BEYOND GESTATIONAL LIMITS: REPRODUCTIVE AUTONOMY AND THE CONSTITUTIONAL FUTURE OF INDIA'S MEDICAL TERMINATION OF PREGNANCY FRAMEWORK[1]

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ABSTRACT

The current debates surrounding abortion laws in India bring forth significant issues pertaining to the intersection between autonomy and regulation under the Medical Termination of Pregnancy Act, 1971 ("MTP Act"). Even though the MTP Act does prescribe the conditions upon which abortion is permissible, there continue to be systemic constraints on accessing healthcare, specifically for women. The increased filing of constitutional writ petitions by victims of sexual assault, minors, individuals with severe foetal anomalies, women with late pregnancies and cases where patients are faced with barriers to accessing the service itself highlights the lacuna in the current legislative framework and the inherent contradiction between legislative control and the right to reproductive liberty. This article analyses the constitutional validity of gestational restrictions within the Indian MTP regime from the lens of individual autonomy and a rights-based approach, providing a brief trajectory of the development of abortion laws in India from a criminal law perspective to a constitutional framework focusing on reproductive choice.

The article explores key constitutional cases like Suchita Srivastava v. Chandigarh Administration, Justice K.S. Puttaswamy v. Union of India, and X v. Principal Secretary[2]-[3], Health and Family Welfare Department, and discusses how reproductive autonomy is recognised as part of Indian constitutional law as central to dignity, privacy and bodily autonomy. [4]-[5]

The article then appraises the efficacy of a case-by-case judicial adjudicatory mechanism, along with the medical board procedures and gestational

[1] Anogh Chakraborty & Shubhayan Chakraborty, "The Reform of Abortion Law in India: A Critique" 3 Contemporary Challenges: The Global Crime, Justice and Security Journal 99 (2022).
[2] Suchita Srivastava & Anr. v. Chandigarh Administration, (2009) 9 SCC 1.
[3] Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.
[4] X v. Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi & Anr., Special Leave Petition (Civil) No. 12612 of 2022, decided on 29 September 2022.
[5] X v. Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi & Anr., Special Leave Petition (Civil) No. 12612 of 2022 (Supreme Court of India, decided on Sept. 29, 2022).

constraints. Via comparative constitutional law and adherence to international human rights norms like CEDAW, the jurisprudence on the ICCPR, and guidelines by the World Health Organization, the article proposes that increasingly rigid abortion regulations no longer comply with current constitutional concepts regarding autonomy, equality, and healthcare access. Conclusively, the article demands a constitutional review of India's abortion policy, focusing on proportionality-based analysis and structural reform to create a more liberal, autonomy-affirming reproductive framework that limits institutional discretion and asserts reproductive choices as inherent elements of liberty, dignity, meaningful equality and constitutional identity.[6]-[7]-[8]-[9]

Introduction

The laws around abortion in India have changed dramatically over the decades and there has been increasing awareness about issues surrounding abortion not only from a medical standpoint, but also in terms of personal autonomy, liberty and privacy. From petitions filed on behalf of rape survivors and women with incest pregnancies, pregnancies involving severely anomalous foetuses or mental health issues, to pregnancies which are beyond term when discovered and those that are a result of certain legal obstacles posed by the gestation caps under the MTP Act. The growing trend shows that it is difficult to restrict this issue to purely a question of medical regulation or health administration; abortion is gradually becoming a contentious constitutional issue that implicates body autonomy, privacy of personal choices, dignity and constitutional equality in a significant manner. This has been facilitated by repeated intervention by Indian courts, bringing the discussion away from that of medical necessity to that of rights.[10]-[11]

Despite legislative modifications to the law and the judiciary's progressive interventions, India's legal and institutional framework on abortion is largely driven by a medicalised, paternalistic conception where access is conditional on a registered medical practitioner's opinion and governed by rigid timeframes. While the amended MTP Act in 2021 has brought

[6] Convention on the Elimination of All Forms of Discrimination against Women, art. 11, Dec. 18, 1979, 1249 U.N.T.S. 13.
[7] International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.
[8] World Health Organization, Abortion Care Guideline (2nd ed., World Health Organization, 2024), available at: https://iris.who.int/handle/10665/382157 (visited on May 30, 2026).
[9] The Medical Termination of Pregnancy Act, 1971 (Act No. 34 of 1971); The Medical Termination of Pregnancy (Amendment) Act, 2021 (Act No. 8 of 2021).
[10] Suchita Srivastava & Anr. v. Chandigarh Administration, (2009) 9 SCC 1.
[11] Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.

in certain changes by extending the gestational limits for a few categories of women and also brought in unmarried women in its purview, the legislative scheme nonetheless retains the character of a medical and institutional gate-keeping process for reproductive choices and even leaves those outside the specific provisions with limited choices unless they approach the constitutional courts. The result is a complex legal situation where complex and emergent medical situations are forced to take the path of complex constitutional debates.[12]

This situation brings forth a direct clash between State-imposed gestational restrictions and the reproductive rights guaranteed under Article 21 of the Indian Constitution that has led to an increasing role for the judiciary in defining reproductive autonomy. The Supreme Court has in various decisions stated that Article 21 encompasses a right to autonomy, dignity, privacy and bodily integrity. While this notion of individual privacy as a fundamental right recognized in Justice K.S. Puttaswamy v. Union of India, may have reinforced the constitutional foundation for a reproductive choice, reproductive autonomy still remains significantly compromised when it comes to determining whether or not to carry a pregnancy to term. A decision relating to carrying or not carrying a pregnancy to term is inherently a matter concerning bodily autonomy and dignity. These fundamental constitutional values are nevertheless made subservient to a regulatory framework based on strict time-limits, especially in circumstances of delays due to lack of resources, lack of adequate facilities or poor health access for individuals with socio-economic barriers.[13]

This conflict becomes much more pronounced and acute when the same is viewed through the lens of substantive equality and constitutional morality. Gestational restrictions do not affect different social groups in a uniform way but place undue burdens on specific populations. Women who have been raped, minors, persons from economically weaker sections of society, those in rural and remote areas and women from marginalized communities, often experience undue delays in obtaining care due to the prevailing social norms, lack of adequate resources and inefficient public health systems and in such cases the stringent gestation time-limits can prevent women from accessing the termination services to which they are entitled.

There exists a large body of literature on abortion and reproductive rights in India, particularly on access and reproductive health policies, or the liberalization of reproductive laws through

[12] National Law University and Judicial Academy, Assam, "Judicial Dynamism in Recognising Women's Reproductive Rights in India: An Analysis" (June 2024).
[13] Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.

judicial activism. However, there has been an absence of thorough constitutional analysis on the gestational limits per se, with much of the literature either focused on the legislative amendments for abortion access, healthcare management or the judiciary's role in expanding reproductive rights without substantively assessing the validity of gestation caps in the context of prevailing fundamental rights jurisprudence. This article addresses a significant gap in existing literature by examining the constitutionality of gestation limits imposed under India's MTP Act in light of developments in jurisprudence pertaining to autonomy, dignity, and reproductive justice.

In light of this understanding, the article addresses the following core research questions: Firstly, are the statutory gestation limits prescribed under India's abortion framework constitutionally sound under Articles 14 and 21 of the Constitution of India? Secondly, to what extent have we widened reproductive autonomy in spite of MTP act restrictions, if yes to what extent? Thirdly, what is the stance of India's legal framework regarding abortion in comparison to its international and foreign jurisdiction regarding reproductive rights? Fourthly, what constitutional reforms would be best suitable for balancing women's right to and autonomy to decide on reproductive choices against legitimate state interest concerning public health and foetal well-being?

This article's main thesis is to show that strict gestational restrictions as imposed under the current abortion framework for India needs a constitutional review through a human rights approach to the issue of reproductive justice and autonomy. While the state has its legitimate authority to regulate the practice of abortion to ensure medical facility and for maintaining public health, the same can not be at the expense of right to life and dignity of pregnant women.

This article will follow the doctrinal and analytical legal research methodology comprising of method of constitutional interpretation, precedent study, statute study, comparative legal study, and international human rights law study. The present will include the examination of constitutional jurisprudence of India on the issues pertaining to right to life, personal liberty, right to privacy, right to dignity, right to autonomy and right to reproductive choices in addition to a comparative study on the foreign jurisprudence on right to abortion of some key foreign jurisdictions i.e. United States, Canada, United Kingdom. Further, will take into account, the provisions under Convention on the Elimination of All Forms of Discrimination Against Women and the other related standards of international human rights law, so far as it is relevant

to the area of abortion Jurisprudence.[14]-[15]

Evolution of Abortion Law and Reproductive Rights in India[16]-[17]

Historically in India the legal regulation of abortion has not emanated from an explicit recognition of a constitutionally protected reproductive autonomy. Instead it has been primarily structured through the prism of criminal law, regulation of the medical profession and public health policy. Prior to the Medical Termination of Pregnancy Act, 1971, the regulation of abortion in India was predominantly governed by sections 312-316 of the Indian Penal Code, 1860 ("IPC") which prohibited all voluntary abortions unless the same was carried out with a view to saving the life of the pregnant woman.[18]

Section 312 IPC prohibits voluntary causing of miscarriage, save when it is necessary with a view to saving the life of the pregnant woman.[19]

This framework, drawing from the Victorian criminal law legacy of England, perceived abortion as primarily a criminal and moral offence rather than a matter of decisional autonomy and reproductive freedom. But the criminalization of abortion failed to deter the prevalence of unsafe, clandestine abortions and by mid-century, the problem of maternal deaths due to unsafe medical procedures prompted Indian policymakers and public health officials to consider reforms. Consequently, the Government of India appointed the Shantilal Shah Committee in 1964 to look into the question of the legality of abortion. The Committee ultimately recommended liberalisation of the law for reduction in maternal deaths due to illegal abortions and for enabling access to safe procedures of termination of pregnancy.[20]-[21]

Significantly, although the recommendations of the Committee recognized various social factors, such as contraception failure, pregnancy due to rape, and danger to health to pregnant women, they did not, as such, advocate for a specific recognition of reproductive autonomy.

[14] Ministry of Health and Family Welfare, Government of India.
[15]Ministry of Health and Family Planning, Report of the Committee to Study the Question of Legalisation of Abortion (Government of India, 1966)..
[16] The Medical Termination of Pregnancy Act, 1971 (Act No. 34 of 1971).
[17] The Medical Termination of Pregnancy (Amendment) Act, 2021 (Act No. 8 of 2021), s. 3.
[18] Karan Chaudhary, "Privacy and Abortion: An Analysis of Procedural Aspect of Medical Termination of Pregnancy Act, 1971," Manupatra Articles (Mar. 17, 2021).
[19]The Indian Penal Code, 1860, s. 312.
[20] The Medical Termination of Pregnancy (Amendment) Act, 2021 (Act No. 8 of 2021).
[21]The Medical Termination of Pregnancy Act, 1971 (Act No. 34 of 1971), s. 3.

This led to the Medical Termination of Pregnancy Act, 1971, which abandoned the absolute criminal prohibition approach in favor of conditional legalisation within a medical regulatory structure. The legislation allowed the termination of pregnancy on several specified grounds, including where there is danger to the life of the pregnant woman, or the danger to her physical and mental health; or there is substantial risk of abnormality of the foetus; or where the pregnancy is due to rape; or where it is caused due to failure of any contraceptive device or methods in married women. The statute however continued to be heavily regulated, requiring not the Autonomous decision making capacity of the pregnant person but the opinion of a Registered Medical Practitioner within specified gestation limits (one doctor up to 12 weeks of pregnancy and two doctors up to 20 weeks).[22]

The Medical Termination of Pregnancy (Amendment) Act, 2021, modified the original framework, making significant advancements in accessibility by extending the outer gestational limit up to 24 weeks in cases of specified categories of women such as victims of rape, minors, and other vulnerable sections through legislation passed under delegated power. The criteria of a 'married woman or her husband' has been removed for failed contraceptives and 'any woman or her partner' was added thereby giving due recognition to all unmarried women. Also, the insertion of the confidentiality clause has brought in a much-needed assurance that women can access the procedure without a threat to their privacy, unless mandated by the law. Notwithstanding the amendments, this move has not helped tackle persistent procedural hurdles like mandatory approval of the state medical boards for abortions beyond 24 weeks of pregnancy for cases with significant fetal abnormalities.

Such mandated medical boards have often caused undue delays and disagreements among boards, pushing women to seek intervention from the courts.

The entire framework of the MTP Act still remains hinged on a procedural and medically controlled regulatory regime, where the woman's autonomy has always been relegated to the back burner compared to institutional approval. Additionally, reproductive healthcare infrastructure is poorly managed, especially in rural areas and in the shortage of basic medical facilities and doctors making access to safe, legal abortions difficult for many women.[23]

[22] M. Arora, "Reduced Burden on Urban Hospitals by Strengthening Rural Health Facilities: Perspective from India" 13(4) Journal of Family Medicine and Primary Care 1178 (2024).
[23] The Medical Termination of Pregnancy Act, 1971 (Act No. 34 of 1971), ss. 3(2A) & 3(2C).

Judiciary's role in evolution of Reproductive Autonomy under the Indian Constitution

India's constitutional protection for reproductive autonomy primarily derives from a broad interpretation of Article 21, the constitutional provision safeguarding the right to life and personal liberty. Indian constitutional courts have, over time, transformed the abstract constitutional guarantee of personal liberty into a fundamental right protecting bodily autonomy, dignity, privacy, and decision-making control over intimate aspects of one's life. Maneka Gandhi v. Union of India marked a significant step, with the Supreme Court ruling that any curtailment of liberty must satisfy tests of reasonableness, fairness, and non-arbitrariness in light of Articles 14, 19, and 21.[24]-[25]-[26]-[27]

Later jurisprudence has progressively affirmed bodily integrity and dignity as essential aspects of personal liberty. The Supreme Court recognized in Francis Coralie Mullin v. Administrator, Union Territory of Delhi, that the right to life implies the right to live with human dignity. [28]

In Common Cause v. Union of India[29], the court addressed bodily autonomy and decision-making authority in the context of end-of-life care decisions. Collectively, these decisions have established that liberty protects the right of an individual to have control over their body and make decisions regarding personal identity and healthcare choices.[30]

The constitutionality of reproductive autonomy was explicitly declared in Suchita Srivastava v. Chandigarh Administration. The Supreme Court clearly stated that reproductive choice constitutes a component of personal liberty under Article 21.[31]-[32]

Reproductive rights were articulated to encompass an woman's right to complete her pregnancy and bear children, to refuse to carry a pregnancy to term, and to prevent procreation.[33]

Crucially, the judgment linked reproductive choice to bodily autonomy, privacy, and dignity, noting that forced continuation of pregnancy is an intrusion on mental and bodily integrity.

[24] Maneka Gandhi v. Union of India, AIR 1978 SC 597; (1978) 2 SCR 621.
[25] Maneka Gandhi v. Union of India, (1978) 1 SCC 248.
[26] Francis Coralie Mullin v. Administrator, Union Territory of Delhi, (1981) 1 SCC 608.
[27] Common Cause v. Union of India, (2018) 5 SCC 1.
[28] (1981) 1 SCC 608.
[29] Navtej Singh Johar v. Union of India, (2018) 5 SCC 1.
[30] Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.
[31] Suchita Srivastava & Anr. v. Chandigarh Administration, (2009) 9 SCC 1.
[32] Suchita Srivastava v. Chandigarh Administration, (2009) 9 SCC 1.
[33] X v. Principal Secretary, Health and Family Welfare Department, 2022 SCC OnLine SC 1321.

Though the dispute involved a woman with intellectual disabilities, the judgment holds important constitutional significance for affirming that State interference with reproductive choice may not displace decisional authority in the name of paternalism.

The Supreme Court's recognition of decisional privacy as a fundamental right in Justice K.S. Puttaswamy v. Union of India amplified the constitutional foundation of reproductive autonomy.[34]-[35]-[36]

A nine-judge bench confirmed that privacy extends to decisions regarding family, marriage, sexuality, procreation, and bodily autonomy.

Justice Chandrachud's plurality opinion declared that privacy empowers individuals to preserve control over "the sanctity of family life, marriage, procreation, the home and sexual orientation." The judgment redefined the constitutional framework of reproductive rights by asserting that reproductive health and pregnancy decisions are part of an intimate private sphere that State intervention must meet constitutional criteria.

X v. Principal Secretary, Health and Family Welfare Department is the most recent example of the Supreme Court broadening its conception of reproductive autonomy. The Court provided a purposive interpretation of the Medical Termination of Pregnancy Act, 1971, to permit abortions for unmarried women under circumstances of contraception failure.[37]-[38]-[39]

Dismissing the relevance of marital status for reproductive access, the Court affirmed that reproductive autonomy connects with dignity, privacy and bodily integrity, and stated that the stigma against unmarried pregnancy is not an adequate justification for restrictions on women's reproductive decisions.

The judgment signifies a trend in Indian jurisprudence moving toward an autonomy-based approach to reproductive rights underpinned by principles of substantial equality and anti-

[34] Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.
[35] Committee on the Elimination of Discrimination Against Women, General Recommendation No. 24 on Women and Health, U.N. Doc. A/54/38/Rev.1 (1999).
[36] World Health Organization, Abortion Care Guideline (World Health Organization, 2022).
[37] X v. Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi & Anr., 2022 SCC OnLine SC 1321.
[38] Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.
[39] Joseph Shine v. Union of India, (2019) 3 SCC 39.

stereotyping.[40]_[41]_[42]_[43]

In addition to privacy, constitutional protection for reproductive autonomy includes the bodily integrity and decision-making freedom. Forced continuation of pregnancy therefore represents a substantial infringement of both bodily autonomy and personal liberty. International human rights bodies have also recognised that denying access to abortion may involve violation of dignity, freedom from cruel or inhuman treatment and the right to health.

The WHO has also noted that strict abortion frameworks may also lead to unsafe abortion and undermine access to reproductive healthcare services. [44]

Within India's constitutional framework, forced continuation of pregnancy due to rape, serious fetal abnormalities or threat to mental health also directly engages the constitutional guarantees of dignity and mental integrity under Article 21 of the Indian Constitution.

The constitutional validity of gestational limits can also be addressed with reference to Article 14 and substantive equality principles. Though gestational limits are a facial neutral standard, the effects fall disproportionately on the vulnerable and the marginalised sections of society. Survivors of sexual violence, minors, economically disadvantaged women, persons from rural areas, and persons without adequate access to medical care frequently experience delays leading to their pregnancies exceeding statutory limits.

Numerous national health statistics also indicate that reproductive healthcare resources are unevenly distributed in urban and rural India.

The Court has observed in Navtej Singh Johar v. Union of India that constitutional morality mandates protection of an individual's dignity and autonomous decision-making abilities from discriminatory social hierarchies. Likewise, in Joseph Shine v. Union of India, the Court held that anachronistic conceptions about gender cannot justify State interference into personal relationships and decisions of the individuals.

These decisions uphold the notion that constitutionalism cannot be based on a premise that

[40] World Health Organization, Abortion Care Guideline (World Health Organization, 2022).
[41] Justice K.S. Puttaswamy (Retd.) v. Union of India, (2018) 10 SCC 1.
[42] (2019) 3 SCC 39.
[43] Modern Dental College and Research Centre v. State of Madhya Pradesh, (2016) 7 SCC 353.
[44]R. v. Morgentaler, [1988] 1 SCR 30 (Supreme Court of Canada).

individual human beings are incapable of making their own decisions. Excessive medical and judicial gate-keeping in abortion access has significant constitutional ramifications since it effectively divests reproductive decision-making autonomy of pregnant women and transfers the same to institutional decision makers.

The constitutional legitimacy of gestational limits can be analysed through the lens of proportionality that has emerged as a crucial standard to govern restrictions on fundamental rights. It is therefore arguable that gestational limits may fulfil the requirement of a legitimate objective and a rational nexus by ensuring uniformity of procedural outcomes and safety of medical procedures. However, the constitutional scrutiny would intensify at the stages of necessity and balancing.

Strict adherence to gestational limits may not account for exceptional circumstances like delayed pregnancy detection, fatal fetal abnormalities, unavailability of services or extreme socio-economic circumstances of a pregnant woman. [45]

Further evidence from comparative constitutionalism indicates that absolute gestational limits are not the sole constitutionally permissible regulatory approach. Additionally, where the continuation of pregnancy would be physically or psychologically detrimental, adherence to absolute gestational limits may not provide a sufficient balancing of the State's interest against the pregnant woman's right to dignity,bodily integrity and freedom of decisional choice.

It follows that though the state is permitted to restrict abortion on the grounds of public health and safety, strict gestational limitations that disregard individual circumstances and structural disadvantages may not pass constitutional muster under Articles 14 and 21.

The Judicization of Gestational Limits of Abortion under the MTP Framework With increasing abortion cases landing on constitutional courts, reproductive healthcare in India under the Medical Termination of Pregnancy Act, 1971 ("MTP Act") has witnessed unprecedented judicization. Abortion petitions where women, survivors of sexual violence, minors, women with critical fetal abnormalities, delayed pregnancy detection, and where continuing the pregnancy is threatening to women's physical and mental health require access to terminate pregnancies beyond the gestation specified under the Act have often resulted in women having to knock on the doors of the High Courts and Supreme Court under Articles 226 and 32 of the

[45] Mrs. X v. Union of India, (2017) 3 SCC 458.

Indian Constitution respectively. The persistent need to rely on constitutional litigation indicates a fundamental conflict between the statutory limit of gestation and a woman's right to decide. [46]-[47]

Thus, the system is no longer acting as a readily accessible healthcare measure but has transformed into an extraordinary system, wherein the judiciary is required to strike a balance between statutory provisions and individual constitutional rights of pregnant women (which include a right to equality and bodily autonomy) to secure protection for themselves.

The earliest constitutionally significant decision where the apex court allowed termination beyond twenty weeks due to a fetus's inability to survive after the medical reports indicated an incurable illness in the fetus was Mrs. X v. Union of India, wherein the Supreme Court allowed abortion for women up to the twentieth week with some exceptions if it would lead to grave hardship. The reasoning behind the Court's decision in the judgment primarily focused on relieving the pregnant woman of grave physical hardship and emotional stress and was heavily based upon the report submitted by the Court-appointed medical board.[48]-[49]-[50]

While it was undoubtedly progressive of the Court to recognize reproductive rights as the right to dignity and not merely bodily health, yet, the case implicitly sustained the legal structure that made access to abortion beyond the statutory gestational period available at the whim of courts.

Meera Santosh Pal v. Union of India further reinforced the constitutional recognition of the fact that it would not be feasible to compel a woman to carry a pregnancy to full term for an anencephalic child; the case that involved the termination of pregnancy up to twenty-four weeks on the basis that continuing it would cause considerable hardship and an extremely adverse impact on the petitioner's mental well-being provided a ray of hope. This case indicated the expanding horizon of our constitution and gave an indication of a shift away from a purely restrictive approach toward abortion, yet at the same time emphasized the procedural approach

[46] Meera Santosh Pal v. Union of India, (2017) 3 SCC 462.
[47] X v. Principal Secretary, Health and Family Welfare Department, 2022 SCC OnLine SC 1321.
[48] Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 3 SCC 458.
[49] X v. Principal Secretary, Health and Family Welfare Department, 2023 SCC OnLine SC 905.
[50] X v. Union of India, 2023 SCC OnLine SC 905.

through which one must get these rights vindicated at a constitutional court.[51]-[52]

One could see an even greater shift in the decision of the Supreme Court in X v. Principal Secretary, Health and Family Welfare Department wherein a broad interpretation of the MTP Act was adopted for women who wanted to terminate pregnancy due to failed contraception and did not get the right because they were unmarried. The Court in this judgment stated, "Reproductive autonomy is an integral component of the right to personal liberty and dignity guaranteed under Article 21.[53]

… Law cannot deny equal treatment on the ground that the woman is unmarried.

Decisional autonomy and bodily integrity are protected interests. Bodily integrity encompasses the right of a woman to make choices in regard to her own body." The Court was very sensitive to this new and broadening scope of abortion under the Indian constitution and also took a progressive step in connecting these rights with equality, privacy and dignity. Although, judicial reasoning has progressed, yet it still remains difficult for women to access abortion beyond twenty weeks because of strict legal provisions even after the Supreme Court has taken a compassionate stance.

In X v. Union of India, the apex court rejected the petitioner's plea to abort beyond the twenty-fourth week on the grounds that there were no severe mental health consequences and that the fetus was beyond twenty weeks gestation. Following this decision, the Medical Board constituted by the Court was divided in its opinions. Subsequently, there was a motion to review, and then another review order was passed allowing abortion.

This demonstrated the ad hoc, unpredictable, and subjective interpretation adopted by the Courts when it came to gestational restrictions of abortion, which led to an uncertain outcome for the petitioner. High Courts too have dealt with numerous gestational limits with varying results. The Bombay High Court permitted abortion on the grounds of the mental agony and psychological trauma suffered by a rape survivor and the physical abnormalities of the fetus.

While, in other cases, courts have rejected similar pleas on the basis that continuing the

[51] (2017) 3 SCC 462.
[52] (2024) SCC OnLine Bom __.
[53] X v. Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi & Anr., 2022 SCC OnLine SC 1321.

pregnancy would not have adverse effects on the health of the pregnant woman, even in cases Of their extreme hardships due to some medical or non-medical conditions. A cardinal feature of contemporary abortion adjudication under the MTP framework is the over-bearing influence of the Medical Boards. Post the Medical Termination of Pregnancy (Amendment) Act, 2021, for any pregnancy exceeding twenty-four weeks with substantial foetal abnormality, reference is required to State-level Medical Boards . [54]

While conceived as a procedural check, the functioning of such Medical Boards has become a source of immense constitutional problems.

Issues pertaining to delays in their constitution, varying medical findings, lack of adequate specialised knowledge, and general procedural inefficiency tend to delay these litigations in an already time-bound area of concern. Many a time, the petitioners land up in constitutional courts only after administrative delay has pushed pregnancies beyond the legal contours prescribed in the Act. Judicious dependence on medical expertise has effectively led to the erosion of decisional autonomy of the pregnant individual by outsourcing reproductive decisions to administrative and clinical institutions. 14 Court, more often than not, tend to take a strong view on the opinions of Medical Boards treating them as conclusive, ignoring the constitutional parameters of decisional freedom in matters of reproduction.

This over-medicalisation of rights discourse related to reproduction may reduce constitutional adjudications into a technical medical diagnosis.

It needs to be reiterated that even medical evaluations do not always yield consistent results.15 Reports from various medical boards have presented different results with respect to viability, the risk associated with continuation of the pregnancy and mental trauma, leading to unpredictability. Access to abortion post the prescribed statutory limits thus becomes dependent not on some clear constitutional standards but on the discretion exercised by the medical experts and judges. 16 The ongoing tension between the interests of the fetus and the reproductive freedom of the woman continues to hold centre-stage in decisions concerning gestational limits.

Indian courts, to an extent, have refused to confer an independent constitutional status to the rights of the fetus . The viability analysis resorted to in several cases, further complicates the

[54] The Medical Termination of Pregnancy (Amendment) Act, 2021 (Act No. 8 of 2021), s. 3(2C).

issue. Changes in the realm of medical technology have led to an evolution of medical understandings of the viability of the fetus, and yet the rigid application of gestational limits has continued without an adequate recognition of the individual circumstances.

While in several cases,courts have recognised the anomaly and allowed termination post the gestation limits when the anomaly was incompatible with survival of the foetus, or when there was extreme mental trauma. In cases involving similar hardships, courts have in the past prioritised the viability of the foetus.

This absence of any coherent constitutional framework to the decisions involving cases beyond gestational limits clearly emerges. The arbitrariness of the outcome has severe constitutional implications, under Articles 14 and 21. Fundamental rights should not be contingent on the subjective decisions of individual benches or on differing findings of the medical boards. 17 Consequently, this framework results in an undue judicial gate-keeping on exercise of fundamental right of reproduction and transforms the constitutional courts into authorisation forums rather than mere adjudication institutions.

This, reflects the inherent inadequacy in the structure of the legislation itself. 18 Indian courts have however been extremely instrumental in bringing about a constitutionalisation of reproductive rights through purposive interpretations.[55]-[56]

International and Comparative Perspectives on Reproductive Autonomy and Gestational Limits

Reproductive autonomy is gaining increasing acceptance as a core element of international human rights principles such as human dignity, bodily integrity, equality, and access to healthcare. While there is no express unrestricted abortion right within an international treaty, various international human rights norms and monitoring bodies have been gradually expanding protection for reproductive choice within the broad ambit of fundamental rights. CEDAW mandates State Parties to eliminate discrimination in access to healthcare, and ensure

[55] Convention on the Elimination of All Forms of Discrimination Against Women, arts. 12 & 16, Dec. 18, 1979, 1249 U.N.T.S. 13.
[56] Committee on the Elimination of Discrimination Against Women, General Recommendation No. 24: Women and Health, U.N. Doc. A/54/38/Rev.1 (1999).

women's autonomy regarding reproductive health matters. [57]-[58]

The CEDAW Committee has frequently critiqued laws criminalizing abortion or restricting access to reproductive services, which can lead to the necessity of unsafe procedures or the continuation of unwanted pregnancy.

The ICESCR recognizes access to comprehensive reproductive health services as integral to the right to the highest attainable standard of physical and mental health, while the Committee on Economic, Social and Cultural Rights has held that States must eliminate barriers to the enjoyment of this right, including restrictions imposed by abortion criminal laws. The WHO has cataloged various 'procedural' barriers such as mandatory third party involvement and judicial approval that may obstruct a person's access to safe abortion and may result in the occurrence of unsafe procedures. This section explores differing conceptions of reproductive autonomy and gestational regulation across various constitutional jurisdictions. A strong example of a heavily autonomy-centered approach to the issue is to be found in Canadian jurisprudence. [59]

In R. V. [60] Morgentaler, the Canadian Supreme Court invalidating a provision under the Criminal Code, finding that the system of therapeutic committees restricted the security of the person in a manner violating the guarantee enshrined in s. 7 of the Charter of Rights and Freedoms. 'We are of the view that by requiring an expectant woman to undergo the trauma of an unwanted birth as the price of securing safe, legal and professional medical attention for a pregnancy the continuation of which poses a danger to her health is an interference with the security of the person which in most circumstances will constitute an abuse of that process'. Presently Canada has no federal criminal gestational limits and such matters lie in the realm of healthcare legislation. [61]

By contrast, the United Kingdom has adopted a more mediated yet liberal approach through the Abortion Act 1967, under which abortion may be performed up to twenty four weeks of gestation with consent of two doctors. Abortions may be permitted at later stages for medical

[57] International Covenant on Economic, Social and Cultural Rights, art. 12, Dec. 16, 1966, 993 U.N.T.S. 3.
[58] World Health Organization, Abortion Care Guideline (World Health Organization, 2022).
[59] Committee on Economic, Social and Cultural Rights, General Comment No. 22: The Right to Sexual and Reproductive Health, U.N. Doc. E/C.12/GC/22 (2016).
[60] Abortion Act 1967 (UK), c. 87.
[61] R. v. Morgentaler, [1988] 1 S.C.R. 30.

reasons (to save the pregnant woman's life, prevent grave injury to the woman's physical or mental health, or in case of severe foetal abnormality). The British framework relies primarily on medical regulation. [62]

Historically, in the United States, Roe v. Wade held that the constitutional right to privacy encompasses a woman's right to terminate her pregnancy, and the Court's abortion jurisprudence has since evolved with the imposition of an 'undue burden' standard. By sharp contrast the recent ruling in Dobbs v. Jackson Women's Health Organization changed everything by overturning Roe, concluding that there is no constitutional right to abortion and relegating such authority to individual states. As such, we are experiencing an increasingly fragmented situation with varied state legislation imposing considerable barriers to access.

Colombia represents an inspiring example from the Global South for how constitutional jurisprudence can move towards an expansive view of reproductive rights.

The Colombian Constitutional Court has moved from criminalising abortion to providing women with up to 24 weeks for an abortion in decision C-055/22 by framing autonomy in the reproductive sphere as integral to dignity, equality and health, and by determining that punitive sanctions disproportionately affect impoverished women. Argentina followed, in 2020, legalizing abortion up to 14 weeks in decision 239/20 with the rationale it constitutes a public health measure, linking reproductive justice to autonomy and gender equality. The above examples show the great diversity of approaches by various high courts in the interpretation of the legal space to reproductive freedom. [63]-[64]

Crucially, these varied approaches demonstrate that imposing firm and strict gestational limits are not a prerequisite to having constitutional review of abortion laws.

In fact, the gestation limit in these legal regimes serves a functional and regulation purpose, but these limits are subject to proportional assessment based on healthcare realities and the specific circumstances of the individual. The above approaches from international law, Canada, UK, USA, Colombia, and Argentina hold important lessons for India. First, Reproductive autonomy must be treated primarily as a facet of autonomy, equality and integrity of body and

[62] Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833 (1992).
[63] Constitutional Court of Colombia, Decision C-055/22 (2022).
[64] Law No. 27.610 on Access to the Voluntary Interruption of Pregnancy (Argentina, 2020).

not solely as a regulatory issue of the medical profession. Second, restrictive access to safe abortion due to procedural barriers including frequent judicial interference and multiple doctors' consent cannot be constitutionally permissible in a progressive society.

Third, the test for proportionality assessment in reviewingabortion restrictions ought to consider realities of Healthcare access and systemic inequities.

Last, the comparative experience proves that even in systems with considerable regulatory measures including gestational limits, there is still space for accommodating autonomy-centered approach that supports both the state's interest in medical security as well as in foetal protection, which is gaining strength in Indian jurisprudence underArticles 14 and 21 but the statutory provisions continue to restrict institutional discretion in the process.[65]

Reforming India's Abortion Framework: Towards an Autonomy-Centred Constitutional Model[66]

That abortion decisions still must be filed with the constitutional courts to seek sanction outside gestational limits suggests a systemic issue with the Medical Termination of Pregnancy Act, 1971 ("MTP Act") rather than an individual one. Individual judicial compromises with gestational limits, while providing interim relief, do not adequately address the constitutionally fraught structure that we currently have. The perpetual crisis-litigation in the context of rape victims, minors, severe fetal abnormalities and delayed pregnancies reflects the failure of the present legal framework to adequately respond to the lived realities of reproductive health access. Reproductive autonomy must underpin any meaningful reform in regulating abortion within the confines of Article 14 and 21 of the Constitution.

The Indian constitution framework has consistently affirmed the essential role of dignity, bodily autonomy, private decisional space and individual liberty as hallmarks of constitutional freedom. [67]

As reproductive decisions inevitably impinge on bodily existence, mental health, the quality of health services available, and individual self-perception, they must be underpinned by the right

[65] Suchita Srivastava v. Chandigarh Administration, (2009) 9 SCC 1; Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.
[66] Ministry of Health and Family Welfare, Rural Health Statistics Report 2021–22 (Government of India).
[67] Suchita Srivastava v. Chandigarh Administration, (2009) 9 SCC 1; Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.

to decide rests with the pregnant individual, and not an institution determined to control outcomes through paternalistic judgment. Rigid gestational limits are particularly unworkable in emergency situations with delays, such as when a victim of sexual assault may defer or conceal their pregnancy, owing to the fear of victimisation, social ostracisation or inability to access help. Such issues also arise for minors and those who encounter severe foetal anomalies at a later stage of gestation, especially in remote or socioeconomically backward areas. The persisting demand for arbitrary gestational limits overlooks the structural and socio-economic barriers to access and may inflict unjust physical and mental hardship inconsistent with constitutional protection. [68]

Thus, a constitutionally viable alternative to the present framework necessitates an adaptation in approach towards gestational restrictions, wherein as found in many other jurisdictions, limits on gestation are not absolute restrictions on termination, but guiding indicators to be used when the State balances its interest in pregnancy post a certain point against an individual's rights to health care and privacy. [69]

Moreover, any autonomy-focused reform must get rid of the procedural barriers that, instead of treating abortion as a medical procedure, turn it into an expensive constitutional proceeding. Reliance on judicial processes for extended gestation burdens the pregnant person with immense financial, emotional and logistical strain. Delays in the decisions of a time-critical procedure become dependent on the vagaries of the judicial calendar and resources and in turn impose unacceptable and inhumane consequences, rendering a more effective medical review mechanism operating within the existing healthcare infrastructure a far more plausible solution.

Finally, the Medical Boards that have been constituted under the MTP (Amendment) Act, 2021 also require reforms.

However, despite its importance, medical assessments of fetal abnormalities or health risks are conducted by Medical Boards that are practically unchecked by the Constitution, largely lack mechanisms of accountability, suffer from inordinate delays in their establishment, lack standardization in assessments and procedures and operate inefficiently – which in itself can be an additional burden for pregnant women. Thus, the statute must oblige Medical Boards to comply with reasonable deadlines for their assessments, especially late in a pregnancy, and

[68] Ministry of Health and Family Welfare, Rural Health Statistics Report 2021–22 (Government of India).
[69] R. v. Morgentaler, [1988] 1 S.C.R. 30; Constitutional Court of Colombia, Decision C-055/22 (2022).

establish procedures that require Medical Boards to adopt standardized guidelines, based on WHO recommendations, that would reduce their arbitrariness. Medical Board decisions should continue to be subject to some form of constitutional review where issues of privacy, dignity, andbodily integrityare at stake, without allowing courts to be routinely turned into instruments for the legalization of abortion but instead ensuring that they help inform a constitutional decision-making process rather than usurp an individual's choice. [70]

More fundamentally than these structural issues, any genuine move to reform will also have to address how these changes contribute to ensuring genuine access to reproductive care; reproduction will never be autonomous when health infrastructure remains iniquitous and/or inaccessible.

Persistent healthcare disparities in rural areas continue to limit access to trained personnel, proper facilities and immediate medical assistance. Therefore, State intervention is not restricted to preventing interference but requires positive facilitation of access through infrastructure development, improved staffing of skilled providers in rural areas, affordability and maintenance of confidentiality standards. It may ultimately be necessary to enshrine reproductive autonomy in law as a constituent element of the dignity, privacy and liberty of the person in order to create a more settled constitutional space around the abortion issue. India has in Supreme Court judgments, like Suchita Srivastava, recognised the basic importance ofbodily autonomy in the context of abortion but in practice the regime remains in legacy of the medically dominated, patriarchal, and controlling approach to women's autonomy and health. [71]

Explicit recognition of autonomy as the organizing principle of any abortion law or regulation would alleviate ambiguity, and any future review ofabortionrestictions will require strict proportionality-test, as any measure restricting the access of abortion would need to be justified by need and proportion. [72]

At its end, the India approach to abortion would have to transcend from being medically and paternalistic to autonomy-, healthcare, and gender-equality-based and recognize reproductive

[70] World Health Organization, Abortion Care Guideline (World Health Organization, 2022).
[71] National Health Mission, Rural Health Care System in India Reports (Government of India).
[72] (2016) 7 SCC 353.

choice as a central aspect of personal liberty.

Conclusion

The constitutional challenge over the gestational limits under India's Medical Termination of Pregnancy Act, 1971 ("MTP Act") ultimately represents the deeper tension between the scope of institutional decision making and individual reproductive autonomy in India's constitutional scheme. Even with a legal regime which permits abortion under a select set of conditions, one premised on gestational limits, medical approval and often judicial review can, however, be antithetical to the fundamental constitutional values of dignity, bodily integrity, decisional autonomy and substantive equality under Article 14 and 21 of the Constitution of India. It is not, whether to regulate the decisions regarding reproductive healthcare in India under its present system which faces the constitutional flaw.

The essential constitutional dilemma of the abortion regime in India today lies in its imposition of both procedure and institutions as gatekeepers to the exercise of choice concerning reproductive health, even when confronted with the most extraordinary and time sensitive circumstances. As articulated in the present article, despite all the extensive legislatorial and judicial intervention, the Indian regime still remains thoroughly medicalized and paternalistic. Beginning from Suchita Srivastava v. Chandigarh Administration, followed by Justice K.S. Puttaswamy v. Union of India and X v. Principal Secretary, Health and Family Welfare Department, the judicial unfolding of the constitution appears to move toward an increasingly autonomy oriented framework which gives paramountcy to the autonomy to make personal decisions as well as dignity, privacy andbodily integrity. Courts have clearly affirmed the indispensable relationship between autonomy of choice and liberty of an individual concerning their reproductive life. Still, in its practical manifestation, pregnant women, particularly victims of rape, women from low income background, and minors would still need to obtain authority from official bodies or undertake a judicial procedure to get an abortion after the statutory limit. It would still vest the courts with an exclusive role of gate-keepers for reproductive healthcare and abortion primarily through the mechanism of individualised constitutional litigation. "Judicialisation of reproductive healthcare decisions" thus has become a salient aspect of Indian abortion jurisprudence, wherein the courts are still caught between the inflexible statutory provisions on one hand, and their own interpretation and evolving understanding of the concept of reproductive right in individual constitutional cases. Case-to-case litigation can

however be, as already demonstrated above, inadequate to achieve meaningful autonomy.[73].[74].[75]

It is symptomatic of the inadequacy of a regime, which fails to respond to the realities of delayed pregnancy detection, inequitable access to health infrastructure and the social stigma that may deter seeking timely abortion.

Contemporary constitutional law overwhelmingly recognizes the primacy of autonomy – an individual's capacity to make fundamental choices about their own life and bodily integrity – as integral to personhood and liberty. Values of liberty, bodily integrity, privacy and equal citizenship demand that the right to make reproductive choices be primarily situated within individual decision-making, not subjected to an overly intrusive paternalistic or medically dominated state apparatus. Consequently, the appropriate standard for constitutional review of all abortion regulations must now be one that prioritizes proportionality, substantive equality, and rights-sensitive balancing. Even while the state may have legitimate concerns relating to the health and well-being of expectant mothers and the regulation of medical procedures, such interests cannot be constitutionally relied upon to excessively curtail autonomy, bodily integrity, or the capacity for individual decision making.

The test of proportionality, as it has been established by Indian jurisprudence itself, requires careful consideration of the necessity of less restrictive measures and whether the procedural obstacles that individuals face are the minimal necessary to achieve the desired state goals. [76]

Moreover, the experience from across jurisdictions indicates the availability of less restricting and autonomy respecting models of health and medicine regulation which can exist even in the absence of pervasive, intrusive judicial gate-keeping. Thus, the current abortion legal regime in India demands an urgent paradigm shift away from the present medically oriented to a more autonomy, bodily integrity, health access and equality based approach. In the push towards a more autonomous rights based regime, greater flexibility and rights responsive regulations on gestational limits, simplified procedures and faster mechanisms for accessing healthcare along with limited use of the courts as last resort are necessary.

[73] (2009) 9 SCC 1.
[74] (2017) 10 SCC 1.
[75] X v. Principal Secretary, Health and Family Welfare Department, 2022 SCC OnLine SC 1321.
[76] Modern Dental College and Research Centre v. State of Madhya Pradesh, (2016) 7 SCC 353.

This may only materialise through the mechanism of legislative changes along with a concrete affirmation by the constitutional framework, that reproductive autonomy is a sine qua non component of the fundamental right to life and personal liberty as contained in Article 21 of the Constitution.

Ultimately, the constitutional destiny of abortion rights in India may rest on no firm entrenchment of rigid chronological and institutionalised limits on women's bodies but on the reaffirmation of their right to reproductive choice as a matter of substantive nature to constitutional citizenship. Thus, India's path to reproductive emancipation demands shifting from a temporally and institutionally regressive framework to an autonomous constitution in which the question of reproductive autonomy can not be presented as a privilege, but as inherent constituent to substantive constitutional citizenship.