



Historical evaluation of reproductive rights: analysis of the timeline of women's reproductive rights from the suffrage movement to modern-day legislation

Muskan Rafiq¹, Dr. Harshita Thalwal²

¹ LL.M. (Master of Laws), University Institute of Legal Studies, Chandigarh University, Mohali, Punjab, India

² Associate Professor, University Institute of Legal Studies, Chandigarh University, Mohali, Punjab, India

ABSTRACT

The women's fight for reproductive rights was as logically continuous as women's struggle for equal rights and personal sovereignty, and as we have come to understand only in the last century reproductive rights are fundamentally integral to human rights, the advancement of suffrage. This paper proceeds first with an introductory historical analysis of the pathway to reproductive rights in India with historical and late legislative and judicial changes. In this regard, the analysis identifies how colonial imprint, social reformism, and feminism intersected in shaping reproductive rights policies and, for instance, comprises legislation on contraception, abortion, and maternal health. This paper analyzes the involvement of the Indian judiciary in constitutionalizing reproductive freedom at the crossroads of reproductive rights and rights to health, privacy, and gender equality. Importantly, there is an analysis of the contemporary specificity of providing reproductive health care to minority particular groups and a discussion of the ethical issues, for example, surrogacy. Last, the conclusion outlines what measures on the policy and the legal front are required to achieve the goal of reproductive justice, including the question of reproductive justice for the disadvantaged segments of society. These suggest less complicated legislation on abortion, a better health care provision system, and an alignment of our stand on abortion with international human rights instruments. This is a brief to contribute to legal and social debates that are meant to proclaim a progressive and inclusive justice framework on reproductive rights in India.

Keywords: Reproductive rights, suffrage movement, reproductive health, judicial activism, gender equality, maternal health, contraception, reproductive justice

Introduction :

Abortion has been consistently at the core of discourse on woman's autonomy and ability to have control over at least one aspect of their lives, is the issue that paved the way not only for reproductive freedoms but for general freedom and justice for women. In its ultimate sense, reproductive rights refer to a woman's right to control her own body and make her own decisions regarding contraception, including safe abortion. These rights have developed by parallel with socio-political developments and rise of the general campaign for women's rights. India, for example, also like other nations has advanced from the suffrage period to the modern age reproductive rights legislations, which have 'evolved' to meet the dynamics and challenges facing women currently finding themselves pregnant. Knowledge of this evolution is indispensable for comprehending the current context for legislation in the United States and for perceiving possible further development for practicing more extensive reproductive justice.

Reproductive rights are a general term referring to many issues connected with the ability of women to control matters concerning conception, fertility, and childbearing. Such rights include contraceptive, legal, safe abortion rights, maternal health rights, and rights against coerced sterilization and contraception. Reproductive rights in totality are part of the broader civil liberties under Article 12 of the International human rights protocols and covenants. The interpretation, recognition, and assertion of reproductive rights as a legal and constitutional right in India began in the second half of the twentieth century through the interpretation of the fundamental rights of the Indian Constitution. These interpretations have paved the way for legal support for reproductive rights; however, large inequities exist in the availability of rights for reproductive choices, including across the national and socio-economic divide.¹

The objective of this article is to cover the history of reproductive rights from the women's suffrage movement to the present timeline for India. In this analysis, the focus will be on specific legal changes, historical decisions, and the influence of international human rights in the promotion and protection of reproductive rights. It will also bring out the socio-legal factors experienced in the implementation of reproductive rights and thus the need to lobby lawmakers and judges to take necessary legal actions. Therefore, the objective of this paper is to have an all-round view of the legal history of reproductive rights and how history has formed the present reproductive health laws.

¹ A Brief History of Civil Rights in the United States: Women's Reproductive Rights, *available at*: <https://library.law.howard.edu/civilrightshistory/women/reproductiverights> (last visited on October 15, 2024).

It is therefore relevant to history to give a brief analysis of how reproductive rights have evolved in India as the current laws governing them exist in that socio-legal context. Legal constraints to reproductive rights in India are influenced by the colonial past as well as by postcolonial legal reform measures. Concerns that include safe abortion, black women's maternal mortality, and gender bias cut across other socioeconomic factors. Highlighting the position of the judiciary in shaping and elaborating on reproductive rights for women through analysing constitutional law in particular, this underlines the interdependence of law and social relations in India. For example, the case in point "Suchita Srivastava v. Chandigarh Administration"² has also enunciated certain fundamental legal provisions regulating a woman's reproductive decision-making as part of the freedom of the person of a woman.

Understanding Reproductive Rights

Reproductive rights are an important part of a general discussion of human rights, especially from the perspective of women's right to choose, to be respected, and to be free. These rights are not just over decisions about reproduction but extend to all other allowable issues to do with health, privacy, and women's rights. This focuses on the changes in the domestication of reproductive rights and their enforcement through social, political, and legal frameworks in different parts of the world. This examines how reproductive rights have been defined and experienced in India about the Indian social structure and the colonial and post-colonial legal frameworks. It has been useful in the transformation of reproductive rights policies and laws that touch on millions of women's lives to assert that reproductive health is not just a governance concern but a legal and constitutional one.³

Definition of Reproductive Rights

Reproductive rights therefore can be understood as civil and human rights of people engaging in voluntary sexual activity, access to safe and legal contraception, as well as safe, legal abortion and maternal care. The above rights also mean nobody should be subjected to shocking practices like forced sterilization or contraception and that people should have free will to control their reproductive life, including capacity. According to the World Health Organization, reproductive rights are, in fact, human rights that relate to an individual's right to make choices about when and how to reproduce. In India, the definitions of reproductive rights have been legally identified and explained through "Article 21 of the Constitution," which deals with the right to life and personal liberty. The Indian judiciary has given the meanings to this article in a further and broader way by including the right of reproductive choice in "*Suchita Srivastava v. Chandigarh Administration*"⁴, wherein the supreme court likened a woman's freedom in the matter of choosing to bear or not bear a child as being a part and parcel of personal freedom.⁵

Core Components of Reproductive Rights

Reproductive rights can therefore be considered the right to control one's fertility, which includes five main aspects: contraceptives, abortion, anti-mitochondrial and prenatal and maternal facilities, and the right to reproductive self-determination without discrimination, force, or violence. Men by themselves cannot decide for women regarding the use of contraceptives; they must be made available to women for them to plan their families properly. This aspect of reproductive rights has been quite a focus of legal changes and judicial review in India, where while contraceptives are endorsed by public health for family planning, the social condemnation is high and the forums to access these commodities are poorly developed. The legal right of women to abort is another facet, which is legal in India under the "Medical Termination of Pregnancy Act, 1971" in some cases. However, this right is not absolute; what this means is that it can still be bounded by things like gestational limits and mandatory medical advice that put women's freedom in danger. Further, reproductive rights include decent maternal care and gender violence, for example, forced implantation, which has been banned as human rights abuses by international human rights organizations.⁶

Intersection of Reproductive Rights with Human Rights

Reproductive rights are connected to other human rights such as the right to health, the right to privacy, the right to equality, and non-discrimination. These intersections must show that reproductive rights are not just medical or health concerns; they are fundamental human rights that involve how human beings' worth and freedom should be acknowledged and respected. International human rights, which include the CEDAW, have played a central role in the advocacy for reproductive rights as human rights. As it will be clear from the following sections, these two interfaces are very acute in India, where constitutional and statutory guarantees of the right to health as well as non-discrimination exist. India has built on these rights and enhanced them by the progressive interpretation of the Constitution's basic structure of rights. For instance, in *Puttaswamy v. Union of India*⁷, the Supreme Court of India held the right to privacy as a fundamental right of Indian citizens in terms of which they have the right to make life and body decisions. This judgment has a

² [2009] 9 SCC 1.

³ Onwuachi-Saunders C, Dang QP, Murray J, "Reproductive Rights, Reproductive Justice: Redefining Challenges to Create Optimal Health for All Women", 9(1) *Journal of Healthcare, Science and the Humanities* 19 (2019).

⁴ [2009] 9 SCC 1.

⁵ Aneesh V. Pillai, Anatoliy Kostruba, "Women's Reproductive Rights and Their Scope Under International Legal Frameworks", 8 *Entrepreneurship, Economy and Law* 18 (2021).

⁶ Pillai VK, Gupta R, "Reproductive Rights Approach to Reproductive Health in Developing Countries", 4 *Global Health Action* 84 (2011).

⁷ [2017] 10 SCC 1.

profound bearing on reproductive rights, especially since this has endorsed one more time that reproductive decision-makers fall under the purview of the right to 'Privacy', which indeed strengthens the legal basis for reproductive health in India.⁸

Historical Background

The struggle for reproductive rights is as old as the fight for women's rights in general, and it goes back several centuries. The struggle for reproductive choice, therefore, cannot be and is not separate from the Indian context social, cultural, and legal. The evolution process towards reproductive rights as rights has been difficult, marked by increased steps through legislative measures and judicial activism. It is pertinent to note that it is the years of women's rights and healthcare movements that sowed the seeds for the development of reproductive rights. Over time, there have been changes in both the ideologies and perspectives adopted by feminism, scientific social movements, and laws on reproductive rights. Such experiences should help us understand the relationship between women's voting rights, feminism, and reproductive freedom, as these drives form the basis of the current legislation in India.

Early Movements for Women's Rights in India

Civil activism and women's rights voice in India started in the late 19th century during the colonial rule of the British with the help of social reformers like Raja Ram Mohan Roy in Sati prohibition and Ishwar Chandra Vidyasagar on widow remarriage and female education. Oddly enough, despite these endeavours being not aimed directly at the reproductive rights of women but at the social change at large, it was very important to have a ground that allowed the discussion and fight against patriarchal structures. There was virtually no concept of choice regarding reproductive matters, and women's bodily integrity was viewed as family honor and discipline. Gender and race roles from colonial America dominated the legal statutes, which gave women no rights or even acknowledgment of bodily autonomy over fetal life. However, the early women's movements started to rise against such defined women-related norms and started demanding more freedom, which in turn paved the way for the future when reproductive rights could be recognized as part and parcel of women's freedom and equal rights. The fight for reproductive rights started small as women's groups started to embark on campaigns that included maternal welfare, birth control, and family planning starting in the middle of the 20th century.⁹

Influence of the Suffrage Movement on Reproductive Rights

The suffrage movement, which started early in the twentieth century, was principally about the right to vote for women, but it impacted almost all areas of women's lives, including reproductive rights. In India, the demand for the franchise for all was merged with the demand for freedom; earlier Indian social reformist women like Pandita Ramabai, and Annie Besant, and later women leaders like Sarojini Naidu and Kamaladevi Chattopadhyay also strongly demanded voting rights for women. While women's ability to control reproductive choices was not a declared goal of the suffrage campaign and was not an aim stated when the first suffragette's appeal was launched, women's right to vote did open the door to questioning women's legal status, and women's rights on balance became an important factor as suffragettes fought for political rights. Emphasis on women's emergent ability to participate in all the public and private domains as entailed by the suffrage movement facilitated the formation of grounds for changing restrictive laws in reproductive health. Such an environment created the basis for claims of women's authority over their bodies and health, for later claiming liberal rights to contraception, safe abortion, and maternal care as policy initiatives. It is therefore possible to make a genealogy of the legal recognition of reproductive rights as fundamental to women's equality and human dignity to the suffrage campaigns that underpinned women's right to vote as a basic human right.¹⁰

Evolution of Feminist Thought on Reproductive Autonomy

Feminist ideologies, especially those of feminism, have tremendously influenced women's reproductive rights discourse by undermining traditional views of women's responsibilities implying autonomic control of their bodies. Influenced by borrowed feminism discourses from the West, early phases of Indian feminism started connecting women's reproductive rights with the emancipation struggles that immediately encompassed social, economic, and political domains. The organized feminist movement that regained ground in India in the 1960s and 1970s changed the form and content of protest to issues like dowry deaths, domestic violence, and rape and ensured that reproductive rights also formed a part of a woman's bodily rights. Cite this as one of the reasons that feminists insisted that women required reproductive freedom to attain full equality; decisions regarding bearing children influenced women's education, work, and civic engagement. The constitutional and discriminatory employment policy on women that failed to permit women employees to continue their jobs after pregnancy compelled the Court to grasp reproductive rights in terms of gender equality. Their commonsensical understanding of reproductive rights included health, privacy, and equality; however, the latter part of 20th-century feminism provided a progressed rights-based concept of these rights. There were also major reforms in the legal area of the country. During this period another vital legal change was the emergence of the Medical Termination of Pregnancy Act, of 1971, which emerged from the colonial-based abortion laws of the country and recognized

⁸ Human Rights Including a Supportive Framework of Law and Policy, *available at*: <https://srhr.org/abortioncare/chapter-1/human-rights-including-a-supportive-framework-of-law-and-policy/> (last visited on October 15, 2024).

⁹ Stri-Dharma: Voice of the Indian Women's Rights Movement 1928-1936, *available at*: <https://doi.org/10.57709/3075581> (last visited on October 15, 2024).

¹⁰ Miller G., "Women's Suffrage, Political Responsiveness, and Child Survival in American History", 123(3) *Quarterly Journal of Economics* 1287 (2008).

the health and liberty of women as legal principles. Feminist thought is emerging and advancing and is now discussing reproductive justice, which is the process that goes beyond the simple extension of legal rights to ensure that all people of colour have limited reproductive autonomy.¹¹

Reproductive Rights in Pre-Independence India

Reproductive rights even before coming to British India were changed by the colonial policies and indigenous reform movements, along with the legislation regarding the social condition of Indian women. The colonial masters not only determined the rights of the people about the law but also informed the ideologies of reproductive health policies and bioethics. Although the British administration put a legal system of their perspective, it was the progressive Indian thinkers who demanded rights for women as well as several issues concerning reproduction and family planning. The pre-independence period was a mixture of Indigenous customs before the British invasion and democratic legislation and the British laws that impacted women, and a few initial legal reforms started to address social problems like child marriage affecting women. It is very informative to understand this period to understand how the policies and legislation that shaped modern reproductive rights were developed and the prejudices that informed the legislation that was to govern women's reproductive health in the future.¹²

Colonial Influence on Reproductive Health Policies

The colonial power influenced reproductive health policies in India to the highest degree. The British legal system that prevailed during the time purged Victorian norms with the Indian system; however, the scrubbed law retained a patriarchal bent rather than fighting against it. The colonial state in Britain was more interested in hegemonic control of the colonized peoples and in managing the population than the welfare of women, let alone their reproductive health. With the initiation of medical practices by white people in India, some changes happened regarding maternal care, but these were available only in the cities or to the higher classes of society. Although the colonial medical system increasingly excluded midwives, who offered reproductive health care to women in the rural areas, traditional midwifery practice remained dominant. Technically, the term reproductive rights as a legal matter were almost wholly unrecognized; even such matters as abortion were prohibited under 'Section 88 of the Bharatiya Nyaya Sanhita, 2023,' which made abortion a legal offense unless necessary to save the life of the mother. It also weakened women's reproductive rights by resulting in restrictive legal systems and limited reproductive health care after gaining independence.

Role of Indian Reformers in Advocating Women's Rights

Indian reformers also held key positions in the movement for Indian women's rights during the pre-independence era, where they discussed the social problems that had a bearing on women's reproductive health. Social reformers like Raja Ram Mohan Roy, Vidyasagar, and Mahatma Gandhi raised their voices against social evils like child marriage, sati, and the untimely death of a wife leaving her husband behind and neglect of widows, all of which were very hazardous to the health of women. What all these reformers wanted was the improvement of women's status in society, and most of them worked for change in the laws and social practices; they saw education as a way of enabling women to make choices in their lives and health. Especially Gandhi associated women's fertility with the struggle for social justice by speaking for better conditions in childbirth and informing women about birth control. Early campaigns by Indian reformers led to subsequent legal reform that began to establish the framework that would eventually come to be known as women's rights, including reproductive rights. However, such endeavours were sometimes somewhat wanting, as the newfound woman was not recognized in terms of legal rights, let alone reproductive rights.¹³

Pre-Independence Legislative Efforts (e.g., Sarda Act, 1929)

Working and legal reforms of the pre-independence era for the uplift of women's social status also had an impact on reproductive health. Search on: Hundred years of child marriage has been a serious problem affecting the reproductive health of young girls. This was checked with the passage of the "Child Marriage Restraint Act, of 1929," known as the Sarda Act. Through the act, the marriage age for girls and boys was set at 14 and 18, respectively, to reduce cases of early pregnancies and maternal deaths, which were highly a result of early marriage. Though the Sarda Act saw legislative reform for women's rights, it had poor enforcement, and child marriage was still prevalent in India. However, it was a giant leap forward in women's struggle, taking into account that it marked the beginning of including legal protection in the quest for women's reproductive rights. To a large extent, the failure of the legislative measures during and before the British rule meant that the advocacy for women's reproductive rights had to look beyond the social model of change to one that involved the law and health care services.¹⁴

¹¹ Lisa McLennan Brown, "Feminist Theory and the Erosion of Women's Reproductive Rights: The Implications of Fetal Personhood Laws and In Vitro Fertilization", 13(1) *American University Journal of Gender, Social Policy & the Law* 87 (2005).

¹² Sanjam Ahluwalia, *Reproductive Restraints: Birth Control in India, 1877-1947* 251 (University of Illinois Press, Urbana & Chicago, 1st edn., 2008).

¹³ Female Social Reformers of India, available at: <https://sathee.prutor.ai/article/social-science/female-social-reformers-of-india/> (last visited on October 15, 2024).

¹⁴ Dr. Yuthika Mishra, "The Struggle Against Child Marriage: The Sarda Act (Act XIX) of 1929", 1(2) *International Journal of Creative Research Thoughts* 272 (September 2013).

Post-Independence Developments

The early decades of post-independence India saw a changing social, political, legal, and policy framework that initially focused on population questions and later on the rights of women, including their reproductive rights. Firstly, the family planning programs in India were more a top-down decision focused on reducing population growth with a strong Malthusian apprehension on the carrying capacity of the earth. Over the years, it expanded to include family planning and reproductive health/rights due to changes in internal organizational policies as well as global shifts, including women's rights and health movements. It was during this year when legal and policy processes were set that paved the way to encourage the enforcement of reproductive liberty as a human right in India. If the transition was from the early introduction of family planning to reproductive health, the real issue that comes out is how best to regulate population policies to protect the rights of individuals in a plural society.¹⁵

Early Post-Independence Policies on Family Planning

The policies on reproductive health, especially in the early years of the twenty-first century, in India mainly continue to be influenced by matters concerning the large growth rate. The newly liberated country had a poor economy, a high rate of illiteracy, and little or no health facilities. The administrative agencies saw regulation of the population as key to the progress and well-being of the nation and, as a result, promulgated family planning policies. These early policies, despite the goal of enhancing the well-being of communities, largely regarded reproductive rights as an essential way to regulate the population rather than a fundamental aspect of human well-being. Proportions of writers also focused on the numbers of birth rates through the usage of oral and injectable contraceptives, IUDs, and sterilization, and the consequences arising from these policies were not significant concerns about women's reproductive freedom. The early emphasis of laws and policies was primarily on population and therefore formed the basis for subsequent legal and policy progress in fertility control and the advancement of reproductive rights.

The First Five-Year Plan (1951-1956)

The formalized Indian family planning program started with the first five-year plan of 1951–56. It was not until the third plan that awareness of how high the population growth rate was likely to hinder economic growth made the government adopt a recommendation for family planning as a public health intervention. The aim was to encourage the take-up of contraceptive measures to slow the birth rate through the opening of family planning centres and conducting awareness in every part of the country. Albeit the initiative was liberal for the then society, the chief goal mostly centered on matters of fertility rather than women's rights to decide about their reproduction. The government measures were more focused on demographic goals than on the correspondent rights; many times, this implied more enforcing ways, especially in the rural sectors. Even the first plan, which established the paradigm for subsequent family planning policies, revealed the problem of relying on a demographic approach, however; this led to the eventual evolution of more rights-based concern in the later decades.¹⁶

Family Planning Program (1952)

Thus, the beginning of the Family Planning Program in 1952 was a major landmark, and, most importantly, India became the first country in the world to have a national policy and program in family planning. It was developed to achieve lower birth ratings through the deliberate use of contraception services and information facilities that were instituted as family planning centres. However, the program received many challenges the culture did not embrace the program, the available infrastructures, and the trained health personnel. In addition, the issue was over control and choice in sterilization—especially about female sterilization. Probably due to the obsession with reaching quantitative goals about sterilizations, incentives for parties to participate and punishments for non-compliance were given. While this highhandedness eroded reproductive liberties, it also fixed reproductive inequity by sex as women were left with increased demands for family planning. The lack of proper management and inadequate effort to implement the early Family Planning Program paved the way for formulating a composite view of reproductive health policies with a focus on women's rights and health.

Shift from Population Control to Reproductive Health

The change to the reproductive health-oriented policy framework for population control was initiated in the 1980s but intensified in the 1990s. This development was due to increased awareness of and objections to the use of force and coercion and knowledge of the globalization of reproductive rights movements. The Indian government started to change the approach of its policies to be based on women's health and other social factors instead of targets. This paved the way for the National Population Policy in 2000, which was again an important landmark recognizing reproductive health as a human right that must be afforded with quality reproductive health care services. In this policy, the government changed its focus from a disease-oriented approach to emphasizing maternal healthcare, low IMR and MMR, and quality FP services. This shift was also notable in the judiciary, where courts started defining reproductive rights as a part of the right to life and personal liberty 'under Article 21 of the Indian Constitution', thus establishing reproductive health rights under fundamental rights.¹⁷

¹⁵ VK Paul, HS Sachdev, "Reproductive Health, and Child Health and Nutrition in India: Meeting the Challenge", 377 *Lancet* 332 (2011).

¹⁶ N. A. Sarma, *Economic Development in India: The First and the Second Five Year Plans 158* (IMF eLibrary, Washington D.C., 1st edn., 1958), available at: <https://www.elibrary.imf.org/view/journals/024/1958/001/article-A002-en.xml>.

¹⁷ Drakshayani P Kongawad, Boodeppa G K, "National Family Planning Programme - During the Five Year Plans of India", 3(19) *Journal of Evolution of Medical and Dental Sciences* 5172 (May 2014).

Landmark Judicial Decisions Shaping Reproductive Rights

The judiciary has come out prominently in defining reproductive rights as law in India and transitioning from a colonial-imposed strict interpretation of English law to a more humanitarian perspective. Over thirty years, several important judgments have gone a long way in furthering reproductive rights within the framework of other rights such as the right to life, personal liberty, and right to privacy. Successive legislation and policy measures have been built on these fundamental rights and other related freedoms as courts have expanded their meaning to include reproductive choice. Activism within the judiciary has helped fill the gaps within the current legal provision and more so to the social transformation needs that seek to protect reproductive rights not only on paper but also in equal measure and practice.

Mohini Jain vs. State of Karnataka

One judgment that interpreted the elements of Part III rights was given in “*Mohini Jain v. the State of Karnataka*”¹⁸. Although the case did not specifically deal with reproductive rights, the extended notion of the right to education and the right to healthcare led the way. The case emerged when the student, Mohini Jain, sought to quash a capitation fee in the medical college in Karnataka State, arguing that her right to education enshrined in the Constitution under “Article 21” was violated. The Supreme Court directed society in her Favor, stating that the right to education forms part of the right to life. Though the case was a principal right to education, that judgment had a positive connotation toward reproductive rights by making a correlation between the right to education and complete life. This was in light of the constitutional provision of the right to life, which I understand is not merely the right to stay alive but the right to live a dignified life, including the right to healthcare, including reproductive health. It can be said that the court demarcated the concept of “Article 21” widely enough to include reproductive health as an accessory of the right to life, after which other decisions were made to uphold women’s reproductive liberty.

Suchita Srivastava vs. Chandigarh Administration

The judgment in “*Suchita Srivastava v. Chandigarh Administration*”¹⁹ is a useful case as it dealt immediately with the issue of the ‘right to reproduce’. The case referred to in the petition involved a woman with mental health disorder who conceived through rape and was living in a special home under the state’s department of social welfare. The Chandigarh administration also wanted permission to compulsorily sterilize her so they could abort her pregnancy because her mental competence was in question. The Supreme Court, however, turned down the forced termination that it said violates “Article 21” of the Constitution which protects the right to personal liberty, which includes reproductive freedom. About individual rights of women, the court pointed out that such rights encompass a woman’s right to bear a child or to abort, but bearing a child is limited under the law. This judgment was important as the court for the first time identified reproductive decisions as a core component of the right to privacy and liberty that cannot be intruded by the state without one overriding public interest. It also brought a consent aspect to reproductive health and was a convincing precedent for similar cases in the future that is part of the advancement of legal analysis on reproductive rights that we saw in this case.

In this way, the women’s rights groups appreciate the fact that constitutionalizing the right to reproductive choice as an ingredient in liberty, these judicial decisions have acted as a robust catalyst in liberalizing reproductive rights in India. They have migrated into future cases and also contributed to legislative changes, including the laws on the “Medical Termination of Pregnancy Act.” These judgments show the interaction of constitutional rights and reproductive health to demonstrate that the judiciary performs the gaps between rights under the constitution and social rights. This evolution from regarding reproductive rights in the framework of anti-natalism to regarding them as human rights, rights that people of reproductive age have, has been led, to a large extent, by interpretation by judges and activism by courts, which means that judicialization is one of the continuities in the fight for reproductive justice.

Key Legislation Related to Reproductive Rights

Reproductive rights in India have been a subject of development for decades in different facets of reproductive liberty, including abortion, prenatal sex selection, surrogacy, and protection against domestic violence. The main concern displayed by the change in the legal environment from an unfavourable legal regime back to a rights-based legal approach can be seen through several legislations that have played a major role in reforming the field of reproductive rights. These laws may be seen as indicating more and more consideration given to women’s ability to control their fertility resulting from international human rights standards embraced by some states, feminisms, and case law. Specific legislation enacted and changes in those laws like the MTP Act 1971, PCPNDT Act 1994, Surrogacy Regulation Act 2021, and legal provisions under DV Act 2005 represent revolutions in the legal right of reproductive choice and the potential as well as challenges related to the quality of this aspect of reproductive healthcare.²⁰

The Medical Termination of Pregnancy (MTP) Act, 1971

The “Medical Termination of Pregnancy (MTP) Act, 1971” may be considered one of the most influential laws in India since it describes under what circumstances pregnancy can be terminated legally. Previous to this law, abortion was forbidden for the most part under “Section 88 of the Bharatiya Nyaya Sanhita,” with an exception if the pregnancy endangered the woman’s life. The MTP Act permitted aborting if the woman’s life or mental or

¹⁸ AIR 1992 SC 1858.

¹⁹ [2009] 9 SCC 1.

²⁰ Kirtipal Singh Kabawat, "Reproductive Rights of Women: A Study in Reference to New Surrogacy Law of India", *12 International Journal of Advanced Research* 13 (2024).

physical health was in peril or if there was a likelihood of the birth of a severely handicapped child. Also, gestations that originated from rape and contraception breakdown in married women were legal abortion reasons. The implementation of the MTP Act changed its focus from an absolute ban to actually providing safe and legal termination to save the lives of women. However, the Act also placed some limitations, for example, the gestational limits and a medical opinion, which raised even more questions and concerns about women's bodily sovereignty.

Amendments and Recent Reforms

The MTP Act has been amended several times in the interest of society to enlarge the legal limits of abortions. The biggest change, however, was heralded with the coming of the "Medical Termination of Pregnancy (Amendment) Act, 2021", which raised abortion time for women from 20 weeks to 24 weeks or more for categories of women who fall under survivors of rape, incest, physiologically and mentally ill, etc. The Amendment also recognized the right of unmarried women to an abortion in cases of congenital contraceptive failure, therefore providing a connection to reproductive freedom outside wedlock. Also, one of them is to provide a medical board to decide on abortions beyond the 24th week on grounds of fetal abnormality but ensure equal rights between women and medicine. That said, some of these amendments in the Act mirror progressive changes in extending women's reproductive choices as human rights; the Act nonetheless retains restrictions such as the medical opinion that has been said to hinder concrete recognition of reproductive rights as fundamental freedoms under "Article 21" of the Constitution.²¹

The Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, 1994

The "Pre-Conception and Pre-Natal Diagnostics Techniques (Prohibition of Sex Selection) Act, 1994," abbreviated as the PCPNDT Act, was enacted to check the menace of sex-selective abortion and female foeticide, which has led to unprecedented enhancement in sex ratio in any given Indian state. The Act bans the use of techniques used for prenatal diagnostic techniques for sex determination and restricts the technique's use only to diagnosing diseases and disorders affecting foetuses. It also sets severe penalties for those found culprits of the illegal procedure through imprisonment and fines, hoping that nobody would risk going for the wrong procedures. The PCPNDT Act has not only conceptualized gender-based discrimination but also the right of the unborn female child to life. But the enforcement has remained a challenge, lack of awareness, and some ethical issues with the woman's reproductive freedom. Despite this imperative of the code of law in regulating reproductive rights with social justice, its stringent measures have sometimes been considered to have an unjustifiably negative impact of restricting women's rights while accessing legitimate health-related reproductive care.²²

The Surrogacy (Regulation) Act, 2021

The "Surrogacy (Regulation) Act, 2021" points towards a new shift in controlling ART in India, more specifically the position of the women involved in surrogacy contracts. This act also seeks to control surrogacy by banning both sorts of surrogacy while exercising the doctrine of altruistic surrogacy, where the gestational mother is being paid nothing more than the medical expenses, inclusive of insurance premiums. It also sets high qualifications for those wanting to become intended parents or surrogate mothers, such as age, medical need for surrogacy, and previous childlessness of the intended parents. The legislation has some concerns for women and their exploitation in commercial surrogacy and some degree of the ethical issue of surrogacy and trading of mother design. However, the opponents of the Act state that restrictive legislation hinders reproductive freedom based on the premise that it is very difficult for people who wish to use surrogacy as a mode of conception. The Surrogacy Act therefore shows that even as more legal provisions are enacted to shield vulnerable human beings so that reproductive liberty is respected, the two principles continue to clash.²³

Contemporary Challenges and Developments

The struggle for the reproductive rights of women in India has gone a long way from simply being associated with measures of population control to the claim to reproductive freedom. Nevertheless, serious obstacles remain to be implemented and protected such rights for all segments of the population. Still, exceptions by unsafe abortions and variations in coverage of maternal health and reproductive services remain key challenges to reproductive health rights. Moreover, another layer of vulnerability is excluded from reproductive health care services: financially vulnerable individuals, people living in rural areas, and male and female transgender people. The present-day legal issue also cannot avoid addressing issues of reproductive freedom, gender justice, and agency, which are beyond legal solutions and legal improvisations but call for social justice reforms and policy changes. It is crucial to meet these contemporary patterns to ensure reproductive justice and liberate the constitutional rights of equal citizenship and personal freedom.²⁴

Addressing Unsafe Abortions and Maternal Health Issues

Unsafe abortions are still a major concern in the flux of public health in India even after the clear provisions made by the "Medical Termination of Pregnancy (MTP) Act, 1971," as well as its modification in the later years. Some of the reasons why many women still use unsafe methods include

²¹ Anuvi Sinha, Ratnesh Sinha, "Recent Amendment in the Medical Termination of Pregnancy Act in India: Empowering Women's Health", 68 *Indian Journal of Public Health* 130 (2024).

²² A. Bhaktwani, "The PC-PNDT Act in a Nutshell", 22 *Indian Journal of Radiology and Imaging* 133 (2012).

²³ S. Kashyap, P. Tripathi, "The Surrogacy (Regulation) Act, 2021: A Critique", 15 *Asian Bioethics Review* 5 (2022).

²⁴ J. Dey, C. Ramanathan, S. Dutta, "Issues and Concerns of Women's Health in India: A Case Study of Cachar, Assam", 2 *The International Journal of Community and Social Development* 327 (2020).

limited access to health facilities, social culture, and legal provisions on abortion that require medical doctors' recommended approval, thus acting as a barrier to early and safe medical care. As much as unsafe abortions lead to maternal morbidity and mortality, that is likely to slow down the achievement of MDG 5 by increasing populist figures of maternal mortality. While the 2021 MTP Act passed to increase access by exempting pregnancy beyond the previous gestational limit and unmarried females, the problems still surface in rural India, where facilities have remained inadequate. Moreover, self-serving provisions that require doctors to approve abortions can subordinate women from making independent reproductive decisions. Correction of these problems necessitates not merely the continuing legalization of abortion and enhancement of the laws that deregulate abortion but also enhancement of both the health care systems that deliver reproductive services and campaigns that demystify the act as well as prevention of abuse of the law by every woman who needs safe and dignified reproductive health services.

Access to Reproductive Healthcare for Marginalized Communities

Socially excluded groups of India suffer from disparities in the reproductive health care that adequately meets their needs, and it is inclusive of women of the lower sections of the economy, women of the rural areas, and the scheduled castes and tribes. Due to mentality and culture, social norms, poverty, lack of education, and especially discrimination, these communities can hardly access qualified reproductive health services. For instance, in rural areas, there is a high chance that women will not find good health facilities and health practitioners that would offer them services such as safe abortions, contraceptives, and maternal care. However, discrimination based on caste may even more entrap them and thus hinder access of Dalit and tribal women to the public health care system. There is little accommodation for beings who are not strictly male or female in the present reproductive health care system, which in a way is also built on a male/female binary understanding of gender. It is also well understood that improvement in legal provisions is insufficient to close these gaps; there is a need for demand-driven politically purposeful policies that appropriately address the particular needs of the vulnerable populations in health care services, accompanied by efforts aimed at eradicating prejudice and discrimination in health care facilities. Reproductive justice for all is not only about legal rights but also about the physical infrastructures that make these rights feasible and the larger social movements that support the realization of these rights.²⁵

Reproductive Rights in the Context of Gender Equality and Empowerment

The Millennium Development Goals and gender equality link reproductive rights to gender equality and women's human rights because decision-making on one's own body and reproductive life is central to women's human rights. The rights to contraception, safe abortion, and maternal health are inextricably married to women's social, economic, and political status. For example, where women can make explicit decisions about their fertility, they can access education, work, and citizenship in ways that undermine entrenched gender hierarchies. Delinking and legalizing reproductive rights in India have been a pathbreaker in this direction. Legal propositions like "Suchita Srivastava" uphold the right to reproductive choices. However, for these rights to be enjoyed to the fullest, it is not just enough to spot them within the legal framework but a radical change in the perception of gender roles and women's freedom. Culture oriented toward honouring a family's name or reputation over individual decisions and rights, gendered violence, and continued unfavourable inequalities remain barriers to reproductive choice. The enhancement of reproductive justice as a component of gender equity means eradicating these ingrained social problems, advocating for education and policy reform that encourage women to assert their fertility rights without prejudice from their male counterparts, and intrusion.²⁶

Critical Analysis of Reproductive Rights under Indian Law

The need for women's reproductive rights in India, which includes the right to contraceptives, legal abortion, maternal care, and protection from violence, has been championed by progressive laws and the judiciary. Legal regulation of reproduction has developed from colonial laws that prohibited conscious intervention in childbearing to modern legislation that covers all the minor facets of the issue. However, the given state of the law today has its advantages and drawbacks vis-à-vis the reproductive rights regime, with some deficiencies and uncertainties on the way to the reproductive justice agenda. Through the interpretation of constitutional provisions, the judiciary has stepped in to enhance these rights and grappling with legal and ethical issues incident to policy implementation and advancement of reproductive liberties. This argues that knowledge of the existing laws by Indian law on reproductive rights and the judiciary's assisting role enables examination of the extent to which the existing laws protect the reproductive rights of women as well as pointing out what needs further legal and policy reforms.²⁷

Strengths and Limitations of Existing Legal Frameworks

Reproductive rights in India in the current legal climate are pending between progressive statutes and judicial pronouncements, which have expanded legal conceptions of volitional reproductive freedom. Bills like the Medical Termination of Pregnancy (MTP) Act (1971), the Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act (1994), and the Surrogacy (Regulation) Act (2021) are examples that show the steps taken by the government for the protection of women's reproductive health. Thus, the MTP Act, particularly after the changes in 2021, is a considerable improvement that has offered an opportunity to women beyond gestational legal control regarding abortions and opened access to unmarried females. Likewise, the PCPNDT

²⁵ M.A. Biggs, R. Schroeder, "Access to Reproductive Health Services Among People With Disabilities", 6 *JAMA Network Open* e2344877 (2023).

²⁶ Women's Autonomy, Equality and Reproductive Health, available at: <https://www.ohchr.org/en/special-procedures/wg-women-and-girls/womens-autonomy-equality-and-reproductive-health> (last visited on October 15, 2024).

²⁷ Women's Autonomy, Equality and Reproductive Health, available at: <https://reproductiverights.org/sites/default/files/documents/Reproductive-Rights-In-Indian-Courts.pdf> (last visited on October 15, 2024).

Act has a useful role in the elimination of gender discrimination by checking sex selection. However, these laws also lack features that reduce their efficiency to a considerable degree. As you can see, the MTP Act also kept the restriction of abortions only to medical practitioners, thus again seeming to take away the rights of women, especially in rural and other areas where there may be a scarcity of medical practitioners. The PCPNDT Act as an instrument that can prevent female feticide has been heavily criticized for several reasons, which include its restrictive measures in Indian states as well as for cultivating barriers for immoral reproductive health service providers. Further, the ‘Surrogacy (Regulation) Act, 2021’ which focuses primarily on altruistic surrogacy has been deemed to have restricted women’s reproductive freedoms by putting forward very stringent criteria for eligibility and allowing only altruistic and not commercial surrogacy, therefore questioning the problems of autonomy and choice.

Role of the Judiciary in Protecting Reproductive Rights

The judiciary, especially in India, has been instrumental in asserting reproductive rights by affording reproductive freedom as part of any of the provisions of the constitution, declaring it a fundamental right. Disposing of landmark judgments has made links between reproductive rights and the “right to life and personal liberty” enshrined in “Article 21” of the Constitution. The judgment in the case of *Suchita Srivastava v. Chandigarh Administration*²⁸ also confirmed that the right to reproductive choice of a woman is contained in the Protection of Life and Personal Liberty and therefore the autonomy in reproduction is a constitutional right. In the same manner, *Justice K.S. Puttaswamy v. Union of India*²⁹ upheld the Indian Constitution and recognized the right to privacy, where the freedom to decide what should be done to one’s body was emphasized again as one more key constitutional protection for reproductive rights. The judiciary has also assumed a strong role in cases where reproductive health policies violated women’s rights not only through coerced sterilizations under forced family planning programs. Nevertheless, judicial activism cannot go unalloyed; as courts have embraced broad connotations of rights, the practical implementation and vindication of such rights are often partial, compounded by dependence on the socioeconomic status and geographical distribution of healthcare facilities. The judiciary has been, without doubt, going the extra mile in the promotion of reproductive rights, but all this has to be coupled with effective policy implementation and change of legislation.³⁰

Legal and Ethical Dilemmas Surrounding Reproductive Health Policies

This identifies that the reproductive health policy process in India comes with many legal and ethical issues that test the policymaker on the differential between the rights of an individual and duties to society. The main ethical issue is therefore a conflict of interest regarding the reproductive freedoms of women and the state’s rights to control some of these rights like abortion and surrogacy. The issue of safe abortion has always been prospective under the MTP Act; however, clauses such as medical approval and gestational limits can be perceived more as limitations to a woman’s agency to choose what happens to her body and hence end up putting her through the meant-for-safety-risk of having dangerous abortions. Sex-selective practices dealt with in the PCPNDT act pose the question of the right to privacy as compared to the right to be free from discrimination based on sex. Equally, the legalization of surrogacy raises ethical concerns over the commercialization of motherhood and the exploitation of poor surrogate women. The banning of commercial surrogacy while attempting to stop the exploitation of women has also been said to restrict the choices of women who wish to seek surrogacy agencies. Solving these questions is possible only with necessary attention paid to personal autonomy in reproductive matters while at the same time retaining legal provisions that prevent abuse of nontraditional families and discrimination. The struggle for reproductive rights in India is therefore far from over, and the cherished goal of reproductive justice must seek a synthesis between legal rationality, ethical imperative, and social utility.³¹

Conclusion :

Concerning reproductive rights, it is possible to discover the long way India has come from colonial laws and social reform movements up to the current legal framework, which, while upholding the individual’s right to decide on reproductive matters, also tries to protect the public health interest of the country. Although they did not have voting rights, late 19th and early 20th century women’s rights activists and suffragettes, and later, feminism, paved the way for the recognition of reproductive liberty for women as empowering and liberating. The first policies after independence were mainly for controlling population growth; the focus later expanded to include all reproductive health issues due to changes in internal policies, international human rights movements, and judicial decisions. The law is, however, not without its challenges; even so, the triad of the Medical Termination of Pregnancy Act, the Pre-Conception and Pre-Natal Diagnostic Techniques Act, and the Surrogacy (Regulation) Act demonstrates important advancements in the protection of reproductive health.

Civil society has tried to broaden the definition of reproductive rights, and the judiciary has supported this in cases like “*Suchita Srivastava v. Chandigarh Administration*”³² a couple fighting for their reproductive rights in line with the liberty included in “Article 21.” On the other hand, caught-up activism has also covered forceful practices and defined changes in the policies incredibly, as reproductive rights have become part and parcel of the ability to live and be treated with dignity. But there is still a long way to go to achieve reproductive justice because the material realities of race, class, the lack of access to healthcare resources and technology, and an entrenched culture of oppression and shame prevent full reproductive autonomy for the oppressed. All these hurdles point to the need for a continuous process of legal change that extends even beyond the policy to increase women’s actual availability of reproductive services irrespective of their class background.

²⁸ [2009] 9 SCC 1.

²⁹ [2017] 10 SCC 1.

³⁰ Dipika Jain, Payal K. Shah, “Reimagining Reproductive Rights Jurisprudence in India: Reflections on the Recent Decisions on Privacy and Gender Equality from the Supreme Court of India”, 39 *Columbia Journal of Gender & Law* 1 (2020).

³¹ Subin Thomas, Smita Satapathy, *Gender, Environment, and Human Rights: An Intersectional Exploration* 32 (IGI Global, 1st edn., 2025).

³² [2009] 9 SCC 1.

The current communication examines how legal systems have pros and cons regarding reproductive rights in India. Although there have been progressive laws and judicial interventions in the form of reproductive liberty, many times such laws themselves are creating moral controversies like the right to privacy vs. prevention of detrimental actions, including sex-selective abortion or regulating surrogacy. Future research should implement a new strategy that will focus on the reproductive rights of all women regardless of their background, regarding any ethical and social issues involved.

Securing the cause of reproductive justice in India needs a multi-sectoral strategy that involves the enforcement of laws, implementation of health policies and polity, and communal education. India has the opportunity to go even further in guaranteeing reproductive rights both at the legal level and in practice by persisting in the progression of domestic law with international human rights standards and by filling existing legal and practical gaps.

Suggestions :

To improve reproductive rights and to overcome the existing issues in India, the following recommendations are suggested in the legal, healthcare, and social aspects. The above measures are intended to guarantee reproductive rights to the maximum for everyone, particularly the vulnerable in society.

- Ensure comprehensive sex education in schools across India to promote awareness of reproductive rights, focusing on safe practices and addressing cultural taboos that limit understanding of reproductive health.
- Create government-funded programs for training rural health practitioners on safe delivery practices and maternal health to reduce maternal mortality rates, especially in marginalized communities.
- Integrate reproductive health services within primary healthcare centers to make contraception, prenatal, and postnatal care more accessible and to reduce stigma associated with reproductive health services.
- Increase the legal gestational limit for abortions across categories, especially for cases involving mental health issues or fetal abnormalities, giving women greater agency over their reproductive choices.
- Establish mobile healthcare units equipped to provide reproductive health services in remote areas, reducing the distance barrier to access essential maternal and reproductive care.
- Encourage media campaigns to normalize discussions about reproductive health, countering social stigmas and providing information on available legal rights and healthcare services.
- Address gender-based discrimination in reproductive healthcare access by creating policies that eliminate caste and class biases in public health institutions.