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# Women's Autonomy over Sexuality and Reproductive Health in India

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## ABSTRACT

*This article aims to critically analyze the concept of women's autonomy over their sexuality and reproductive health within the Indian context. It explores the historical background, legal framework, challenges, emerging trends, and judicial attitude surrounding this topic. By examining key legislative reforms, judicial decisions, and societal dynamics, this article seeks to shed light on the complexities and opportunities for progress in ensuring women's autonomy and reproductive rights in India.*

*The article further emphasizes the importance of promoting comprehensive sexuality education, improving access to healthcare services, and advocating for policy reforms that prioritize women's agency and well-being. Ultimately, the objective is to contribute to the ongoing discourse on women's rights, shape public opinion, and inform policymakers, legal practitioners, and activists working towards achieving greater gender equality and women's empowerment in India.*

**Keywords:** *Autonomy, reproductive rights, marital rape, harassment, abortion.*

## I. INTRODUCTION

Women's sexual and reproductive health autonomy is a fundamental aspect of their overall well-being and human rights. It encompasses the ability of women to make informed decisions regarding their bodies, sexuality, contraception, pregnancy, childbirth, and access to healthcare services. Recognizing and respecting women's autonomy in these matters is crucial for ensuring their dignity, equality, and agency.

India's legal framework provides both positive and negative aspects concerning women's autonomy over their sexual and reproductive health. On the positive side, Article 21 of the Indian Constitution provides every individual with the "right to life, liberty, and personal autonomy which includes the right of women to make decisions about bodily and reproductive health". The Medical Termination of Pregnancy Act grants women the right to access safe and legal abortion services, empowering them to make choices based on their physical and mental health. The Sexual Harassment of Women at Workplace Act promotes a safer working place,

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enabling them to exercise their autonomy and participate in the workforce free from sexual harassment.

However, challenges persist. The absence of specific legislation criminalizing marital rape remains a significant negative aspect. This gap infringes upon women's autonomy and consent within the institution of marriage. Gender-based violence and discrimination pose further obstacles, limiting women's autonomy over their sexuality and reproductive health. Cultural stigmas and societal norms surrounding women's sexuality impede open dialogue and access to comprehensive information, hindering informed decision-making. Disparities in accessing healthcare services, particularly in rural areas and marginalized communities, can further restrict the autonomy of women to make the reproductive choices

Acknowledging these positive and negative aspects is essential to address the complexities of women's sovereignty over their reproductive rights in India. It calls for ongoing efforts to enact comprehensive legislation, raise awareness, promote gender equality, and ensure accessible and inclusive healthcare services. By doing so, we can create an environment where women's autonomy is respected, enabling them to make informed decisions, protect their well-being, and actively participate as equal members of society.

## II. HISTORICAL BACKGROUND IN INDIAN CONTEXT

### (A) *Vedic period*

During the ancient period, women held relatively higher and dignified positions in society and enjoyed certain rights and autonomy. Women were free to take part in battles, archery, equestrianism, education, socio-cultural activities, and decision-making processes and the freedom to select their companions represented the quality of women's place in the Rig Vedic social sphere. Women scholars such as Ghosa, Lopamudra, Gargi and Maitreyi actively participated in philosophical debates and contributed to knowledge.

Women enjoyed autonomy in their lives and those who fulfilled their duties as wives were considered *ardhangini* (better half) or *sahadharmini* (equal partner) in the early Vedic family system. Women were never forced to marry<sup>3</sup>. No trace of the tradition of child marriage is found in the Vedas. Girls and women were permitted to marry after completion of their education and puberty, they were free to select their partner through *swayamvara* (choosing a husband). It was observed that during the Vedic period, both polygamy and polyandry existed. Widows'

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<sup>3</sup> Bhaswati Pal, *The Saga of Women's Status in Ancient Indian Civilization*, 23, Misc. Geogr., 180, 181-182, 2019, <https://sciendo.com/article/10.2478/mgrsd-2019-0012> (last visited on January 24, 2025).

remarriage was socially allowed and accepted in society<sup>4</sup>.

In Vedic civilization, women had complete economic independence and engaged in various professions and work such as teaching, agriculture, spinning and weaving garments, health, and well-being. However, married women were restricted from inheriting their father's property.

Vatsyayana's Kamasutra underlines the Rig Vedic's sexual eroticism and emotional fulfilment in life and pays special focus to the female's preference and certification during sex. Prostitutes and prostitution were never deemed undignified or humiliating rather these females were illustrated as classy women free of traditional clutches, in Rig Vedic society<sup>5</sup>. Furthermore, sex workers were defined as elegant, talented, and rich within the framework of society. There was a demonstration of a vast understanding of sexuality through divine prostitution in Vedic culture. As a result, early Vedic civilization attempted to portray an image of idealized conditions of women's sexuality<sup>6</sup>.

In the later Vedic period, women were depicted as the root of *dharma*, *pleasure* and *prosperity*<sup>7</sup>. They had glorified and respected positions in society and possessed unqualified economic independence. During the epic period, the Devadasi practice became popular in which women were psychosexually committed to God. These devoted girls and women were destined to spend their lives serving the priests and pilgrims. Women had "sexual liberty" and played major roles and positions in the war during the later Vedic civilization.

### ***(B) Age of Manusmriti***

With the introduction of manusmriti, a Hindu legal text, the condition of women underwent significant changes. Manusmriti prescribed social norms and hierarchies that curtailed women's autonomy and subjected them to patriarchal control. It imposed restrictions on their education, limited their property rights, and reinforced the notion of women's subservience to men. For instance, it restricted women's freedom to choose their partners, emphasized their dependence on male relatives, and prescribed harsh punishments for transgressions.

Besides, motherhood was glorified and society imposed a duty on women to gratify the societal preference for male progeny. During this period, women's contributions were outweighed by men's to society. With the codification of Manusmriti, women were denied inheriting any kind of property, robbing them of their freedom and individuality. Manu claimed that "nothing that must be done independently, even in her own house by a girl, a young woman, or even an elderly

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<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

woman". These laws and regulations also declared that "a female must be subject to her father in childhood, to her husband in youth and her son or sons when her husband is dead; a woman must never be independent"<sup>8</sup>. In the age of Manusmriti, women's status was characterized as subordinate to men.

### ***(C) Mughal Era: An Overview of the Plight of Women***

Within the Mughal social hierarchy, women's responsibilities were broadly determined by their relative's historical past and caste. Aristocratic women had more education opportunities and had substantial socio-cultural influence in contrast to women who belonged to lower castes and classes. Nevertheless, they were subjected to stringent social norms and rules that limited their mobility and individuality which affected the shaping of women's role in society. Due to religious and cultural factors along with socio-political circumstances, there was a significant distinction in the status of Hindu and Muslim Women<sup>9</sup>. In general, Muslim women had a better reputation and honour in society than their Hindu counterparts. This is because Islam gave girls and women more legal and social safeguards compared to Hinduism.

The Mughal period saw the birth of Unani and Ayurvedic medicines, female doctors commonly known as midwives or Dia. These practitioners cared for and provided treatments to women for a variety of diseases entailing reproductive illnesses such as childbirth, menstruation, and fecundity issues. Several detrimental practices were discovered throughout the Mughal period, such as female infanticide and child marriage. These practices were frequently entrenched in socio-cultural conventions and they had a substantial impact on women's health. Various treatments were utilised to prevent or terminate a pregnancy through contraception and abortifacients at that time. These accepted practices were employed by women to avoid or end their pregnancies through a variety of measures including withdrawal, herbal remedies, and intake of beneficial herbs<sup>10</sup>. However, these methods were often volatile and caused major health consequences for women. Using such approaches is regularly deemed unethical and disgraceful and women who are detected utilizing these methods and practices have to face social stigma and legal repercussions.

Women's beauty and sexuality were regularly glorified in literature and art. Many painters and writers described women as their physical attractiveness and sensuality in their works. Women in the imperial harem were often appreciated for their beauty and sensuality, some women took

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<sup>8</sup> Ibid.

<sup>9</sup> Mohd Asim Zaidi, *The Role of Women in the Mughal Empire*, 11, IJRASET, 7496, 7497, 7505-7507 (2023), <https://www.ijraset.com/best-journal/role-of-women-in-mughal-empire> (last visited on January 25, 2025).

<sup>10</sup> Id.

the benefit by swaying the emperor for their own or their families' interest<sup>11</sup>. Mughal art and literature are the portrait of female grandeur and sexuality which reflects both the constraints and possibilities accessible to women at that time. Only a few women were able to leverage their beauty and sexuality to achieve authority and influence.

The Mughal era witnessed some improvements in women's condition. There were implementations of policies aimed at empowering women and enhancing their autonomy. Various steps were taken to discourage child marriage and promote widow remarriage, thereby challenging prevalent societal norms. Laws and rules were passed to ensure inheritance rights for women, enabling them to exercise control over property and resources to some extent.

However, it is important to note that these advancements were limited to certain sections of society, particularly the nobility and elite. The majority of women, especially those from marginalized communities continued to face significant challenges in asserting their autonomy and rights.

#### ***(D) Colonial period/ British Rule***

The advent of British colonial rule in India brought about both positive and negative changes in women's autonomy. The British administration introduced legal reforms that aimed to improve women's rights, such as the abolition of sati (widow burning) and the legalization of widow remarriage<sup>12</sup>. These reforms challenged oppressive customs and practices prevalent in Indian society, providing some degree of autonomy to women.

Under British rule, several laws were implemented that influenced women's autonomy over sexuality and reproductive health. The Hindu Widow Remarriage Act of 1856 allowed widows to remarry, breaking the societal taboo surrounding widowhood. The Age of Consent Act of 1891 upraised the age of consent for minor girls, protecting them from child marriages and exploitation<sup>13</sup>.

However, it is important to note that colonial policies were also influenced by patriarchal values, and women continued to face various forms of discrimination and limited agency. The social and cultural practices deeply rooted in Indian society persisted even after India gained independence, posing challenges to women's autonomy.

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<sup>11</sup> Id. at 8.

<sup>12</sup> Jaspreet Kaur, *Status of Women in India: In British Period*, 6, 312, 313 (2018), <https://ijert.org/papers/IJPUB1801047.pdf>

<sup>13</sup> Age of Consent Act, 1891. This Act raised the "consenting" age of Indian Brides from 10 to 12 years. This bill was introduced by Sir Andrew Scoble in the Imperial Legislative Council. On 26 January 1950, this act was repealed by the Indian Government.

The historical background in the Indian context sheds light on the evolution of autonomy over sexuality and reproductive health to women, demonstrating the shifts in societal attitudes, legal provisions, and cultural practices. Understanding this historical context is crucial for comprehending the present challenges and formulating strategies to enhance women's autonomy and rights in contemporary society.

### III. PRESENT SCENARIO IN INDIA

#### (A) Marital Rape violates women's sexual autonomy

*"Sexual Freedom means freedom from having to have sex"*

Lily Tomlin

Since the 1970s, Rape has been viewed as a form of male tyranny and control over women by the Indian Feminist group. Anyhow the Indian Legal system still views "rape" as a matter of loss of women's honour<sup>14</sup>. Rape remains a severe issue for Indian women. According to the "Declaration on Elimination of Violence Against Women", 1993, 'violence against women' is an expression of an uneven relationship between men and women in society. It also denotes an infraction of the human rights of women<sup>15</sup>. Rape is globally recognized as a type of gender-based violence inflicted on a woman only because of the conviction that women are subordinate to men. Rape is not always motivated by a desire for sex or lust. Rape is a power and control issue through which men maintain their dominance over women's bodily and other actions. In other circumstances, it is a representation of a clash between two or more factions. Rape incidents might be politically stimulated to exact revenge on political adversaries. Many Feminist Scholars demystify rape as a crime of power and control rather than one driven merely by sexual desire.

Section 375 of the Indian Penal Code (Section 65, Bharatiya Nayay Sanhita, 2023), defines rape as "*sexual intercourse with a woman against her will, without her consent, by coercion, misrepresentation or fraud or at a time when she has been intoxicated or duped or is of unsound mental health or in any case, is she is under 18 years of age and when she is unable to communicate consent.*"<sup>16</sup>

However, an exception to this act is provided, that is, "*sexual intercourse or sexual acts by a*

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<sup>14</sup> Nicole Westmarland & Geetanjali Gangoli, *International Approaches to Rape* 101, Bristol University Press (2011).

<sup>15</sup> Usha Tandon & Sidharth Luthra, *Rape: Violation of the Chastity or Dignity of Women? A Feminist Critique of Indian Law*, Volume 51 of Policy Brief series, TOAEP, 1, 2 (2016), <https://www.toaep.org/pbs-pdf/51-tandon-luthra>

<sup>16</sup> Section 375, Indian Penal Code, 1860 (Section 65, Bharatiya Nayay Sanhita).

*man with his wife, the wife not being under eighteen years of age, is not rape.*"<sup>17</sup>

"Marital rape refers to non-consensual sexual acts committed by a spouse within a marital relationship. It includes all forms of penetration whether anal, vaginal, or oral, committed against her will or without her consent". In India, marital rape is not explicitly criminalized, except when the wife is less than the age of eighteen<sup>18</sup>. It is astounding that while governments recognize rape as a crime and impose sanctions for it, omit cases where a marital alliance subsists between the victim and the perpetrator. This is known as "the marital rape exception clause". The failure to recognize marital rape leads to the invisibilisation of the trauma and the survivors' emotional, physical, sexual, and reproductive health consequences<sup>19</sup>.

Marital rape violates the fundamental rights of women guaranteed under "Article 14 (*Right to Equality*) and Article 21 (*Right to Life and Personal Liberty*)" of the Indian Constitution. It is crucial to examine the judiciary's unwillingness to entertain fundamental rights in the private sphere by outlining the trend of decisions concerning the "restitution of conjugal rights". This is due to the Constitutional law concerns raised by restitution of conjugal rights being akin to the discussion over marital rape. Section 9 of the Hindu Marriage Act, 1956, provides restitution of a spouse's conjugal right against the other. Women have been known to condone as a result of the Restitution of Conjugal Rights, because of this section women are frequently compelled to resume marital relations with their spouses. The essential point here is, as in the controversy over marital rape, whether it is justified for the State to compel a woman to have sexual encounters with her husband?<sup>20</sup> This issue has been before the High Courts and Supreme Court and they have had to deal with objections to its constitutionality regularly.

In the case of *T. Sareetha v. T. Venkata Subbaiah*<sup>21</sup>, the Andhra Pradesh High Court was a pioneer to strike down the "constitutionality of the Restitution of Conjugal Rights as provided under section 9 of the Hindu Marriage Act". The argument that Section 9 of the Hindu Marriage Act transgressed "Articles 14, 19, and 21 of the Constitution" is accepted by the Court. The Court ruled that the remedy provided under Section 9 was unconstitutional and invalid "because it shifted the woman's right to choose whether or not to engage in sexual intercourse and sexual

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<sup>17</sup> Id, exception 2.

<sup>18</sup> Id.

<sup>19</sup> *A Ruling on Marital Rape in India in Coming Up, Here's Why you Should be Watching Closely*, [https://www.equalitynow.org/news\\_and\\_insight/a-ruling-on-marital-rape-in-india-coming-up-heres-why-you-should-be-watching-closely](https://www.equalitynow.org/news_and_insight/a-ruling-on-marital-rape-in-india-coming-up-heres-why-you-should-be-watching-closely) (last visited on January 26, 2025).

<sup>20</sup> Non-criminalization of marital rape, as a result, the State inferred that woman has granted "irrevocable consent" for the engagement in sexual activities to her spouse. The State in this case not give them any choice to refuse and left them to participate in such activities. Hence, the State has compelled women to resume marital relations with their husbands.

<sup>21</sup> *T. Sareetha v. T. Venkata Subbaiah*, AIR 1983 AP 356.



activities to the State". It violated the "individual's autonomy" which is an infringement of Article 21 of the Constitution of India<sup>22</sup>. Furthermore, the Court acknowledged that this rule would be detrimental to women and emphasized the significance of sexual autonomy for women<sup>23</sup>. The Court also holds that "no positive act of sex can be forced upon unwilling persons, as nothing can be more degrading to human dignity and monstrous to the human soul than to subject a person to a positive sex Act by the long arm of law"<sup>24</sup>. Interestingly, this is a very unusual occurrence for the court, it adds that the idea of forced sex can exist even inside the sphere of marriage. Nevertheless, the Court determined that the idea of Conjugal Rights does not correspond to the concept of the "marital sphere"<sup>25</sup>.

In *Harvinder Kaur v. Harmander Singh*, in this case, the Delhi High Court upheld the constitutional validity of Section 9 of the Hindu Marriage Act. The Court asserted that the goal of RCR was to protect the institution of marriage rather than to compel and pressure someone to stay with their spouse<sup>26</sup>. It further withholds recognition that a "Restitution of Conjugal Rights ruling would coerce women to resume conjugal ties with their husbands". By adhering to the principle of "marital privacy" the court turned a blind eye to the type of violence women would endure. In the opinion of the Court, "the opening of constitutional law into the law regarding the domestic relationship of spouses will create a door to endless litigation in the relationship"<sup>27</sup>. Since the Court abstains from even considering the "issuing of sexual and personal autonomy as it separates the RCR argument from the constitution". This reduces the conjugal rights dispute to a purely legislative policy issue with no consequences for constitutional law. The Court has established a private arena in which the Constitution and the basic liberties contained in it have no meaning.

Over 150 countries have criminalised marital rape<sup>28</sup>, unfortunately, India still is one of the 36 countries in the world where marital rape has no legal recognition. The exception provided under section 375 of the IPC (Section 65 of BNS), is founded on the age-old patriarchal norms and beliefs that consider a woman as the property of her husband and marriage grants an irrevocable agreement to the husband by the woman to have sex with her husband when he desires so in her life. The non-criminalization of marital rape puts women in a susceptible

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<sup>22</sup> Justice J.S. Verma Committee, Report of Committee on Amendments to Criminal Law (January 23, 2013).

<sup>23</sup> *Supra* note 22.

<sup>24</sup> Raveena Rao Kallakuru & Pradyumna Soni, *Criminalisation of Marital Rape in India: Understanding its Constitutional, Cultural and Legal Impact*, 11, NUJS L. Rev., 1, 9-11 (2018), <https://docs.manupatra.in/newaline/article/upload/8787A55C-D93F-4589-8A68-A9A032AFAFOE.pdf>

<sup>25</sup> *Id.*

<sup>26</sup> *Harvinder Kaur v. Harmander Singh*, AIR 1984 Delhi 66.

<sup>27</sup> *Id.*

<sup>28</sup> *Supra* note 24.

situation in the relationship allowing a vicious spouse to compel his wife to have sex by intimidation, coercion, force and other forms of abuse. Due to the absence of legislative protection for women against marital rape, women who are coerced into having non-consensual sex with their spouse cannot able to seek any legal remedy and relief. However, the Kerala High Court Judgment of 2021, held that "merely for the reason the law does not recognise marital rape under IPC, it does not inhibit the court from recognizing the same as a form of cruelty to grant divorce..."<sup>29</sup> Furthermore, the Bench opined, "a partner in a marriage has a choice, a choice not to suffer, which is essential to the autonomy given by natural law and the constitution"<sup>30</sup>.

The lack of legal recognition of marital rape restricts women's autonomy and bodily integrity within their marriages. The need to recognize and criminalize marital rape as a violation of women's rights and autonomy is a subject of ongoing debate and advocacy in India.

### **(B) Honour Killing: An Assault on Women's Autonomy**

Despite the great societal development, there are deeply established "patriarchal gender norms" that are inflexible enough to condone gender-based violence as well as embrace certain unbending rules and laws to exert control and authority over women. "Honour Killing" is one horrible specimen of gender-based violence. The outdated patriarchal thought process and profoundly embedded gender-based ideas provide a facilitating environment for honour killings to occur.

"Honour Killing may be defined as the murder of a family member or a member of the community, clan, or social group by other members because the perpetrators believe the victim's actions have brought dishonour and shame to the family and the community at large". Women are often beaten to death as a result of such traditional and patriarchal ideas. Since the community ratified the notion that disgrace brought to the family name can only be wiped by the victim's blood<sup>31</sup>. Women who betrayed their families damaged the reputation of a man and failed to do what is expected of these women in return are prescribed honour killing as punishment<sup>32</sup>. The victims and perpetrators of honour killing can be both males and females. It occurs in a far broader social sphere than is typically accepted.

The honour-based culture reflects female sexuality as a matter of social control and authority.

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<sup>29</sup> X v. X, Mat. Appeal No. 151 of 2015

<sup>30</sup> Id.

<sup>31</sup> Nabilah Rahman, *Redeeming "Honour" Through Violence: A Socio-legal Study of Triggering Factors, Legal Issues, and the Way Forward*, Volume 1 (2020), <https://law.dypvp.edu.in/plr/Publication/all-publication/Honour-Killing-ver-2.pdf>

<sup>32</sup> Id.

Typically, women's sexuality pertains to the male member of the family such as father, husband, or brother. For the sake of family honour, women are expected to embody traits like shyness, subservience, and submissiveness to enhance their honesty and dignity in society. "The patriarchal culture is defined by the two conceptions of male honour and female shame, in which a woman's adultery or sexual liberty is only viewed as terrible conduct that brings ill-repute but also mutilates the man's honour". The only way to correct the damage is to use the legal instrument of violence. In this case, violence against women has not been deemed a sin but rather a punishment.

### **(C) Sexual Harassment**

*"Whereas sexual harassment results in violation of fundamental rights of a Woman to equality..."<sup>33</sup>*

"Sexual Harassment" is defined under "The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013", states that it "includes any unwelcoming acts or behaviours of the following, whether directly or by implication, namely:

- Physical contact or advances,
- A demand or request for sexual favour,
- Making sexually coloured remarks,
- Showing pornography,
- Any other unwelcome physical, verbal, or non-verbal conduct of a sexual nature"<sup>34</sup>.

"Equality of status and opportunity"<sup>35</sup> must be ensured for all the citizens of the country as enshrined in the Preamble of the Constitution of India. Article 14 of the Constitution guarantees equality for every individual under the law. Hence, ensuring safety at the workplace becomes a woman's legal right. Indeed, the rights guaranteed under Articles 14, 15, and 21 of the Indian Constitution guaranteed an individual a "right to equal protection under the law, to live a life free of discrimination on any basis, and to life and protection of personal liberty"<sup>36</sup>.

Sexual Harassment is one of the forms of gender-based violence against women, it transgresses the "right to equality" and the "right to dignity" of a woman. It emanates from the patriarchy and is associated with the belief that women are inferior to men and that types of violence

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<sup>33</sup> The Preamble, Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act.

<sup>34</sup> Section 2(n), The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

<sup>35</sup> The Preamble of the Indian Constitution

<sup>36</sup> Handbook on Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, Ministry of Women and Child Development, 1 (2015), <https://wcd.nic.in/sites/default/files/Handbook%20on%20Sexual%20Harassment%20of%20Women%20at%20Workplace.pdf>

against women are acceptable. To grapple with this issue, the "Sexual Harassment of Women in the Workplace (Prevention, Prohibition and Redressal) Act, 2013", was passed to provide safe and secure working conditions for women to cultivate a work environment that respects women's legal rights and to build a workplace where women feel safer which might encourage women's engagement in the labour force, resulting in the improvement of their economic conditions and stimulate inclusive growth.

Sexual Harassment is a pervasive issue faced by women in India. "The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013", provides a legal rack for dealing with workplace harassment. It mandates the establishment of "Internal Complaints Committees (ICCs)" in organizations to receive and address complaints of sexual harassment<sup>37</sup>. This act aims to create safer work environments and promote women's autonomy in the workplace.

However, harassment and other gender-based violence extend beyond the workplace. Women often face harassment in public spaces, educational institutions, and online platforms. The lack of effective mechanisms to address these issues, limited awareness, and social norms that normalize harassment contribute to the challenges women encounter in exercising their autonomy.

#### **(D) Child and Forced Marriage**

Child marriage continues to be a prevalent issue in certain parts of India, impacting girls' autonomy and rights. The Prohibition of Child Marriage Act, of 2006, aims to curb child nuptials and provide protection and support to those affected. Certain provisions of the Indian Penal Code can be used to bring a case of a child or forced marriage to justice. IPC states that kidnapping or abduction of a girl or woman to force her marriage or illicit intercourse as well as criminal intimidation or any other method of compulsion is a punishable offence<sup>38</sup>. Despite legal provisions, cultural practices, socioeconomic factors, and limited awareness contribute to the persistence of child marriage.

Forced marriage implies any marriage in which one or both parties are forced to marry without full and free consent and there are one or more components of force, fraud, or coercion<sup>39</sup>. Forced marriage is gender-based violence in which women and girls are disproportionately targeted and injured.

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<sup>37</sup> Section 4, supra note 33

<sup>38</sup> The Indian Penal Code, 1860, Section 366

<sup>39</sup> [https://www.tahirih.org/wp-content/uploads/2021/11/Framework-for-Addressing-Forced-Marriage-in-the-U.S.-National-Action-Plan-to-End-Gender-Based-Violence\\_FMVG-Reccomendations\\_Nov.pdf](https://www.tahirih.org/wp-content/uploads/2021/11/Framework-for-Addressing-Forced-Marriage-in-the-U.S.-National-Action-Plan-to-End-Gender-Based-Violence_FMVG-Reccomendations_Nov.pdf)

"Child and forced marriage violates almost all human rights" and it deprives girls and women of their autonomy and choice over their bodies and their lives<sup>40</sup>. These marriages can result in an increased risk of domestic and sexual violence, reproductive coercion, constraints on education, emotional and financial abuse, denial of freedom and choice to work, curtails of their autonomy in making decisions about their lives, as well as the impact on mental and physical health<sup>41</sup>.

#### IV. REPRODUCTIVE AUTONOMY

*"Women's Rights are an essential part of the overall Human Rights agenda, trained on the equal dignity and ability to live in freedom all people should enjoy"*

*Ruth Bader Ginsburg*

##### **(A) Women's Autonomy over Reproductive Health**

Reproductive autonomy is the right of women to choose whether or not to have children, if that is the case, they should have the right to decide how many children to have and also have the right to decide with whom and when. It also includes the right to pick any mode to exercise fertility management<sup>42</sup>. Access to information on sexuality, contraceptives, reproductive and maternal healthcare, pregnancy termination services, and economic resources is some of the most essential components to determine whether the legal structure of any country safeguards the reproductive autonomy of women within a legal system<sup>43</sup>. Furthermore, various regulating committees to ensure human rights such as the "Convention on the Elimination of All Forms of Discrimination Against Women", the "United Nations Convention on the Rights of the Child", the "International Covenant on Civil and Political Rights", and the "International Covenant on Economic, Social, and Cultural Rights", have acknowledged the significance of the right of reproductive health similar to the all other human rights<sup>44</sup>.

"A woman's or girl's right to make independent decisions about her body and reproductive health lies at the heart of her fundamental right to equality, dignity, and privacy in personal concerns of physical and psychological integrity"<sup>45</sup>. Parity in reproductive health entails equal access to high-quality contraception without discrimination. Women's autonomy over

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<sup>40</sup> *Child and Forced Marriage: A Violation of Human Rights*, <https://www.ohchr.org/en/stories/2016/11/child-and-forced-marriage-violation-human-rights> (last visited on January 26, 2025)

<sup>41</sup> *Id.*

<sup>42</sup> Saumya Maheswari, *Reproductive Autonomy in India*, vol.11, NSLR, 27, 31-33 (2017), <https://nslr.in/wp-content/uploads/2019/04/NSLR-Vol-11-No-2.pdf>

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> Articles 3 and 17 of the ICCPR

reproductive health refers to their ability to make informed decisions about their reproductive lives, including contraception, pregnancy, childbirth, and parenting. It encompasses the right to access reproductive healthcare services, receive accurate information, and exercise control over one's own body and fertility.

Indian courts have endorsed the constitutionality of the right to reproductive autonomy. Since the 1990s, a substantial transition in the judicial attitude towards women's right to abort unwanted pregnancies is detectable. In the case of *Jacob George v. State of Kerala*, where the Supreme Court abstained from remarking on whether the right to abort is granted to women or not, to the case of *Laxmi Mandal v. Deen Dayal Harinagar Hospital*, this case was filed on the behalf of a woman named Shanti Devi. She was denied admittance to the government hospital because her husband was unable to exhibit a valid ration card even though she was entitled to avail of the free services under state-sponsored programs since they lived below the poverty line. She died shortly after giving birth to a premature child at home. The Delhi High Court ruled that the right to access public health facilities to obtain basic quality care and to enforce women's reproductive rights is protected by the Indian Constitution<sup>46</sup>. Nonetheless, in this case, the Court did not explicitly recognise the right to abortion as an aspect of the right to reproductive health. It merely granted legal recognition to the right to abort.

Reproductive rights incorporate:

- Right to control one's reproductive function,
- Right to avail the reproductive choice free of coercion, violence and discrimination,
- Right to education and information about contraceptives and sexually transmitted diseases (STDs),
- Freedom from forced sterilization,
- Right to menstrual health,
- Right to safe and legal abortion,
- Right to protection from female genital mutilation and so on<sup>47</sup>.

However, in the majority of situations, women have been allowed to suffer because they cannot demand what is rightfully theirs.

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<sup>46</sup> *Laxmi Mandal v. Deen Dayal Harinagar Hospital*, 172 (2010) DLT 9 (HC of Delhi)

<sup>47</sup> Joseph Cyriac & Parshathy S. R, *An Outlook on Efficiency of Existing Laws Protecting Reproductive Rights of Women*, 16, JILT, 105, 107-117 (2022), file:///C:/Users/Admin/Downloads/2022Volume16.pdf

In India, several factors influence women's reproductive autonomy, including legal provisions, societal norms, healthcare infrastructure, and cultural practices. Examining these aspects provides insights into the challenges and progress in ensuring women's autonomy over their reproductive health.

### **(B) Protection Granted to Reproductive Rights in the Indian Legal System**

Yet, the scope of reproductive rights is unexplored so limited laws are formulated in the Indian legal system.

The Indian Constitution incorporates some legal provisions to safeguard the reproductive autonomy and rights of women. However, these rights and privileges are dispersed within the sphere of Part III, Part IV, and Part IV-A

#### *Fundamental Rights- Part-III of the Constitution*

The Indian Constitution incorporates various Fundamental Rights from Article 14 to Article 35. The right to equality is guaranteed under Articles 14-16. These articles provide gender equality to the citizens. "The Constitution permits the State to formulate special provisions for women and children"<sup>48</sup>.

The "right to Life and Personal Liberty" is guaranteed under Article 21 of the Constitution which lays down that "No person shall be deprived of his life or personal liberty except according to the procedure established by law"<sup>49</sup>. The right to life "means freedom from all kinds of exploitation and the right to live with human dignity"<sup>50</sup>. Currently, the right to health and the right to privacy are aspects of Article 21 that were added through judicial pronouncements. Subsequently, as asserted in *Kharak Singh v. State of Uttar Pradesh* and *Sunil Batra v. Delhi Administration*, the right to enjoy life with all limbs and faculties is an aspect of the right to life enshrined under Article 21<sup>51</sup>.

#### *Directive Principles of State Policy- Part-IV of the Constitution*

DPSPs empower the government to formulate laws to eradicate "inequalities in status [Article 38(a)], opportunities and facilities to ensure that the legal system promotes justice based on equal opportunities [Article 39(a)], to secure just and human conditions of work and maternity relief and to regard the improvement of nutrition (Article 42), standard of living and public

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<sup>48</sup> Article 15(3), The Constitution of India.

<sup>49</sup> Article 21.

<sup>50</sup> Supra note 49.

<sup>51</sup> *Kharak Singh v. State of Uttar Pradesh*, 1963 AIR 1295; *Sunil Batra v. Delhi Administration*, 1978 AIR 1975.

health as among its elementary obligations"<sup>52</sup>.

#### *Fundamental duties- Part-IV-A of the constitution*

Part-IV-A inserted by the 42nd Constitutional Amendment Act, 1976<sup>53</sup>, fundamental duties impose a "duty on every citizen to renounce practices derogatory to the dignity of women"<sup>54</sup>. The Indian Judiciary with the help of provisions given in the Constitution of India can fill the lacuna of insufficient laws on reproductive rights. For instance, in the case of *Govind v. State of Madhya Pradesh*, the court stated that the "right to privacy must entail and safeguard the personal intimacies of the home, family, marriage, motherhood, reproduction and child upbringing"<sup>55</sup>. The Supreme Court recognized the right to medical treatment of the individual in the case of *Parmanand Katara v. Union of India*<sup>56</sup>.

#### **(C) Female Feticide**

Female feticide, the selective abortion of female fetuses due to gender preference, is a grave concern in India. It reflects deep-rooted patriarchal attitudes and preferences for male children. "The Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act", 1994, was enacted to prevent the misuse of medical technology for sex determination and to curb female feticide the act prohibits "sex determination tests"<sup>57</sup> and regulates the use of ultrasound machines. This Act also outlaws any type of advertisement on "pre-conception and pre-natal sex determination of fetus or sex selection of fetus"<sup>58</sup>. However, despite legal provisions, female feticide persists due to societal biases, cultural norms, and inadequate implementation of the law.

Efforts to combat female feticide include awareness campaigns, community engagement, and stricter enforcement of the PCPNDT Act. Promoting gender equality, challenging patriarchal mindsets, and empowering women are crucial in addressing the root causes of this issue.

#### **(D) Abortion Law**

In India, the "Medical Termination of Pregnancy (MTP) Act", of 1971, governs the practice of abortion. The act recognizes a woman's right to make decisions about her own body and grants her the option of safe and legal abortion under specific circumstances. These circumstances include "risk to the woman's life, physical or mental health, fetal abnormalities, contraceptive

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<sup>52</sup> Directive Principles of State Policy, The Constitution of India.

<sup>53</sup> On the recommendation of the Swaran Singh Committee, in 1976, Fundamental Duties were incorporated into the Constitution. Earlier, 10 fundamental duties were listed, and one more duty was inserted through the 86<sup>th</sup> (amendment) Act, 2002.

<sup>54</sup> Article 51A (e).

<sup>55</sup> *Govind v. State of Madhya Pradesh*, 1975 AIR 1378

<sup>56</sup> *Parmanand Katara v. Union of India*, 1989 SCR (3) 997

<sup>57</sup> Section 3, The Pre-conception and Pre-natal Diagnostic Techniques Act, 1994.

<sup>58</sup> Id. Section 22.



failure, and pregnancies resulting from rape".

The Medical Termination of Pregnancy Act only made the consent of the women compulsory not of the husband for the termination of unwanted pregnancy<sup>59</sup>. This Act grants women the right to choose to terminate unwanted pregnancies. After the amendment (2021) in the Act, access to safe legal abortion has been broadened. It attempted to pave the road for women's humanitarian and comprehensive access to privileges. This Act substitutes the term "Husband" for "Partner" and applies to both married and unmarried women. Under certain conditions, it altered the required period from 20 weeks to 24 weeks<sup>60</sup>. Still, women do not have absolute autonomy over the termination of unwanted pregnancies. In case of specific circumstances such as the grave danger of life to pregnant women, fetal abnormalities etc., pregnancy termination after 24 weeks is permitted.

The act aims to protect women's reproductive autonomy, promote safe abortion practices, and prevent unsafe procedures that pose risks to women's health and lives.

#### **(E) Surrogacy Law**

Surrogacy, "where a woman carries a pregnancy and gives birth to a child for another person or couple", has been a subject of legal regulation in India. The Surrogacy (Regulation) Act, of 2020, replaced the earlier unregulated practices with a comprehensive legal framework. The act prohibits commercial surrogacy and allows altruistic surrogacy under specific conditions. It establishes guidelines to "protect the rights and interests of surrogate mothers and the children born through surrogacy, ensuring their autonomy and well-being".

The Surrogacy (Regulation) Act aims to prevent exploitation, safeguard the rights of all parties involved, and regulate the practice of surrogacy transparently and ethically. It recognizes the importance of protecting women's autonomy and reproductive choices within the context of surrogacy arrangements.

#### **(F) Maternity Benefits**

Maternity leave provisions in India play a crucial role in supporting women's autonomy and reproductive health. "The Maternity Benefit Act, of 1961, provides for maternity leave and other benefits for women in employment". It ensures that women have the right to take leave during pregnancy and after childbirth, allowing them to prioritize their health, bond with their newborns, and make informed decisions about their reproductive journey.

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<sup>59</sup> Supra note 49.

<sup>60</sup> The Medical Termination of Pregnancy (Amendment) Act, 2021.

According to the Maternity Benefit Act, "Women are entitled to a maximum of 26 weeks of paid maternity leave, which can be availed before and after childbirth". In certain cases, the leave period can be extended by an additional eight weeks if there are medical complications or if the woman adopts a child. The act also guarantees other benefits such as nursing breaks and protection against dismissal during the maternity leave period.

Maternity leave provisions not only contribute to the physical well-being of women but also support their emotional well-being and bonding with their newborns. By recognizing the need for adequate time off during pregnancy and childbirth, these provisions aim to ensure women's autonomy and enable them to make informed choices regarding their reproductive health.

It is noteworthy that while the Maternity Benefit Act protects women in formal employment, there is a need to extend similar provisions and support to women in the informal sector, such as domestic workers and agricultural labourers, who often lack access to such benefits<sup>61</sup>.

## **V. JUDICIAL PRONOUNCEMENTS**

Indian courts have played a crucial role in shaping legal principles and precedents related to women's autonomy over sexuality and reproductive health. The judiciary has consistently backed and prioritised women's reproductive autonomy by declaring it to be part of the "right to life" guaranteed under Article 21 of the Indian Constitution. The Constitution also maintains the ideals of the right to health that have been enacted by the Courts.

The Court determined the "reproductive rights of women which include the right to carry a pregnancy, childbirth, and child-rearing, and the Court also ruled that these rights are part of the women's right to dignity, privacy, and bodily integrity"<sup>62</sup>. In the landmark case of the right to privacy or Puttaswamy judgment, the court affirmed that "Article 21 right to life and personal liberty ensures the right to make reproductive choices for women"<sup>63</sup>. *Navtej Singh v. Union of India*, the Supreme Court upheld the decriminalization of adultery and homosexuality and also asserted that women have complete freedom over their sexual autonomy which is a crucial aspect of their right to personal liberty<sup>64</sup>.

As a result, the Indian judiciary has played an integral function in ensuring women's reproductive rights and freedoms must not be violated. This entitles a woman to relish their reproductive rights.

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<sup>61</sup> *Supra* note 49.

<sup>62</sup> *Srivastava v Chandigarh Administration*, (2009) 11 SCC 409

<sup>63</sup> *K S Puttaswamy v. Union of India*, AIR (2017) SC 4161

<sup>64</sup> *Navtej Singh Johar v. U.O.I*, AIR (2018) SC 4321

## VI. CONCLUSION

The issue of women's autonomy over their sexuality and reproductive health in the Indian context is a complex and multifaceted one. Throughout history, India has experienced shifts in societal norms, legal provisions, and cultural practices that have influenced the status of women and their ability to exercise autonomy.

While progress has been made, challenges persist in the present scenario. Legislative measures and judicial pronouncements have sought to address issues such as sexual autonomy, reproductive rights, and the right to health and reproductive choices. However, implementation gaps and societal attitudes continue to pose obstacles to women's full autonomy and well-being.

Reproductive autonomy and health are vital aspects of women's lives. Efforts to combat female feticide through the Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, provide safe and legal abortion options under the Medical Termination of Pregnancy (MTP) Act, regulate surrogacy practices through the Surrogacy (Regulation) Act, and offer maternity leave provisions contribute to enhancing women's reproductive choices and well-being.

India must strive towards a society where women have complete autonomy over their sexuality and reproductive health. By dismantling biases, empowering women, and creating an enabling environment, India can foster a society that respects and upholds women's rights, benefiting both individual women and the nation as a whole.

However, addressing these issues requires sustained efforts from various stakeholders, including the government, civil society organizations, and individuals. It is crucial to cultivate a culture that values and promotes women's autonomy, ensuring that women have the freedom to make informed decisions about their bodies, health, and reproductive lives.

Only by working together can we create an inclusive society that upholds women's autonomy, respects their choices, and paves the way for a brighter and more equitable future for all.

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