 of the Indian Penal Code, 1860, which establishes guidelines for getting a legal abortion, India underwent a fundamental shift in its abortion laws in 1971. The characteristics of the abortion law have changed with the adoption of the new Medical Termination of Pregnancy Act, 1971 (hence referred to as MTP). In 1971, the Medical

---

<sup>13</sup> *Suchita Srivastava and Anr. v. Chandigarh Administration*, (2009) 9 SCC 1.

<sup>14</sup> *Paramananda Katara v. Union of India*, (1989) 4 SCR 997.

Termination Pregnancy Act was passed, and it went into effect in 1972.

**Section 3** of the MTP Act, 1971 allows “for the termination of pregnancy (abortion) by a registered medical practitioner working under good faith” in the following situation:

- a) If a situation arises where the continuance of pregnancy would induce a risk to the life of the pregnant woman or may cause grave injury to her physical as well as mental health.
- b) In case of pregnancy which is the consequence of rape or intercourse with a lunatic woman.
- c) Where pregnancy is the result of failure of contraceptive method or device.
- d) In case of Eugenic which means “there is a substantial risk that the child born would suffer from any physical or mental deformity or disease”.

Instead of giving women the freedom to make decisions about their own bodies, the Act sought to eradicate the widespread practice of illegal abortion. In reality, the main goal was to stop India’s population expansion by legalizing abortions of unwanted pregnancies in cases when contraceptive methods had failed<sup>15</sup>.

The Act, which consists of eight provisions, intends to grant women the right to privacy. This right includes the ability to<sup>16</sup> -

1. space and restrict pregnancies (i.e., choose whether or not to have children) and
2. Make decisions regarding her own body.

The law made clear that pregnant women can lawfully choose to abort whether they are married, divorced, or widowed. However, because of a lack of knowledge regarding the Medical Termination of Pregnancy Act and the services offered for the purpose, unsafe and illegal abortions are carried out. Without a doubt, the Act has contributed significantly to the modernization of Indian society through the application of the legal system. On the other hand, the Act marks a significant step in releasing women from their long-held fear of abortion, which is also still viewed as a sinful and unlawful act.

### **(B) The Medical Termination of Pregnancy (Amendment) Act, 2021**

One aspect of eliminating gender discrimination is changing the law on abortion to the benefit

---

<sup>15</sup>Darshini S., *Reproductive rights of women in a patriarchal society - an overview*, International Journal of Law Management & Humanities, 3, (2020), <https://www.ijlmh.com/reproductive-rights-of-women-in-a-patriarchal-society-an-overview/>.

<sup>16</sup> Ibid



of pregnant women. The Medical Termination of Pregnancy Bill (MTP Bill) 2020 was a step forward because it reduced the number of risky unregulated abortions.

The amendment was accepted by the Lok Sabha on March 17, 2020, approved by Parliament and the Indian President, and it became a law on March 25, 2021. In order to give more women access to safe and legal abortion treatments for medical, eugenic, humanitarian, or cultural reasons, the MTP statute was revised.

- **COMMENDABLE CHANGES TO THE ACT -**

1. **Extension in Gestation Period** - This modification also takes into account the fact that some “birth abnormalities” are only detectable later in pregnancy, after the first trimester. Abortion is allowed now during 20-24 weeks. This increase in gestation period for 24 weeks allows pregnant women to undergo abortion on the advice of two medical practitioners.
2. **Recognizing pregnancies in relationships other than conventional marriages** - The definitions of “pregnant married woman” and “her husband” have been changed, respectively, in the Amendment. Pregnancies outside of marriage are effectively destigmatized by these ostensibly little improvements, which reflect shifting social norms. Due to the definitional modification, incidents of pregnancies occurring outside of the traditional institution of marriage would now fall under the purview of the MTP Act. By doing this, the legal presumed exemption will be expanded and statutory discrimination against married and single women would be eliminated.
3. **Failure of contraceptive as a ground for abortion** - The addition of unintended pregnancies brought on by the failure of contraception as a justification for abortion is another good modification. The original MTP Act prohibited abortions unless it could be demonstrated that the pregnant woman was in extreme danger or that there was a grave risk of a serious physical or mental defect. The Amendment Act permits unintended pregnancies to be sufficient grounds for abortion on their own.
4. **Setting up Medical Boards** - The statutory requirement to establish Medical Boards for cases lasting longer than 24 weeks is another positive step. Currently, medical boards are established by different High Courts and the Supreme Court after hearing writs submitted by women and are not in any way legally required. By requiring the formation of a Medical Board by law, a pregnant woman will no longer need to go before the Supreme Court or the High Court to request the formation of a Medical Board to hear her request for an abortion after 24 weeks.

- **Drawbacks of the Legislation**

The Amendment Act 2021 is not sufficiently comprehensive to transform the panorama of abortion rights in India, notwithstanding the admirable modifications that have been made. The Act's failure to be rights-based law is its main detractor, according to critics. Section 3 of the Act still requires a doctor's assessment. It is not just up to the pregnant woman and her partner to decide whether to get an abortion. This suggests that even though a pregnant woman wishes to choose an abortion, her consent is worthless if it is not accompanied by approval of medical practitioner. The MTP Act maintains its general retrograde legislative posture on the subject of women's reproductive autonomy by maintaining the provision for a medical practitioner's opinion.

A rights-based approach to abortion regulation would also be consistent with the Supreme Court's seminal decision in *KS Puttaswamy v. Union of India*<sup>17</sup>, which recognized women's constitutional right to choose their reproductive options and incorporated the right to "abstain from procreating" into other fundamental rights like privacy, dignity and bodily autonomy. A change along these grounds will also enable Indian legal system to more closely resemble international rules that protect women's right to abortion without requiring prior consent from a third party<sup>18</sup>.

Another important difficulty with the Act is that it only permits abortions in cases where continuing the pregnancy would "prejudice the life of the pregnant woman or cause grave injury to her mental and physical health" or "if there is a substantial risk that, if the child is born, it would suffer from serious physical or mental abnormality". This holds true in both situations, whether the time frame is 20 weeks or 20–24 weeks as provided in the Section 3 of the Act. This small spectrum of situations in which pregnancies can be medically terminated ignored factors like death of partner and variations in socioeconomic status that may make the pregnant woman and her spouse unable to raise a kid satisfactorily. As has been noted previously, the Act "makes motherhood the norm and abortion the exception" by failing to take the right to an abortion at any time into account<sup>19</sup>.

If this statute only allows for "foetal abnormalities" in cases when pregnancy is more than 24 weeks, a woman would still need to file a writ petition with the court in question if she wants

---

<sup>17</sup> Justice K. S. Puttaswamy (Retired) v Union of India And Ors, (2017) 10 SCC 1.

<sup>18</sup> S. Rao, *The Medical Termination of Pregnancy (Amendment) Act, 2021- progressive but not far enough*, Live Law (2021), <https://www.livelaw.in/know-the-law/medical-termination-of-pregnancy-amendment-act-2021-analysis-drawbacks-182913>.

<sup>19</sup> S. Kumar, *Why the MTP bill is not progressive enough*, The Indian Express, March 21, 2021, <https://indianexpress.com/article/opinion/columns/medical-termination-of-pregnancy-bill-passed-7241943/>.

to have the pregnancy terminated for a reason other than the presence of a “foetal abnormality”. For rape-related pregnancies, for instance, abortions after 24 weeks are not allowed. In these situations, the pregnant rape victim will have no choice but to seek legal intervention in order to get authorization for an abortion. The situation of rape victims seeking abortions after 24 weeks will be made harsher by this. This can be witnessed in the recent judgment of Delhi High Court, where Court allowed 33 weeks pregnancy on the ground of “foetal abnormalities”.<sup>20</sup>

The predicament of an unwanted pregnancy faced by victims of sexual assaults is one of the clearest instances in point which shows that abortion is not a right but rather a privilege. Giving consent for a pregnancy termination after the legal deadline becomes a professional intervention rather than a right to which they are naturally entitled in such circumstances.

This line of reasoning is endorsed by *ABC through her Guardian v. State of Maharashtra*<sup>21</sup>, *Pramod A. Solanke v. Dean of BJ Govt. Medical College*<sup>22</sup> and *X minor through her Guardian v. State of Madhya Pradesh*<sup>23</sup>. These cases involve the rape victims who were permitted to have their pregnancies medically terminated because there appeared to be a danger to their lives. This suggests that the only option for ending rape-related pregnancies after the twenty-four-week mark (as it currently stands) is to obtain permission through a Writ Petition and to endure a drawn-out and arduous legal process<sup>24</sup>.

The MTP Act, 1971 clearly restricts the circumstances under which women may receive abortion services from licensed medical professionals rather than granting a fundamental right to initiate abortion. As a result, from a medical perspective, ending a pregnancy is no longer a right but a therapeutic procedure or privilege.

Lastly, even though the Amendment Act significantly broadened its reach by changing the word ‘husband’ to ‘partner’, it still restricts its applicability to a ‘relationship’ framework, excluding groups like sex workers.

#### IV. JUDICIAL INITIATIVE TOWARDS REPRODUCTIVE RIGHT

The Supreme Court of India and the State High Courts have made significant breakthroughs by acknowledging that the denial of reproductive rights is an infringement of women’s fundamental and human rights. This section outlines substantial verdicts that have made it abundantly clear that women’s right to reproductive autonomy and healthcare provide rise to a

---

<sup>20</sup> Mrs. X v. GNCTD & Anr., 2022 LiveLaw (Del) 1145.

<sup>21</sup> ABC through her Guardian v. State of Maharashtra, (2018) 4 Mah LJ 374.

<sup>22</sup> Pramod A. Solanke v. Dean of BJ Govt. Medical College, (2020) SCC OnLine Bom 639.

<sup>23</sup> X minor through her Guardian v. State of Madhya Pradesh, (2021) SCC OnLine MP 695.

<sup>24</sup> ABC v. State of Maharashtra through Rajapur Police Station and Anr., 2021 SCC OnLine Bom 419.

variety of State obligations, notably providing inexpensive, prompt, and elevated maternity health care, assuring access to the complete spectrum of forms of contraception in a non-coercive, elevated, and target-free way, and prohibiting forced pregnancy.

Recent abortion-related legal precedent in India also illustrates how the judiciary has articulated reproductive rights in a progressive manner. The Supreme Court of India acknowledged and recognized women's reproductive autonomy as a fundamental right and a facet of Article 21 of the Constitution. The freedom of a woman to make reproductive decisions is without a doubt a component of personal liberty as defined by Article 21 of the Indian Constitution<sup>25</sup>.

The Bombay High Court triumphed that the right to abortion is a component of the fundamental right to live in dignity as provided under Article 21 of the Constitution. In the 2016, in the case of '*High Court on its Own Motion v. State of Maharashtra*'<sup>26</sup>, the decision of the Court improved the access to abortion for women who are prisoners. According to the judgment, forcing any woman to continue the pregnancy "represents a breach of bodily integrity of woman and aggravates the mental agony".

The above discussed judgments take into account the importance of access to second-trimester abortions for women's physical and mental health. These initiatives by the Supreme Court are progressive and achieve the goal of women empowerment.

### **(A) Recent Development**

The recent judgment of the Supreme Court triumphs the abortion rights provided to the women. In the significant and landmark judgment of the Apex Court in the case of *X v. Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi*<sup>27</sup>, declared that unmarried women are equally entitled and permitted to seek abortions for pregnancy after 20 weeks that result from a consensual sexual relationship. The Court held that it is unconstitutional and against the constitutional scheme which profoundly supports women empowerment and gender equality, to bar unmarried women who conceive outside of a live-in-relationship from accessing medical abortion.

#### **1. Background of the Case**

The situation originated when a 25 year old woman requested a pregnancy termination at 23 weeks and 5 days after her partner refused to get married to her. She claimed that her pregnancy was the result of a consensual relationship but that she was unable to give birth and her partner

---

<sup>25</sup> Suchita Srivastava & Anr v. Chandigarh Administration, (2009) 11 S.C.C. 409.

<sup>26</sup> High Court on its own Motion v. The State of Maharashtra, W.P. (CRL) No. 1/2016.

<sup>27</sup> X v. Principal Secretary, Health and Family Welfare Department, Govt. of NCT Of Delhi, C.A 5802/2022.

refused to marry her. She was denied interim relief by the Delhi High Court Division Bench and stated the reason that Medical Termination of Pregnancy Rules, 2003 do not apply to unmarried women whose pregnancy resulted from a consensual relationship.

She subsequently filed the petition before Supreme Court, which, on July 21, 2022, in which the Apex Court issued an ‘ad-interim’ decision permitting the appellant to terminate the pregnancy, subject to the opinion of medical board established by the ‘AIIMS Delhi’ reaching the conclusion that the termination of pregnancy could be performed without endangering the woman’s life.

In light of the fact that Rule 3(b) refers to a woman’s “change in marital status” and uses the expressions “widowhood or divorce”, the Supreme Court majority felt that the Delhi High Court had adopted an “unduly restrictive interpretation”. It was observed that the phrase “change in marital status” required a “purposive interpretation”.

The MTP (Amendment) Act, 2021 has replaced the word ‘husband’ in Explanation 1 to Sec. 3(2) of the said Act with the word ‘partner’. The court stated that it would be contrary to the purpose of the laws to exclude single and divorced women from the application of the laws. Further, the Bench stated that “there is no basis to deny unmarried women the right to medically terminate the pregnancy, when the same choice is available to other categories of women”<sup>28</sup>.

**2. Distinction between Unmarried and Married Women Unsustainable** – The Court held that every women is entitled to safe as well as legal abortion whether married or unmarried. On this point, the Apex Court pointed out that the MTP (Amendment) Act, 2021 does not make a distinction between married and unmarried women.

The Bench observed that interpreting Rule 3B(c) of the MTP Rules to apply exclusively to married women could promote the notion that only married women participate in sexual activity. Constitutionally speaking, this cannot continue. The artificial division between married and single women is untenable. To freely enjoy these rights, women need to be autonomous.

**3. Reproductive Right: A Part of Individual Autonomy** – The mother’s body is essential to the foetus’ survival. As a result, the choice to end is solidly grounded in their right to bodily autonomy. A woman’s dignity will be violated if the State compels her to carry an unintended pregnancy to term.

---

<sup>28</sup> P. Sharma, *All women entitled to Safe & Legal Abortion, distinction between married & unmarried women unconstitutional : Supreme Court interprets MTP rules*, Live Law (2022), <https://www.livelaw.in/top-stories/all-women-entitled-to-safe-legal-abortion-distinction-between-married-unmarried-women-unconstitutional-supreme-court-210548>.

The Court observed that an unmarried woman is at same parlance like married woman and have seminal reproductive rights. The goal of MTP Act section 3(2)(b) is to let women to have an abortion between 20 and 24 weeks. Therefore, it would be violative Article 14 of the Constitution to include only married people while excluding unmarried women.

Hence, by using purposive interpretation, the Court interpreted the law in an applauding manner and observed that law must be interpreted while keeping changing social mores in mind. Societal norms and mores change and these must be adapted by law.

**4. Rape includes ‘Marital Rape’ for the Purpose of MTP Rules** – The Apex Court held that “the survivors of sexual assault, rape or incest shall be considered for termination of pregnancy up to 24 weeks”. The Court was of the view that the group of survivors of sexual assault or rape may include married women as well. The term ‘rape’ generally refers to forced sexual contact with a person, whether or not such forced contact takes place during nuptials, without that person’s knowledge or consent. A woman may become pregnant as a result of her spouse engaging in non-consensual sexual activity with her. We would be negligent if we failed to acknowledge the reality of intimate relationship abuse, which can manifest itself in rape. It is terribly disappointing that there is the misunderstanding that gender-based violence is primarily or largely the fault of strangers.

Hence, this judgment is applauding and a huge step towards the right of bodily autonomy of women. However, there is long way to go as even today, in India, a majority of women do not have access to safe abortion services. Due to the difficulty in obtaining legal abortion services, women continue to use risky methods and self-induce abortions, which might occasionally worsen their health. Removing the stigma associated with reproductive rights in India and raising awareness of their significance are crucial.

## V. CONCLUSION AND SUGGESTIONS

It is stated that until women acknowledge and demand authority over their own bodies and reproductive processes, there is no freedom, no equality, and no complete human dignity and personhood attainable for them. Every person’s conscience and every woman’s conscientious decision to have children are their own<sup>29</sup>.

The demands, restrictions, and opportunities for women’s reproductive behaviour are established by cultural structures, which have a significant impact on the Indian milieu. Gender biased family norms and practises substantially impede the exercise of women’s reproductive

---

<sup>29</sup>Sushma Sharma, *A Study of the Legal Framework for the Protection of the Reproductive Rights of Women in India* (2009), <https://ir.nbu.ac.in/bitstream/123456789/1369/1/235167.pdf>.

right. At a higher level, there are clear inconsistencies in how policies are made, services are offered, and how demographic changes, preferences for family size, and family structure preferences affect the need for contraception and abortion.

In spite of the fact that India was among the first countries in the world to establish legal and regulatory procedures ensuring access to abortion and contraception, women still face significant barriers to properly practicing their reproductive rights, thus, it is high time to make amends in this regards.

As a result, without a space for the defence of reproductive right, the fight for the empowerment of women's rights will fall short. Tangible legal structure is the primary requirement for attaining this right. Therefore, it is imperative that the Indian legal system's provisions for reproductive right be passed into law and put into effect.

The aforementioned instances highlight the important and developing role India's judiciary may play in addressing the ethical, moral, and practical obstacles that prevent women and girls from exercising their right to reproductive autonomy.

Additionally, Indian courts will make decisions in cases that have been pending for a while, such as those that ask for reform of the MTP Act, a stronger legal framework to prevent child marriage, or even on new topics like surrogacy. The legal protections outlined in the verdicts previously mentioned serve as a powerful call to action for the judiciary to continue upholding and defending women's reproductive rights, which are defined to include both reproductive health and personal freedom, including for underrepresented groups in future legal proceedings.

## **SUGGESTIONS**

Supporting human rights requires defending reproductive freedoms and offering sexual and reproductive health care. To protect the right to reproductive health, it is important to address the many social factors that affect health, like income disparity, poverty, as well as the marginalisation of health care. Moreover, it is crucial that the state acknowledges and combats discrimination based on race, ethnicity, caste, religion, and any other factors specified by the Constitution, as well as discrimination based on sexuality, gender identification, and sexual orientation.

Therefore, programs and policies should be aware of and fully implement reproductive rights that extend beyond maternity care and contraceptive methods; they must cover a wide range of requirements like nutrition, water, education, non-discrimination, freedom from violence, access to affordable, accessible, and high-quality care for abortion, transmittable and non-communicable diseases, and also access to information. The following are the suggestions put

forth by NHRC based on the assessment for various Ministries, such as Health and Family Welfare, Women and Children, Finance, Home, and other pertinent ones at the federal and state levels<sup>30</sup>.

- a) Increasing adherence to the international human rights norms that India has approved in order to safeguard, advance, and uphold human rights and the right to reproductive health in India.
- b) Ensure that everyone, irrespective of age, marital status, ethnicity, employment position, caste, religion, handicap, gender, etc., has access to accurate information on laws, programs, and services as well as reproductive healthcare.
- c) Prejudice, as is among the most significant social determinants of health, must be eradicated in settings that provide medical care. To provide fair access for disadvantaged populations, special measures must be taken.
- d) Acknowledge gender based violence as a significant factor influencing both reproductive and general health, and support both its prevention and a forceful intervention via health programs and services.

Further, after the mindful deliberation of this study, following are the suggestions put forth –

- a) Several acts are necessary on the legal front as well. It is obvious that for many Indian women, the legalisation of abortion during the past 30 years has had minimal impact. The first step in guaranteeing the implementation of this right must be a push to educate and inform women and their families about the legal right to an abortion.
- b) Equally important to educating the general public is educating service providers about the specifics of the law. The MTP Act itself needs to be revised as well.

The modification to the legislation that was passed the previous year to simplify the process for providers to register demonstrates that pressure from devoted stakeholders and constituencies can have an impact. Subsequent developments to the Act must, nevertheless, concentrate on making it simpler to implement and more transparent.

\*\*\*\*\*

---

<sup>30</sup> *Sexual Health And Reproductive Health Rights In India*, NHRC (2008), [https://nhrc.nic.in/sites/default/files/sexual\\_health\\_reproductive\\_health\\_rights\\_SAMA\\_PLD\\_2018\\_01012019\\_1.pdf](https://nhrc.nic.in/sites/default/files/sexual_health_reproductive_health_rights_SAMA_PLD_2018_01012019_1.pdf).