



# Gender Inequality and Human Rights: Historical and Cultural Perspectives on Women's Reproductive Rights

Dr. Sadaf Iqbal<sup>a</sup>, Mr. Suryansh Nigam<sup>b</sup>

<sup>a</sup>Research Associate, Academy of Management Studies, Lucknow

<sup>b</sup>Scholar, Amity Institute of Liberal Arts, Amity University Lucknow

## ABSTRACT

Women are the most vulnerable group in society, and their reproductive rights are the foundations of women's reproductive health. This paper explores the intricate intersections of historical, cultural, and feminist dimensions of gender inequality to understand the barriers women face in asserting control over their reproductive choices. By analysing historical milestones, feminist ideologies, cultural norms, and legal frameworks, the paper seeks to offer a comprehensive understanding of the progress and challenges in promoting gender equality and women's bodily autonomy. The analysis identifies key findings related to the legal framework protecting reproductive rights, including international conventions and Indian legislation. The intersection of reproductive rights with broader issues of gender equality underscores the need for systemic changes that address the root causes of inequality. This research paper explores the intricate relationship between gender, autonomy, and reproductive rights of women. It delves into the historical context of women's rights movements, the evolution of feminist theories, and the impact of cultural practices on women's health and autonomy. The paper also examines the legal frameworks established to protect women's rights and the ongoing challenges faced in achieving gender equality.

Keywords: Gender roles, Feminism, Reproductive rights, Autonomy, and Intersectionality, Human Rights, Gender Inequality

## Introduction

Gender inequality has persisted as a profound challenge across societies, shaping cultural norms, institutional frameworks, and individual experiences. At its core, this inequality has had far-reaching implications for women's autonomy, particularly in areas related to reproductive health. Reproductive health, a cornerstone of women's well-being, is inextricably linked to their agency and empowerment. Yet, for centuries, societal norms and patriarchal structures have undermined women's ability to make autonomous decisions about their bodies.

The historical evolution of women's rights reveals a journey deeply entrenched in the fight against systemic inequality. In many early societies, women's roles were confined to the private sphere, dictated by rigid patriarchal norms that prioritized male authority and control. However, the emergence of the feminist movement in the 18<sup>th</sup> and 19<sup>th</sup> centuries signified a turning point. Early feminists fought for suffrage, property rights, and access to education, laying the groundwork for subsequent movements that expanded their focus to include reproductive rights and bodily autonomy. The feminist movement's second wave in the mid-20<sup>th</sup> century brought reproductive health to the forefront, emphasizing its centrality to women's overall empowerment. These efforts underscored the intrinsic link between women's rights and their ability to exercise control over their reproductive choices, catalyzing legal and policy advancements across the globe. Central to the discourse on reproductive health is the concept of gender—a social construct that shapes individual experiences, societal norms, and power dynamics. Unlike biological sex, which is determined by physical attributes, gender is a fluid concept influenced by cultural, historical, and social factors. Traditional gender roles have often perpetuated stereotypes that confine women to the roles of caregivers and homemakers, limiting their access to education, employment, and healthcare. In the context of reproductive health, these roles reinforce the notion that women's primary duty is to bear and raise children, often at the expense of their personal aspirations and autonomy. Understanding gender as a dynamic and socially constructed concept is crucial to dismantling these stereotypes and fostering a more equitable approach to reproductive rights.

Globally, the recognition of reproductive rights as fundamental human rights has been a relatively recent development. Legal instruments such as the *Universal Declaration of Human Rights (UDHR)* and the *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)* have played pivotal roles in establishing a normative framework for addressing gender-based discrimination and promoting women's autonomy. These conventions emphasize the importance of bodily integrity, freedom from coercion, and access to healthcare, setting a global standard for safeguarding women's rights. In India, constitutional provisions such as Articles 14, 15, and 21 reinforce the state's commitment to gender equality and women's welfare. Progressive legislation, including the *Medical Termination of Pregnancy (MTP) Act* and the *Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act*, reflects the country's efforts to address critical issues related to reproductive health. These legal measures, however, must be complemented by cultural and social reforms to overcome deeply entrenched patriarchal attitudes.

Reproductive rights, encompassing access to contraception, safe abortion, maternal healthcare, and protection from reproductive coercion, are integral to women's health and autonomy. In India, the expansion of the MTP Act in 2021 marked a significant step toward inclusivity by granting unmarried women the same abortion rights as married women and extending the gestation limit for specific categories. Policies such as the *National Population Policy (NPP)* and the *National Rural Health Mission (NRHM)* further underscore the state's commitment to improving maternal and child health. However, societal stigma, inadequate healthcare infrastructure, and cultural practices continue to impede women's ability to fully exercise their reproductive rights. These barriers highlight the need for a holistic approach that integrates legal safeguards with education, advocacy, and community engagement to challenge discriminatory norms and promote gender justice.

This paper seeks to contribute to the broader discourse on gender inequality by examining the historical and cultural dimensions of women's reproductive health through a human rights lens. By analysing the evolution of gender roles, feminist movements, and legal frameworks, it aims to highlight the intersections of social, cultural, and political factors that shape women's experiences. The findings emphasize that achieving gender equality necessitates a transformative approach that not only addresses legal and policy gaps but also challenges societal attitudes and norms. Reproductive rights, as a fundamental aspect of women's autonomy, must be recognized as essential to achieving broader goals of social justice and equity. Through a comprehensive exploration of these themes, this research underscores the importance of collective action in dismantling patriarchal structures and fostering a society that values and upholds women's rights in all spheres.

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## Objective

The objective of this paper is to explore the intersection of gender, autonomy, and reproductive rights to understand the persistent challenges faced by women in achieving equality and dignity. It aims to:

- Analyze historical perspectives on gender roles and women's subordination to trace the evolution of thought regarding autonomy and reproductive rights.
- Examine cultural variations in gender roles and their impact on women's agency and access to reproductive rights.
- Investigate feminist movements across different waves to understand their contributions to the struggle for gender equality and bodily integrity.
- Highlight the need for transformative social and cultural changes that affirm women's autonomy and promote reproductive rights as fundamental to achieving gender justice.

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## Historical Context of Women's Rights

The fight for women's rights can be traced back to the enlightenment period, where thinkers like Mary Wollstonecraft advocated for women's education and equality. The first wave of feminism focused on suffrage and legal rights, culminating in the ratification of the Nineteenth Amendment in the United States in 1920. The second wave, characterized by the slogan "the personal is political," addressed issues of sexuality, reproductive rights, and workplace equality. The third wave of feminism emerged in the 1990s, challenging the notion of universal womanhood and advocating for intersectionality. Collectively, these waves illustrate the gradual but transformative struggle of women across the globe to dismantle patriarchal structures and assert their autonomy in political, social, and cultural spheres.

The first feminist wave, rooted in the late nineteenth and early twentieth centuries, was largely concerned with women's suffrage, educational access, and working conditions. This period emerged against the backdrop of industrialization, which had created a new economic structure but reinforced gender roles that confined women to the private sphere. In the United States, the first wave's origins can be traced to the Seneca Falls Convention of 1848, where men and women gathered for the first national women's rights assembly. At this convention, Elizabeth Cady Stanton presented the Seneca Falls Declaration, a seminal document that outlined women's demands for equality, particularly in political participation. Stanton's advocacy for the natural equality of women inspired the subsequent suffrage movement, which sought the right to vote as the cornerstone of women's liberation. Despite prolonged opposition, the movement culminated in the ratification of the Nineteenth Amendment in 1920, securing American women the right to vote. Parallels, in Europe, liberal feminism found one of its earliest voices in Mary Wollstonecraft's *A Vindication of the Rights of Woman* (1792), a pioneering work that criticized the systemic denial of education and autonomy to women. Wollstonecraft's arguments reflected Enlightenment ideals of reason and equality, asserting that women were not inherently inferior but were made so through lack of opportunity. Similarly, the works of authors such as Virginia Woolf and Simone de Beauvoir laid intellectual groundwork that would influence subsequent feminist waves. Woolf, in "*A Room of One's Own*", highlighted the importance of economic independence and intellectual freedom for women, while Beauvoir, in "*The Second Sex*", explored how societal constructs relegated women to a subordinate status. While the first wave primarily focused on legal and political rights, its achievements provided a critical platform for the more radical demands of the second wave.

The second wave of feminism, emerging in the late 1960s and continuing into the 1970s, was marked by the slogan "the personal is political," coined by Carol Hanisch. This phrase underscored the feminist critique of patriarchy's control over not just public systems but also private lives, including family structures, sexuality, and reproduction. Unlike the first wave, which concentrated on achieving political equality, the second wave broadened the feminist struggle to encompass social, economic, and cultural dimensions. This phase of feminism emerged in the context of larger movements such as the Civil Rights Movement and anti-Vietnam War protests, which exposed women to political activism but also highlighted their marginalization within male-dominated radical movements. Women began to organize independently, focusing on issues like reproductive rights, sexual autonomy, and workplace

discrimination. Key texts of the second wave provided a theoretical framework for understanding women's oppression. Simone de Beauvoir's "The Second Sex" (1949) argued that women are constructed as the "Other" in relation to men, forced into subordinate roles by cultural and societal norms. Beauvoir's Marxist-inspired analysis positioned women as a class oppressed within patriarchy, advocating for their autonomy and independence. Similarly, Betty Friedan's "The Feminine Mystique" (1963) exposed the psychological and emotional discontent of housewives who, despite living seemingly perfect lives, felt unfulfilled due to their lack of personal identity and economic independence. Friedan's work became a catalyst for the women's liberation movement, pushing for equality in employment, education, and personal development. The second wave also saw the rise of radical feminism, which critiqued patriarchy as the primary system of oppression. Kate Millet, in *Sexual Politics*, challenged the constructed nature of gender roles, arguing that gender is a social, not biological, construct. Radical feminists pushed for sexual autonomy, reproductive rights, and the deconstruction of gender norms, viewing these issues as essential to dismantling patriarchal structures. By the late 1960s, however, the movement experienced internal fragmentation, dividing into equal rights feminists—who sought equality within existing systems—and radical feminists, who advocated for a complete overhaul of patriarchal society. These divisions reflected deeper tensions related to race, class, and sexuality, as many non-white and working-class women felt excluded from the priorities of mainstream feminism.

The third wave of feminism, emerging in the mid-1990s, arose in response to the perceived shortcomings of the second wave, particularly its lack of inclusivity. Third-wave feminists criticized the second wave's focus on the experiences of white, middle-class women, arguing that feminism needed to address the diverse realities of women based on race, class, sexuality, and cultural background. This wave rejected the notion of a universal "womanhood", embracing intersectionality—a concept popularized by Kimberlé Crenshaw—to analyze how overlapping systems of oppression shape women's experiences. Third-wave feminism also adopted new rhetorical strategies, including performance, mimicry, and subversion, to challenge traditional notions of femininity and power. It sought to reclaim derogatory terms and redefine them in empowering ways, while also critiquing sexist language and media representations of women. The proponents of the third wave benefited from the legal and social gains of earlier feminist movements but remained critical of unresolved issues, such as persistent gender inequality, the underrepresentation of women in leadership, and new challenges posed by globalization and fundamentalism. Third-wave feminism emphasized individual agency, celebrating diverse expressions of gender identity and sexual freedom while calling for a more inclusive and dynamic feminist movement.

Moreover, in a parallel universe, human rights were viewed as fundamental entitlements rooted in moral principles. They serve to protect individuals from external interference while upholding their dignity and autonomy. Though the term "rights" gained prominence during the European Enlightenment, its principles have been embedded in various cultures and historical periods. Rights represent a long-standing struggle for recognition and equality, tracing back to the early formation of states, where the concept of citizenship laid the foundation for individual and collective entitlements. The relationship between rights and the state is deeply interwoven, as rights are often granted and safeguarded by states. Citizenship implies a social contract in which individuals are entitled to specific rights while adhering to corresponding duties. Wesley Hohfeld categorizes rights into four types: claim rights (e.g., a worker's right to wages), liberty rights (e.g., the freedom to spend leisure time), power rights (e.g., authority to direct others), and immunity rights (e.g., exemption from certain obligations). These distinctions highlight the complexities of human interactions within societies and the role of rights in managing these relationships. Over centuries, norms of social behaviour evolved into what is now called human rights. D.D. Basu describes these as "essential rights every person is entitled to possess against the state or public authorities by virtue of being human." Chief Justice J.S. Verma emphasizes human dignity as the core of human rights, which are crucial for the holistic development of individuals. While human rights encompass social, economic, political, cultural, and civil dimensions, their exact definition remains elusive. Often referred to as natural rights, they are inherent to humanity and exist regardless of societal or political constructs.

Furthermore, institutionalization of human rights began in earnest after World War II, although traces of their principles are found in ancient civilizations and religious texts, such as the Hammurabi Code, Confucian ethics, and Greek political thought. The adoption of the *Universal Declaration of Human Rights (UDHR)* in 1948 marked a turning point. As part of the United Nations' efforts to promote global peace and stability, the UDHR articulated fundamental rights and freedoms for all individuals. The UN Charter's preamble reaffirmed faith in human rights, equality, and dignity, highlighting the organization's commitment to addressing global social issues that impede governance and development. While not legally binding, the UDHR has significantly influenced global consciousness, fostering awareness and advocacy for dignified living conditions. To support the declaration, two additional covenants were adopted: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights. These covenants, collectively known as the International Bill of Human Rights, address diverse facets of human existence, emphasizing both individual freedoms and societal well-being. Michael Freedman describes human rights as conceptual tools that prioritize specific attributes essential for individuals' proper functioning while calling for measures to safeguard these attributes. The prioritization of different rights has often been a source of debate. Civil and political rights, such as freedom of expression and political representation, are seen as crucial for democratic governance. In contrast, social, economic, and cultural rights, such as access to healthcare and education, are viewed as foundational for a stable and productive society. This dichotomy reflects broader ideological divides. Western liberal democracies emphasize individual and political freedoms, while socialist states historically prioritized group rights and social equality. Newly independent states in the Global South have advocated for a combined approach, introducing the concept of "collective/solidarity rights," often referred to as the third generation of human rights.

Despite its universal aspirations, the human rights discourse faces criticisms and challenges. Feminist scholars argue that traditional human rights frameworks are often gender-biased, neglecting women's specific needs and struggles. Historically, women were relegated to reproductive and caregiving roles, with limited acknowledgment of their individuality and rights. This gap underscores the ongoing need for inclusive interpretations and applications of human rights. Human rights remain a dynamic and evolving concept, reflecting humanity's aspirations for justice, dignity, and equality. While the framework is not without its flaws and contestations, it continues to serve as a vital tool for addressing social, political, and economic challenges worldwide. Recognizing its limitations while striving for inclusivity and fairness is essential for realizing its transformative potential.

Post-independence India witnessed significant attention to women's rights. Mahatma Gandhi strongly advocated for their empowerment, emphasizing the respect and dignity they rightfully deserve, recognizing their potential to drive transformative societal change. He promoted equal involvement for women in both public and private spheres. With the help of reformists and contemporary magazines like Sudhakar, Subodh Patrika, and Kesari, women were able to defend social injustices and gain the courage to seek greater rights in the political arena. Conscious of their political rights and influenced by western democratic values, women worked actively to generate political consciousness during the early decades of the twentieth century. They took up the issue of voting rights for the women during the tenure of Lord Edwin Montagu, the Secretary of the State for India. Though the Southborough Franchise Committee was not in the favour of giving the rights but the demands from the women's organization and with the support of the Indian National Congress, it made possible for the women's to become active participants in the political arena and Madras was the first province to grant the franchise in 1920, followed by the Bombay in 1921. But the Equal franchise came only after independence. The point figured out in the present context of Indian patriarchal social construction is that the women in particular, did not challenge patriarchy or the male dominance which should be stripped off, rather the useless traditions, customs, cultures, superstition, apathy, and ignorance which prepares the line of a hindrance to realizing their rights. Hence, All-India women's conference (AIWC), in 1946 ratified the charter of Women's Rights and Memorandum for the central and provincial governments. The fundamental rights and obligations of women, including equal rights in civic, personal, and property law, are also fully outlined in the charter. Now that they were more aware of their rights, women began to view themselves as equal to men in all areas of life. On the other hand, in 1948, Pandit Nehru established a special subcommittee under the aegis of the Nehru Planning Committee to address the issues of women's status from all angles, including social, political, legal, and economic, in response to Mahatma Gandhi's remarks. Since women are an important and productive segment of society, the rulers were forced to accommodate their demands as their consciousness grew.

Although the Indian society and the government have to do a lot for uplifting women in the country and to raise and recognize their status in the public perception, they proposed a 33% seat reservation for women in the Parliament. The state legislature had to go through a long debate as both the ruling as well as the opposing party was male dominated. Further women's status in general in Indian society, can be gauged through law on the protection of women through the Domestic Violence Act, 2006. The violence against women of any form was not permitted and this passing of the act ensured their rights and their authority to claim against the accesses done on them. Extending the arena of rights of women 'The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013'. Likewise, women from the very beginning of the time have struggled for their individual status in the society and coming out of the illusionary trap of patriarchy. With the gradual change in the mind-set of the people and society, women's individual identity and their importance in the private and public sphere was recognized by the early social reformists, women's movement, women's organization, which led to the significant amendments and passing of the Acts recognizing the equal rights of women in education, employment, family planning, etc. Now, with the acceptance of the rudimentary laws and policies implemented for the betterment of the condition of women, the right to health of the women became the major concern. This was an important step taken by the Indian government for the safety and wellbeing of the women in general, especially the working women. India ratified the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), with certain limitations in 1993. With the ratification, India was bound by the laws and articles mentioned in its convention. Moreover, with the ratification of CEDAW and other conventions, the women in India were aware of their rights in the post-independent era and started claiming for the same. With the entitlement of rights and claims, they gathered the courage to fight for the injustices done against them. Further, to support them, the government is also busy in passing laws and acts to ensure their safety and wellbeing, but the position of women is not the same for all the sections of society. Though, this legislation for the women proved helpful for the elite class mostly, due to their boldness in raising these issues; now the rights in minor forms also has come to the front like demands for the health of the women, maternity leave, and to complement these 'Right to reproductive health' has also come forward. But this demand for equality of women is not uniformly accepted in the Indian context, as India being a culturally diverse country does not accept uniform laws passed by the government and is governed by their own cultural and religious laws. This creates hindrance in exercising the laws and policies made for women empowerment. Hence, the condition of women is not what is supposed to be even after the formulation of so many acts, laws, and policies for the betterment of the women.

***“Women have been held back by traditions and laws created by men, in which they had no influence. Women deserve the same opportunity to determine their own futures as men do. It is the responsibility of men to ensure that women can achieve their full potential and participate as equals.”***

The fact is that these traditions are engrained deep into the societal structure of which we humans have been nurtured all through the years. Therefore, even to talk about rights such as the 'Reproductive Rights' of women is considered as a big achievement in the field of women's rights.

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### **Reproductive Rights:**

In the 1970s and early 1980s, women's health movements in the United States and Europe based in the north gave rise to the concept of "reproductive rights." These movements made abortion easily accessible and granted people the right to "control their bodies" when it came to sexuality and reproduction. The issue concerning the reproductive rights of women was not only confined to control over fertility but also maternal mortality and maternal health. The Millennium Development Goal (MDGs) 3 was meant to promote gender equality and empower women, and Goal 5 aimed to reduce the maternal mortality ratio by three quarters between 1990 and 2015. Later, in 2015 it was replaced by Sustainable Development Goals (SDGs), with goal 3 concerning good health and wellbeing and goal 5 again relating to gender equality. This substantiates that maternal mortality has decreased and maternal health has improved with the targeted deadline of the MDGs in 2015, but gender inequality still persists, as it is again taken up by SDGs to be accomplished by 2030, as one of the missed goals of MDGs.

The Indian judiciary has played a significant role in upholding and expanding women's reproductive rights. Some landmark cases that have shaped the discourse on reproductive autonomy, health, and rights in India are *Suchita Srivastava v. Chandigarh Administration* (2009)<sup>1</sup>. This case involved a mentally disabled woman who became pregnant due to sexual assault at a government-run welfare institution. The Chandigarh Administration sought to terminate her pregnancy without her consent. The Supreme Court emphasized the importance of a woman's reproductive autonomy as a part of her personal liberty under Article 21 of the Constitution (Right to Life and Personal Liberty). The Court upheld that women have the right to make decisions about their bodies, including whether to continue a pregnancy, and stressed the need for informed consent. This case laid the foundation for reproductive rights as an essential component of personal liberty.

Another case, *Puttaswamy v. Union of India* (2017), recognized the 'Right to Privacy' as a fundamental right under Article 21 of the Indian Constitution. The Supreme Court held that reproductive choices are an integral part of personal autonomy and privacy. By declaring privacy a fundamental right, the Court reinforced women's reproductive autonomy, including the right to access contraception, abortion, and family planning services without state interference. Moreover, in *X v. Union of India* (2017)<sup>2</sup> case, a woman sought permission to terminate her 24-week pregnancy after discovering severe foetal abnormalities. Under the Medical Termination of Pregnancy (MTP) Act, 1971, abortion beyond 20 weeks was not allowed unless it endangered the mother's life. The Supreme Court allowed the termination and underscored the importance of a woman's right to make reproductive decisions when continuing the pregnancy would cause her mental and physical harm. This case brought attention to the need for amending the MTP Act to allow abortions beyond 20 weeks in cases of foetal abnormalities and other exceptional circumstances. It directly contributed to legislative reforms.

Another landmark case, *Justice K.S. Puttaswamy (Retd.) v. Union of India*<sup>3</sup>, primarily focused on privacy but also underscored the importance of human dignity, emphasizing women's bodily autonomy and reproductive rights. The Supreme Court reaffirmed that a woman's choice regarding reproduction is her right and is covered under the right to privacy and dignity. This judgement linked reproductive rights to the right to privacy, strengthening women's autonomy in deciding matters related to their bodies. In *Devika Biswas v. Union of India* (2016)<sup>4</sup> case, the death of several women due to unsafe sterilization procedures in government-sponsored family planning camps, highlighted violations of women's reproductive health and the lack of safe medical practices. The Supreme Court recognized the violation of women's fundamental rights under Articles 14 (Equality) and 21 (Right to Life and Dignity). The Court condemned coercive and unsafe sterilization practices and directed the government to improve healthcare facilities. This case emphasized the importance of access to safe and informed reproductive healthcare and held the state accountable for ensuring women's rights to health and dignity.

Furthermore, a woman filed a petition seeking termination of her 24-week pregnancy after doctors found foetal abnormalities in *Meera Santosh Pal v. Union of India* (2017)<sup>5</sup> case. The Supreme Court allowed the termination, considering the severe harm it could cause to the mother's mental and physical health. This judgement underscored the importance of extending reproductive rights to protect women's mental and emotional well-being in addition to physical health. Another case of *Ankush Shivaji Gaikwad v. State of Maharashtra* (2013)<sup>6</sup>, focused on compensation for rape survivors. The issue was whether survivors could claim compensation for the mental and physical trauma caused, including pregnancy resulting from sexual assault. The Supreme Court directed courts to consider the needs of rape survivors, including the costs associated with childbirth and the upbringing of a child in such circumstances. The judgement acknowledged the severe impact of forced pregnancies on women's lives and highlighted the importance of providing restorative justice to survivors of sexual violence. High Court of Kerala (2023) - *Child Marriage and Reproductive Autonomy*<sup>7</sup>, A minor girl became pregnant as a result of child marriage and sought permission for medical termination of her pregnancy. The High Court intervened to prioritize the girl's health and well-being. The Court allowed the termination, recognizing the importance of safeguarding the reproductive autonomy of girls who are victims of child marriage. The case highlighted the intersection between child marriage, reproductive rights, and healthcare access for vulnerable groups.

These landmark cases have significantly influenced Indian law, most notably through the *Medical Termination of Pregnancy (Amendment) Act, 2021*, which extended the abortion limit to 24 weeks for specific categories of women, including survivors of rape, incest, and those with foetal abnormalities. Such rulings have reinforced those reproductive rights, encompassing access to safe abortion and healthcare are integral to the constitutional rights to life, dignity, and privacy. The Indian judiciary has been pivotal in advancing women's reproductive rights, interpreting constitutional provisions to uphold autonomy, health, and dignity. From ensuring safe access to abortion to addressing healthcare inequalities and combating coercive family planning practices, these landmark decisions signify a progressive acknowledgment of women's bodily autonomy as essential to achieving gender equality.

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## Feminist Theories and Ideologies

Feminist theories, particularly Liberal, Marxist/Socialist, and Radical feminism—provide critical lenses to understand the roots of gendered inequalities and the exploitation of women's reproductive roles. These schools of thought dissect how systemic forces have maintained control over women's bodies while offering pathways to challenge such inequities.

Liberal feminism, which originated during the enlightenment in the 18<sup>th</sup> century, provides one of the earliest analyses of gender inequality. Liberal feminists emphasize individual autonomy, equal opportunities, and legal reforms as key to overcoming women's subordination. Reproductive rights, in

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

<sup>2</sup> *X v. Union of India*, Writ Petition (Civil) No. 81 of 2017

<sup>3</sup> *Justice K.S. Puttaswamy (Retd.) & Anr. V. Union of India & Ors.*, (2017) 10 SCC 1

<sup>4</sup> *Devika Biswas v. Union of India & Ors.*, (2016) 10 SCC 726

<sup>5</sup> *Meera Santosh Pal v. Union of India*, Writ Petition (Civil) No. 17 of 2017

<sup>6</sup> *Ankush Shivaji Gaikwad v. State of Maharashtra*, (2013) 6 SCC 770

<sup>7</sup> Kerala High Court, *Minor's Case Regarding Reproductive Autonomy*, Writ Petition (Civil) No. 26090 of 2023

their view, are essential for women's participation in society on equal terms with men. Women have historically been denied access to education, economic opportunities, and personal freedom because of the expectations and limitations tied to their reproductive roles. The burden of childbearing, caregiving, and domestic responsibilities has often been perceived as a biological inevitability that defines a woman's place in society. This narrative, however, restricts women's agency and reduces them to tools of reproduction rather than individuals with personal ambitions and identities. Betty Friedan, a prominent liberal feminist, argued in 'The Feminine Mystique' that women's lack of economic independence, often tied to their confinement within the household, is a key source of their subjugation. Economic independence and control over their own bodies are, therefore, deeply interconnected. Friedan and other liberal feminists advocated for women's access to contraception and abortion as fundamental to their autonomy, enabling them to make choices about family planning, careers, and self-fulfilment. Moreover, liberal feminists assert that existing systems can be reformed to ensure reproductive rights without fundamentally restructuring society. Legal changes, such as access to safe abortion, affordable healthcare, and equal workplace opportunities, are viewed as tools for creating a more equal society. However, while liberal feminism has made significant strides in advocating for reproductive rights, its emphasis on individual reforms often overlooks the deeper systemic roots of gender inequality that extend beyond legal barriers.

In contrast, Marxist and socialist feminisms locate women's reproductive oppression within the broader structures of capitalism and class exploitation. Friedrich Engels, in 'The Origin of the Family, Private Property, and the State', argued that women's subjugation is not a result of male domination alone but of the economic systems that benefit from their unpaid reproductive labour. Under capitalism, women's roles as caregivers, child bearers, and domestic workers sustain the economic system by producing and maintaining the workforce. However, this labour is undervalued, unpaid, and often treated as a natural responsibility rather than an economic contribution. Marxist feminism highlights how women's lack of economic independence and reproductive autonomy reinforces their subordination. Without control over their own bodies, women are unable to escape the cycle of poverty and dependence that capitalism perpetuates. Socialist feminists further build on this critique by emphasizing the interconnectedness of patriarchy and capitalism. They argue that both systems work together to naturalize gender roles and maintain women's inferior status in both the family and the economy. For instance, societal expectations that women must prioritize motherhood and caregiving over employment limit their opportunities for economic independence and personal development. Socialist feminists advocate for systemic changes, such as state-supported childcare, paid maternity leave, and universal access to reproductive healthcare, to challenge the economic structures that exploit women's reproductive roles. Importantly, they argue that achieving reproductive rights requires not just legal reforms but also a reorganization of society to recognize and value women's contributions. The emphasis on collective solutions rather than individual reforms distinguishes socialist feminism from liberal feminism, offering a more comprehensive approach to addressing reproductive inequality.

Radical feminism, which emerged in the 1960s, provides an even more critical perspective on the roots of women's reproductive oppression. Radical feminists argue that patriarchy, the system of male dominance, is the primary cause of women's subordination, and reproductive control is one of its most potent tools. According to radical feminists, male control over women's bodies is deeply embedded in cultural, religious, and societal norms. Women's roles as mothers, nurturers, and sexual objects are not natural but are constructed to maintain male power and privilege. Shulamith Firestone, a key radical feminist thinker, argued that biological reproduction has historically been weaponized to confine women to the domestic sphere. Motherhood, often romanticized as a woman's ultimate purpose, has been used to justify the systemic exclusion of women from public life, education, and economic opportunities. Radical feminists challenge this narrative by advocating for women to reclaim control over their bodies and reject the cultural norms that reduce them to their reproductive functions. Consciousness-raising, a central tenet of radical feminism, seeks to make women aware of how patriarchal ideologies shape their oppression and limit their autonomy. Radical feminists emphasize that reproductive rights are about more than access to contraception and abortion—they are about women's liberation from the systemic forces that control their bodies and lives. They argue that true reproductive autonomy requires dismantling patriarchy and creating spaces where women can make decisions free from male interference. This includes challenging societal norms that glorify motherhood while denying women the right to pursue personal ambitions or reject traditional roles. By advocating for women-only spaces and emphasizing the importance of bodily autonomy, radical feminists seek to empower women to define their identities on their own terms.

The struggle for reproductive rights, therefore, cannot be understood in isolation from the broader historical, cultural, and systemic inequalities that have shaped women's lives. Across societies, restrictive norms, religious ideologies, and discriminatory policies have denied women the ability to make informed decisions about their bodies. For example, in many cultures, access to contraception and abortion has been restricted due to moral and religious opposition, reinforcing the idea that women's primary role is to bear children. Similarly, economic barriers, such as the lack of affordable healthcare and childcare, disproportionately affect women, limiting their reproductive choices and perpetuating cycles of poverty. While feminist movements have made significant progress in advocating for reproductive rights, challenges remain. Women in many parts of the world continue to face barriers to accessing safe abortion, contraception, and maternal healthcare. Cultural norms that prioritize motherhood and stigmatize women who choose not to have children persist, further limiting women's autonomy. Moreover, the intersection of gender with race, class, and other forms of inequality means that marginalized women often face the greatest barriers to reproductive freedom.

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## **Gender: A Social Construct and harmful cultural practices**

Gender is a socially constructed concept that defines roles, expectations, and relationships between men and women within various social, cultural, and political contexts. Unlike biological sex, which is biologically determined, gender is shaped by societal norms and cultural conventions, making it dynamic and subject to change over time. The term "gender" emerged within American feminist circles in the mid-20<sup>th</sup> century, gaining prominence as a way to emphasize the social and cultural distinctions associated with sex. Since then, it has evolved to represent a critical aspect of personal and social identity, influencing behaviour, societal roles, and power dynamics. The social construction of gender has been extensively studied by scholars across disciplines.

In the 1950s, Money and Hampson defined gender as the behaviours and actions that individuals use to signify their identity as male or female. By the 1970s, Australian sociologist Raewyn Connell highlighted gender as a structure of social relations, particularly tied to reproductive practices, emphasizing its roots in societal interactions rather than biological determinism. Judith Butler, a poststructuralist philosopher, later expanded on this understanding by introducing the concept of gender performativity. According to Butler, gender is not an innate quality but a set of repetitive actions and behaviours constructed and reinforced through societal norms. These acts create the illusion of gender as a fixed and inherent identity, yet it remains fluid and open to remaking.

Gender is a social and cultural construct, as evidenced by its performative aspect. According to Butler's thesis, people "perform" their gender by consistent behaviours within a controlled social context, giving the impression that their identity is stable. Gender is viewed as a product of societal expectations, challenging conventional ideas that it is physiologically fixed. Gender, according to Gerda Lerner, is a "cultural definition of behaviour," indicating that it varies over time and throughout cultures. While gender is socially and culturally formed and can vary depending on changing norms and settings, sex is biologically established, she underlined. Women's reproductive autonomy and rights are significantly impacted by this societal construction of gender. Reproductive autonomy refers to a woman's ability to make decisions about her body and reproductive health free from societal pressures or constraints. Achieving gender equality necessitates addressing the structural and cultural barriers that limit women's autonomy. These barriers often stem from deeply ingrained gender norms that dictate women's roles as caregivers and limit their decision-making power. The intersection of gender norms and reproductive autonomy highlights the broader societal structures that perpetuate inequality.

Sociologists and ethnographers have argued that individuals are not inherently born with masculine or feminine traits; instead, these traits are cultivated through socialization within specific cultural contexts. Gender identity is shaped by interactions among societal elements, where individuals are expected to conform to predefined roles. This dynamic nature of gender is further reinforced by cultural dominance and power structures, which influence how gender is perceived and performed. Discursive psychologists support this view, emphasizing that gender identity remains fluid and adaptable, capable of evolving within different social settings.

In the Indian context, harmful cultural practices that curtail women's reproductive rights are deeply embedded in patriarchal norms and traditions. While issues like Female Genital Mutilation (FGM) are not as widespread as in some other regions of the world, other cultural and social practices disproportionately impact Indian women's reproductive autonomy and health. These practices perpetuate gender inequality and reinforce societal control over women's bodies, often violating their fundamental rights enshrined in the Indian Constitution. Child Marriage and early pregnancies are one of the most pressing cultural practices affecting reproductive rights in India is child marriage, which continues to persist despite being legally prohibited under the Prohibition of Child Marriage Act, 2006. Child marriage leads to early pregnancies, posing serious health risks for young girls, including maternal mortality, infant mortality, and complications during childbirth. According to UNICEF, India has one of the highest numbers of child brides globally, with early marriage directly curtailing a girl's right to education, health, and self-determination. While laws like the Protection of Children from Sexual Offences (POCSO) Act, 2012 and PCMA address child marriage, implementation remains weak due to societal acceptance. Families often justify the practice on cultural grounds, emphasizing tradition, honour, and economic constraints. In the case of *Independent Thought v. Union of India* (2017), the Supreme Court criminalized marital rape for minors, highlighting the health and reproductive autonomy of girls forced into early marriages. Moreover, the cultural preference for male children remains a significant issue in India, leading to sex-selective abortions and a skewed sex ratio. The Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, 1994 was enacted to curb sex-selective abortions, yet the practice persists due to deeply ingrained gender biases. Women are often pressured into repeated pregnancies until a male child is born, disregarding their health and bodily autonomy. This practice denies women the right to make decisions regarding their own reproductive health and exposes them to unsafe abortions, mental trauma, and health complications. It also reflects the broader structural inequality where women are valued less than men, restricting their right to live with dignity. Marital rape remains one of the most contentious issues in India, where cultural norms often treat women as subordinate to their husbands. The absence of legal recognition for marital rape (except for minors) undermines women's reproductive autonomy and violates their bodily integrity. Forced pregnancies and lack of access to contraception are consequences of this patriarchal mind-set. Women's rights activists argue that bodily autonomy and reproductive choice cannot be ensured unless marital rape is criminalized. Legal reforms are necessary to address this gap and align India's laws with international human rights standards.

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## Findings

The legal and constitutional frameworks in India, along with international conventions, have played a pivotal role in safeguarding women's reproductive rights. Globally, instruments like the Universal Declaration of Human Rights (UDHR) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) provide a robust foundation for addressing gender discrimination and protecting women's bodily autonomy. These frameworks have influenced India's constitutional provisions and legislation to address critical issues of reproductive health and women's welfare. For instance, Article 21 of the Indian Constitution, interpreted expansively by the judiciary, includes the right to reproductive autonomy and access to healthcare, ensuring dignity and bodily integrity for women. Article 15(3) allows the state to enact laws and policies specifically benefiting women, acknowledging their historical disadvantage. Additionally, Article 42 mandates the state to provide humane working conditions, including maternity relief, further underscoring the constitutional commitment to women's health and well-being.

India's legal landscape has been strengthened by progressive legislation to address reproductive rights. The Medical Termination of Pregnancy (MTP) Act, 1971 marked a significant step by legalizing abortion under specific conditions. Its 2021 amendments extended the gestation limit to 24 weeks for vulnerable categories like survivors of rape and granted unmarried women the same abortion rights as married women, promoting inclusivity and autonomy. To combat sex-selective abortions, the Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, 1994 prohibits prenatal sex

determination with stringent penalties. The Surrogacy (Regulation) Act, 2021, while restricting surrogacy to altruistic arrangements, aims to prevent exploitation and prioritizes ethical surrogacy practices. Additionally, the Domestic Violence Act, 2005 recognizes reproductive coercion as a form of domestic abuse, addressing violations of bodily autonomy within familial settings. These legal frameworks reflect the state's commitment to aligning reproductive rights with fundamental rights.

Complementing the legal measures, several policies have been introduced to promote reproductive health and reduce maternal mortality. The National Population Policy (NPP), 2000 focuses on improving maternal and child health services, enhancing contraceptive access, and stabilizing the population by 2045. The National Rural Health Mission (NRHM), 2005, under its Janani Suraksha Yojana (JSY), promotes institutional deliveries and introduced Accredited Social Health Activists (ASHAs) to ensure last-mile healthcare delivery. Programs like the Rashtriya Kishor Swasthya Karyakram (RKSK), 2014, address adolescent sexual and reproductive health through education and awareness. More recently, Ayushman Bharat, Pradhan Mantri Jan Arogya Yojana (AB-PMJAY), 2018 has provided financial protection for maternity care, ensuring access to critical services. Targeted initiatives like Mission Parivar Vikas, 2016 focus on high-fertility districts to promote contraceptive usage and reduce unintended pregnancies, demonstrating a multi-pronged approach to addressing reproductive health challenges. Together, these policies and frameworks highlight India's ongoing efforts to balance cultural sensitivities with the urgent need to empower women and safeguard their reproductive rights.

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## Conclusion

Gender equality is based on reproductive rights, which are closely related to women's autonomy, dignity, and general well-being. Due to their close connection to human rights, both domestic and international legal frameworks have established the groundwork for protecting these rights over time. After examining the historical, cultural, and legal aspects of women's reproductive health, this study offers a thorough assessment of the advancements made and the obstacles still facing us. Globally, conventions such as the Universal Declaration of Human Rights (UDHR) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) have set universal standards for protecting women's rights. These instruments highlight reproductive health as a fundamental component of bodily autonomy and human dignity, urging member states to dismantle discriminatory practices that undermine women's access to healthcare. India's ratification of these conventions reflects its commitment to aligning national policies with global human rights principles.

Domestically, the Indian Constitution embodies a strong commitment to gender justice, particularly through provisions such as Articles 21, 15(3), and 42. The expansive interpretation of Article 21 by the judiciary has been instrumental in ensuring the right to reproductive autonomy, recognizing women's access to healthcare as essential to their dignity and well-being. Article 15(3) enables the state to enact laws that specifically address historical and structural disadvantages faced by women, while Article 42 underscores the need for humane working conditions, including maternity relief, thus placing women's reproductive health at the centre of social welfare. India's legislative progress further demonstrates a determined effort to address the complexities of reproductive health and autonomy. The Medical Termination of Pregnancy (MTP) Act, 1971, and its amendments in 2021 reflect an evolving understanding of women's reproductive rights, particularly by expanding the gestation limit for abortion and granting equal rights to unmarried women. Such provisions are critical in normalizing reproductive healthcare as a universal right, free from societal judgment or marital status-based discrimination. Equally significant is the Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, 1994, which serves as a response to the culturally ingrained preference for male children. By criminalizing prenatal sex determination and imposing stringent penalties, this law highlights the intersection of reproductive rights with broader societal challenges like gender-based discrimination and female feticide. Similarly, the Surrogacy (Regulation) Act, 2021, ensures that surrogacy practices are ethical and free from exploitation, balancing the need for reproductive assistance with safeguarding women's agency. The inclusion of reproductive coercion under the Domestic Violence Act, 2005, is a notable step in recognizing the subtle yet pervasive ways in which women's bodily autonomy can be violated within intimate relationships. By addressing such abuses, the law reinforces the idea that reproductive health is not merely a medical issue but a broader social justice concern requiring systemic redress.

While legal frameworks provide a crucial foundation, policies have played a transformative role in improving access to reproductive healthcare, particularly for marginalized communities. Initiatives like the National Population Policy (NPP), 2000, underscore the importance of stabilizing the population by enhancing maternal and child healthcare services and promoting contraceptive access. Similarly, the National Rural Health Mission (NRHM), 2005, with its flagship program, Janani Suraksha Yojana (JSY), has significantly increased institutional deliveries, reducing maternal mortality rates. Accredited Social Health Activists (ASHAs) under NRHM have been instrumental in bridging the gap between rural communities and healthcare providers, ensuring last-mile delivery of essential services. The Rashtriya Kishor Swasthya Karyakram (RKSK), 2014, and Ayushman Bharat – Pradhan Mantri Jan Arogya Yojana (AB-PMJAY), 2018, further demonstrate a multi-pronged approach to addressing reproductive health. RKSK's focus on adolescent sexual and reproductive health reflects an acknowledgment of the importance of early education in shaping attitudes and behaviours, while AB-PMJAY's financial protection for maternity care ensures that economic barriers do not impede access to critical healthcare services. Mission Parivar Vikas, 2016, targets high-fertility districts, promoting contraceptive use and reducing unintended pregnancies. These initiatives reflect a comprehensive approach, combining education, financial support, and service delivery to enhance women's reproductive rights. Despite these advancements, challenges persist. Societal stigma, cultural taboos, and inadequate infrastructure continue to limit access to reproductive healthcare, particularly in rural and marginalized communities. Gender-based discrimination, deeply rooted in patriarchal norms, often manifests in practices like child marriage, dowry, and restrictions on women's mobility, undermining their ability to make autonomous decisions about their health.

Moreover, while policies and laws exist on paper, their implementation often falls short due to bureaucratic inefficiencies, lack of awareness, and resistance from conservative sections of society. The findings of this research emphasize the importance of a holistic approach to addressing these challenges. Legal frameworks must be complemented by sustained efforts to challenge and transform cultural attitudes that perpetuate gender inequality.



Public awareness campaigns, community engagement, and education programs are essential in fostering a culture that respects and upholds women's reproductive rights. Additionally, robust mechanisms for monitoring and enforcement are critical to ensuring that legal provisions translate into tangible benefits for women. The intersection of reproductive rights with broader issues of gender equality underscores the need for systemic changes that address the root causes of inequality. Empowering women requires dismantling patriarchal structures and promoting inclusive policies that prioritize their health, education, and economic independence. Recognizing reproductive rights as fundamental human rights is not merely a matter of policy but a commitment to creating a society where women can exercise autonomy over their bodies and lives without fear or coercion. While significant progress has been made in advancing women's reproductive rights, much work remains to be done. The legal and constitutional frameworks in India, informed by international conventions, provide a strong foundation for promoting gender equality. However, achieving meaningful change requires a concerted effort to address cultural, social, and economic barriers that undermine women's autonomy. By adopting a multi-faceted approach that combines legal reforms, policy initiatives, and cultural transformation, societies can move closer to realizing the vision of gender justice. Women's reproductive rights must be seen not as a standalone issue but as integral to the broader struggle for equality, dignity, and human rights. Only then can we create a world where every woman has the freedom to make choices about her body and life, free from discrimination and oppression.

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