
REPRODUCTIVE AUTONOMY AND THE RIGHT TO MEDICAL ABORTION: AN ANALYSIS

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ABSTRACT

Reproductive rights form an integral and inalienable part of the broader framework of human rights. These rights empower individuals especially women to make informed, autonomous decisions about their reproductive health, including the right to access family planning services, safe and legal abortion, maternal healthcare, and information about contraception. Rooted in international human rights instruments such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), reproductive rights are essential for ensuring gender equality, bodily autonomy, and personal dignity.³

In the Indian context, the Constitution guarantees fundamental rights such as the right to life and personal liberty under Article 21, which the judiciary has expansively interpreted to include the right to health and reproductive freedom. Legislative developments like the Medical Termination of Pregnancy (MTP) Act, 1971 (and its recent amendments in 2021), the Assisted Reproductive Technology (Regulation) Act, 2021, and the Surrogacy (Regulation) Act, 2021, reflect a growing recognition of women's reproductive autonomy in India's legal framework. Judicial pronouncements in landmark cases such as *Suchita Srivastava v. Chandigarh Administration*⁴ and *Justice K.S. Puttaswamy v. Union of India*⁵ have further entrenched the right to reproductive choice as a constitutionally protected right.

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³ Convention on the Elimination of All Forms of Discrimination Against Women. United Nations 786 CEDAW. (1979). <https://www.un.org/womenwatch/daw/cedaw/> Last visited on 30 oct 2025

⁴ (2009) 9 SCC 1

⁵ (2017) 10 SCC 1

Introduction

The concept of the reproductive rights administration is a widespread phenomenon which derives its operational force from various legal grounds. The scope of the reproductive rights is demarcated under the different dominions of existing laws and statutes. This is to say that there exists close relationship between the reproductive rights and the criminal laws of India. Therefore, to give due regard to this precept, an effort of expressing a framework of the relative study of criminal laws with respect to the reproductive rights is put into existence in this paper.

Efforts are made in this paper to discuss in detail the different legal statutes prevailing in India which expressly deal with the medical termination of pregnancy, miscarriage or abortion. In order to cover each and every detail this paper is primarily divided into three main heads and the study is conducted accordingly. These headings are as under -

1. Sections 88 to 94 of the Bharatiya Nyaya Sanhita, 2023.
2. The Medical Termination of Pregnancy Act, 1971 (as amended in 2021).
3. The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994.

Significance of the research

This research holds critical significance in illuminating the intersection between criminal law and reproductive rights in India, a domain often overshadowed by broader debates on gender justice and public health. By examining how penal provisions such as those under the Indian Penal Code and the Medical Termination of Pregnancy Act shape, restrict, or enable reproductive autonomy, the study contributes to a nuanced understanding of legal accountability and individual rights. It highlights the gaps between statutory protections and lived realities, especially for marginalized women facing systemic barriers to safe abortion, justice after sexual violence, and informed reproductive choices.⁶ The research also aims to inform legal reform by identifying inconsistencies, outdated provisions, and judicial trends that either advance or hinder reproductive justice. Ultimately, this study serves as a

⁶ Dipika Jain, *Abortion and the Law in India: A Feminist Perspective*, 14 NAT'L L. SCH. INDIA REV. 1, 8–12 (2002).

foundational resource for policymakers, legal scholars, and activists seeking to align criminal law with constitutional guarantees of dignity, equality, and bodily autonomy.

This research is also important because it helps us understand how criminal laws affect reproductive rights in India. It looks at how laws related to abortion, sexual violence, and bodily autonomy impact people especially women who want to make decisions about their own bodies. By studying these laws, we can see where the legal system supports reproductive rights and where it creates problems or barriers. This study also highlights the need for better laws and policies that protect people's health, dignity, and freedom to choose. It can help lawmakers, students, and activists work toward a more just and supportive legal system.

Research Methodology

This study uses a doctrinal approach to examine the relationship between criminal laws and reproductive rights in India. The doctrinal part involves analysing legal texts such as the Indian Penal Code, the Medical Termination of Pregnancy Act, and relevant constitutional provisions. It also includes reviewing landmark judgments and scholarly articles to understand how courts interpret reproductive rights.

Legal framework on reproductive autonomy and medical abortion

Constitutional Foundations of Reproductive Rights in India

The constitutional framework of India provides a robust foundation for the recognition and protection of reproductive rights, primarily through the expansive interpretation of Article 21 of the Constitution, which guarantees the right to life and personal liberty. The Supreme Court has consistently held that this right encompasses the autonomy of individuals to make decisions concerning their reproductive health, including the choice to conceive, carry a pregnancy to term, or terminate it. In *Suchita Srivastava v. Chandigarh Administration*⁷, the Court affirmed that reproductive autonomy is an integral part of personal liberty, emphasizing that a woman's right to make reproductive choices is a dimension of her right to privacy, dignity, and bodily integrity. Additionally, Article 14, which guarantees equality before the law, and Article 15, which prohibits discrimination on grounds of sex, reinforce the imperative for non-discriminatory access to reproductive healthcare. These provisions collectively

⁷ (2009) 9 SCC 1

mandate that the state must ensure reproductive rights are accessible, equitable, and free from coercion, particularly for marginalized and vulnerable populations. The constitutional commitment to gender justice and human dignity thus serves as the normative bedrock for India's reproductive rights jurisprudence.⁸

Legal framework Governing Reproductive Autonomy

India's statutory landscape on reproductive rights is anchored by several key legislations that operationalize constitutional guarantees into enforceable legal entitlements. Foremost among these is the Medical Termination of Pregnancy (MTP) Act, 1971, significantly amended in 2021 to expand the scope of safe and legal abortion. The amended Act permits termination of pregnancy up to 20 weeks with the opinion of one registered medical practitioner, and up to 24 weeks for specific categories such as survivors of rape, incest, and minors, with the approval of two practitioners. It also introduces confidentiality protections and recognizes mental health as a valid ground for abortion, thereby aligning with global standards of reproductive justice. Complementing this is the Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, 1994, which seeks to curb sex-selective abortions by regulating diagnostic technologies and penalizing gender-biased practices. Further, the Assisted Reproductive Technology (Regulation) Act, 2021 and the Surrogacy (Regulation) Act, 2021 establish ethical and procedural norms for fertility treatments and surrogacy arrangements, ensuring informed consent and protection against exploitation. These statutes, together with public health initiatives under the National Health Mission and Reproductive and Child Health.

The Bharatiya Nyaya Sanhita (BNS) 2023, which replaces the Indian Penal Code, introduces provisions that directly address violations of reproductive autonomy. Section 89 of the BNS criminalizes causing miscarriage without the woman's consent, recognizing it as a serious offense against bodily integrity. This provision strengthens protections for women by explicitly penalizing forced miscarriage, aligning with the constitutional emphasis on consent and autonomy. The BNS also expands definitions of assault and trafficking, sets stricter penalties for crimes against women, and emphasizes fast-tracking cases involving vulnerable groups. These reforms enhance the criminal justice system's responsiveness to reproductive

⁸ Supreme Court Observer, *Abortion Law in India: A Step Backward After Going Forward* (Oct. 20, 2023), <https://www.scobserver.in/journal/abortion-law-in-india-a-step-backward-after-going-forward>. Last visited on 25 oct 2025

rights violations and reinforce the broader legal commitment to safeguarding women's health and dignity.

Legal Framework on Abortion in India

Abortion in India is governed primarily by the Medical Termination of Pregnancy Act, 1971 (MTP Act), as amended in 2003 and 2021. The 2021 amendment⁹ extended the gestational limit for certain categories of women including survivors of rape, minors, and cases of foetal abnormality from 20 to 24 weeks and allowed termination up to any stage if necessary to save the woman's life. The MTP amendment Act 2021, permits abortion under certain conditions. The 2021 amendment extends the gestation period for abortion to 24 weeks for certain categories of women and recognizes the rights of unmarried women. However, it still requires approval from medical practitioners, limiting full autonomy.

However, the MTP Act does not recognise abortion as a matter of choice. Instead, it operates as an exception to the criminal offence of causing miscarriage under Sections 88–94 of the Bharatiya Nyaya Sanhita (BNS) 2023, which prescribe imprisonment for anyone who induces an abortion outside the conditions set by the Act. This criminal backdrop means that both patients and providers risk legal action if the procedural and medical requirements are not strictly followed.

Two other statutes intersect with abortion access. The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994¹⁰ regulates diagnostic techniques to prevent sex-selective abortion but has, in practice, led to over-regulation and fear among providers. The Protection of Children from Sexual Offences Act, 2012¹¹ mandates reporting of all sexual activity involving minors, which can delay access to abortion for adolescent girls.

On the international plane, India is bound by the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)¹² and the International Covenant on Civil and

⁹ Medical Termination of Pregnancy (Amendment) Act, No. 8 of 2021, INDIA CODE (2021).

¹⁰ Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, No. 57 of 1994, INDIA CODE.

¹¹ Protection of Children from Sexual Offences Act, No. 32 of 2012, INDIA CODE (2012).

¹² Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.

Political Rights (ICCPR)¹³, which require the State to respect and protect reproductive autonomy and privacy.

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is a landmark international treaty adopted by the United Nations General Assembly in 1979 and enforced from 1981. Often referred to as an international bill of rights for women, CEDAW defines what constitutes discrimination against women and sets out a comprehensive framework for eliminating such discrimination in all spheres of life. It obligates signatory countries to incorporate gender equality into their legal systems, abolish discriminatory laws, and ensure effective legal protection of women's rights. The convention covers a wide range of areas including education, employment, healthcare, political participation, and family relations. It also emphasizes the importance of changing social and cultural patterns that perpetuate gender-based stereotypes and inequality. CEDAW is monitored by a committee of experts who review periodic reports submitted by member states and can consider individual complaints under its Optional Protocol. As of now, nearly all UN member states have ratified the treaty, although some have done so with reservations. India ratified CEDAW in 1993, committing to uphold its principles while maintaining certain exceptions related to personal laws. Overall, CEDAW serves as a powerful tool for advancing women's rights and promoting gender equality across the globe.

Yet, the domestic framework stops short of granting abortion as an unqualified constitutional right. Instead, it remains mediated through medical opinion, statutory categories, and, ultimately, the State's discretion.

There are different legal statutes prevailing in India which expressly deal with the medical termination of pregnancy, miscarriage or abortion. In order to cover each and every detail this paper is primarily divided into three main heads and the study is conducted accordingly. These headings are as under: -

1. Sections 88 to 94 of the Bharatiya Nyaya Sanhita, 2023.

¹³ International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

2. The Medical Termination of Pregnancy Act, 1971.
3. The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994.

1. Provisions relating to the miscarriage under the Bharatiya Nyaya Sanhita, 2023

Sections 88 to 94 of the Bharatiya Nyaya Sanhita, 2023 focus on protecting pregnant women and unborn children by criminalizing forced or non-consensual miscarriage. These provisions impose strict penalties for causing miscarriage, especially without consent or resulting in the woman's death. While sex-selective abortion isn't explicitly mentioned, the law broadly covers offences against the foetus, reinforcing a pro-life stance.

Sections 88 of the Bharatiya Nyaya Sanhita, 2023

Beginning with the very first provision, mentioned above, from the substantive criminal law, Section 88 of the Bharatiya Nyaya Sanhita, 2023 talks about voluntarily carried miscarriage by the pregnant woman in bad faith. The various ingredients of 88 of the Bharatiya Nyaya Sanhita, 2023 can be discussed as following: -

(a) Miscarriage should have been caused voluntarily

The word 'voluntarily' used under section 88 of the Bharatiya Nyaya Sanhita, 2023 makes it clear that the offender could be a woman herself or any other person. It is also important to understand and take into consideration the fact such act should not have been done in such circumstances where there was immediate danger to the life of the woman and miscarriage was required to be done by the registered medical practitioner immediately in order to protect the life of such pregnant woman. Another important facet which needs to be given attention to, here is that section 88 of the Bharatiya Nyaya Sanhita, 2023 does not expressly talk about the consent of the woman who is pregnant with the child. The words 'woman who causes herself to miscarry' and the 'woman who gives the consent to miscarry' both stand on different footing.

(b) Cause of Miscarriage- Its Meaning, Extent and Scope

Often the term 'miscarriage' is confused with the term 'abortion'. But there are different views

on this point as to the actual and nature-pertinent definition and meaning of the word 'miscarriage'. In this regard, it is stated that the term 'miscarriage' refers to the death of an embryo or foetus before it is able to survive independently. Some of the signs of miscarriage include vaginal spotting, abdominal pain, cramping, fluid, blood clots and tissues passing from vagina. The absence of maturity of the foetus is a point of concern to account for the miscarriage. This raises certain obligation in legal sense upon the one carrying out miscarriage and the one voluntarily forcing.

There are further two dimensions of treating miscarriage in criminal domain viz. the abetment of causing miscarriage and an attempt of causing the same. This is to say that when any person helps in a miscarriage, he is believed to have committed abetment of such offence and shall be punished in accordance with the criminal law abiding by the provisions of section 88 read with section 49 of the Bharatiya Nyaya Sanhita, 2023. In the case of *Queen Empress vs. Aruna Bewa*,¹⁴ it was held that it is of no concern whether the child who is miscarried or aborted comes out alive or dead, if the child is born after an attempt of causing miscarriage, it shall be brought under section 62 of the Bharatiya Nyaya Sanhita, 2023.

(c) Miscarriage Caused in Good Faith

Section 88 permits abortion only on medical grounds in order to protect the life of the female who is carrying the child inside her womb. The threat to the life of the mother should be immediate and certain and circumstances must be such that unnecessary delay can lead to the death of the female who is pregnant with the child. The person is entitled to protection by the law if the act is done in good faith. Section 88 of the Bharatiya Nyaya Sanhita, 2023 did not mention originally that the person causing miscarriage in good faith should be a registered medical practitioner but after enactment of the Medical Termination of Pregnancy Act, 1971 the Bharatiya Nyaya Sanhita, 2023 stands modified and this exception is available only to a registered medical practitioner.

In the case of *Sharif vs. State of Orissa*¹⁵, it was held that when the abortion is to effectuate any kind of elimination of disaster from the life of the mother, it should be carried forth and the provisions of section 88 of the Bharatiya Nyaya Sanhita, 2023 shall not be attracted in

¹⁴ (1873) 19 WR (Cr) 230.

¹⁵ 1996 Cri.LJ 2826 (Pat)

such cases.

(d) 'Woman with Child' and 'Woman Quick with Child'

There is a clear mention of the words 'woman with child' and 'woman quick with child' under the provisions related with the cause of miscarriage. These words are simply read with close vicinity with the condition of a pregnant woman. The words 'woman with child' in simple words indicates the existence of a pregnant woman. The woman is said to be with a child as soon as conception occurs and she becomes pregnant and subsequently the gestation period commences to perform its obligations pertaining to the reproductive system of female body. To talk about the cause of miscarriage, the prima facie requisite is the existence of pregnancy.¹⁶

Section 89 of the Bharatiya Nyaya Sanhita, 2023

Section 89 of the Bharatiya Nyaya Sanhita, 2023 helps us to understand that if the offence mentioned in section 88 is committed against the discretion or willingness of the woman, it will attract more strict penal provisions.

(a) Causing Miscarriage without consent of pregnant woman

Under Section 89 of the Bharatiya Nyaya Sanhita, 2023 it is stated that when the miscarriage is caused without the consent of the woman, it amounts to be an offence of much graver intensity than the one described under section 88. Keeping in mind the intensity of the offence, the punishment in the form of the imprisonment for life or for an extended period of ten years along with the imposition of penalty in the form of fine is existing under section 89 of the Bharatiya Nyaya Sanhita, 2023. The scope of section 89 which talks about the cause of miscarriage without the consent of the woman, explains that when any person kicks the pregnant woman in her abdomen thereby resulting in the death of the child and the consequent miscarriage, it falls under the domain of section 89 of the Bharatiya Nyaya Sanhita, 2023 and must be punished in accordance with the penal provisions of section 89 of the Bharatiya Nyaya Sanhita, 2023. This was held in the case of *Tulsi Devi vs. State of U.P.* In *Moideen kutty Haji vs Kunhikaya*¹⁷ the accused took the pregnant woman to the doctor who terminated her

¹⁶ Andrew Ashworth, *Principles of Criminal Law* 302 (Claradon Press, New Delhi, 1995).

¹⁷ AIR 1987 KER 184

pregnancy. There was no evidence which proved that the act of miscarriage was done without the consent of the woman because the woman did not raise any voice against the act of miscarriage being administered upon her and after undergoing miscarriage had willingly entered into sexual relation with the accused. Further there was no proof to show whether the accused pressurized the doctor to perform the miscarriage or not. The Kerala High Court taking note of the same held that taking into consideration the above-mentioned facts it can be concluded that no offence is established under section 89 of the Bharatiya Nyaya Sanhita, 2023 in this case.

Section 90 of the Bharatiya Nyaya Sanhita, 2023

Section 90 of the Bharatiya Nyaya Sanhita, 2023 talks about such kind of act where the death of the female occurs while administering miscarriage upon her. This section also declares that if miscarriage which ultimately causes the death of the female was carried upon the woman against her will, then such act is considered more serious in nature.

(a) Intending miscarriage causing death of pregnant woman

Section 90 talks about the death of the woman caused while carrying miscarriage upon her. This section talks about the circumstances where death occurs as a result of miscarriage. Section 90 is divided into two parts, if the miscarriage is done with the consent of the woman but she is not aware of the fact that it may lead to her death and if such act leads to her death then such offence falls in first part of section 90. When the miscarriage entailing the death of the woman is caused without her consent, it attracts second part of section 90 the punishment for which is severe. The knowledge and intention of causing abortion is a relevant part of such provisions defining the voluntary cause of miscarriage. In *Jacob George vs State of Kerala*¹⁸ a homeopath operated upon a pregnant woman to cause abortion but she died within few hours of the operation because her uterus bag was perforated. The conviction of the homeopath was held under section 90 of the Bharatiya Nyaya Sanhita, 2023. The Hon'ble Supreme Court here also enhanced the fine from rupees five thousand to rupees one lakh to be deposited in the name of the minor son of the deceased.

¹⁸ (1994) 3 SCC 430.

(b) Section 105 and 90 of the Bharatiya Nyaya Sanhita, 2023

Section 105 of the Bharatiya Nyaya Sanhita, 2023 talks about culpable homicide not amounting to murder. It is important to understand here that the difference between the murder and the culpable homicide not amounting to murder is that of intention. In *State vs Riyazuddin And Others*¹⁹ the Delhi High Court tried to establish the points of differences between section 90, 105 and 106 of the Bharatiya Nyaya Sanhita, 2023. In this case Shushmita, the wife of Manoj Kumar, was admitted to the Ayasha Clinic after she suffered from acute stomach ache. Riyazuddin who was working as compounder in this clinic after examining Shushmita asked her husband to admit her in the hospital and convinced him to deposit money as surgery had to be performed upon his wife. Before performing the surgery, ultrasound was done and it was found that the wife of Manoj was three and half months pregnant. Riyazuddin along with lady doctors took the wife of Manoj to the operation theatre, operated upon her as a result of which Shushmita, the wife of Manoj, died because of haemorrhagic shock due to perforation of uterus caused by irresponsible surgical intervention. No efforts were made to save the life of the patient and it was taken as a case of gross medical negligence. As such Riyazuddin and Shabana Talat, the female doctor, who was assisted by Riyazuddin while performing surgery were held liable under section 105, 90 and 3 of the Bharatiya Nyaya Sanhita, 2023, along with sections 5(2) and 5(3) of the Medical Termination of Pregnancy Act, 1971.

Section 91 of the Bharatiya Nyaya Sanhita, 2023

Section 91 of the Bharatiya Nyaya Sanhita, 2023 throws light upon such acts where the child is killed before or after his/her birth with the intention of not allowing such child to live his/her life, in bad faith.

(a) Act preventing the child from being born or causing the death when born

This is the best example of describing the act of causing foeticide or infanticide which is to say that when any person, in any way, prohibits the birth of a child by causing its death before or after its birth is punishable under section 91 of the Bharatiya Nyaya Sanhita, 2023. Moreover, the act of causing death of child is strictly penalized under the said provisions. The difference between the foeticide and the infanticide is that foeticide includes the death of foetus inside the womb of the mother while infanticide refers to the death of the infant which

¹⁹ 2013 Cri.LJ 577 (Delhi).

occurs after the birth of the child. The provisions mentioned under section 315 clearly reveal that the law gives utmost importance to the birth of the child and tries to protect the human life whether it is inside the womb or outside.

Section 92 of the Bharatiya Nyaya Sanhita, 2023

Section 92 of the Bharatiya Nyaya Sanhita, 2023 talks about the instances where the death of quick unborn child occurs when intention of causing the death of the mother is found.

(a) Cause of Miscarriage Resulting in Culpable Homicide

The role of intention of the person causing such act is of paramount consideration under section 92 of the Bharatiya Nyaya Sanhita, 2023. If the intention or the mens rea is not established in such cases, the case will not fall under the provisions of section 92 of the Bharatiya Nyaya Sanhita, 2023. The intention hereby is to cause death of the mother, which is as per the presumption of law, but if there is death caused of the child and not of the mother, so the provisions of section 92 will be attracted with an immediate effect. It has been held in the case of *Jabbar vs. State of U.P.*²⁰, that the fact of merely causing death of the child is not enough to attract the provisions of section 316 of the Code, but there must be an appropriate establishment of mala fide intention on the part of the accused to cause such death. In another case of *Motia vs. State of Rajasthan*²¹, it has been observed that if the act of the accused is to be portrayed as culpable homicide, then it needs to be established that the act of the accused has caused death of the mother and not of the child. In yet another case of *Murugan vs. State of Tamil Nadu*²², it was held that striking the woman and causing her death in her pregnant state when she was carrying a child of twenty weeks is also an offence punishable under the provisions of section 92 of the Bharatiya Nyaya Sanhita, 2023.

Section 93 of the Bharatiya Nyaya Sanhita, 2023

Section 93 of the Bharatiya Nyaya Sanhita, 2023 talks about those circumstances where the father or mother of the child leaves the child below twelve years of age, at any place with the objective of abandoning the child permanently.

²⁰ AIR 1966 All 590.

²¹ AIR 1951 Raj 123.

²² 1991 Cri.LJ 1680 (Mad).

2. The Medical Termination of Pregnancy Act, 1971

The Medical Termination of Pregnancy (MTP) Act, 1971 is a landmark legislation in India that addresses women's reproductive rights by legalizing abortion under specific conditions. It was enacted to reduce maternal mortality caused by unsafe abortions and to provide women with safe, legal access to terminate pregnancies under medical supervision.

Section 3 – Conditions for Termination of Pregnancy

This section lays down the legal grounds under which a pregnancy may be terminated. It permits abortion if continuing the pregnancy poses a risk to the woman's life or could cause grave physical or mental harm. It also allows termination if there is a substantial risk that the child, if born, would suffer from serious physical or mental abnormalities. Additionally, pregnancies resulting from rape or contraceptive failure (in the case of married women) are considered valid grounds for termination under this section.

Section 4 – Place of Termination

According to this provision, termination of pregnancy can only be carried out in government hospitals or private medical facilities that have been approved by the government. This ensures that abortions are performed in safe, hygienic, and regulated environments by qualified professionals.

Section 5 – Exception to Time Limit

While the original Act permits termination up to 20 weeks of gestation, Section 5 provides an exception to this limit. It allows abortion beyond 20 weeks only if it is immediately necessary to save the life of the pregnant woman. This clause acts as a safeguard in emergency situations where delay could be fatal. In the case of *Tapasya Umesh Pisal v. Union of India*²³ The Court permitted abortion beyond the 20-week limit due to serious foetal anomalies. It reiterated that the MTP Act must be interpreted in light of evolving medical standards and constitutional rights.

²³ (2017) SCC Online SC 1174

Section 6 – Rulemaking Power

This section empowers the central and state governments to make rules for carrying out the provisions of the Act. These rules may include criteria for approving medical facilities, qualifications and experience required for medical practitioners, and other procedural aspects to ensure proper implementation of the law.

Section 8 – Protection for Medical Practitioners

Section 8 offers legal protection to registered medical practitioners who perform abortions in good faith under the provisions of the Act. If the termination is done following the law and with genuine intent to protect the woman's health or life, the practitioner is shielded from criminal or civil liability.

The 2021 Amendment and Expanded Access

The Medical Termination of Pregnancy (Amendment) Act, 2021 significantly broadened the scope of the original law. It extended the gestational limit to 24 weeks for specific categories of women, including survivors of rape or incest, minors, and women with physical disabilities or fetal anomalies. In this case of *Meera Santosh Pal v. Union of India*²⁴ the Supreme Court allowed termination of a 24-week pregnancy due to severe foetal abnormalities. The Court held that the right to life includes the right to a dignified life, and forcing a woman to carry a non-viable foetus would violate her rights. The amendment also recognized the reproductive rights of unmarried women by allowing abortion in cases of contraceptive failure a provision previously limited to married women. Additionally, Medical Boards were introduced to assess cases involving fetal abnormalities beyond 24 weeks, ensuring expert evaluation and decision-making.

Impact on Women's Reproductive Rights

The MTP Act plays a vital role in affirming women's autonomy over their bodies and reproductive choices. It aligns with constitutional values of dignity, privacy, and equality, and has been reinforced by progressive judicial interpretations that emphasize a woman's right to

²⁴ (2017) 3 SCC 462

make informed decisions about her pregnancy. The Act empowers women to exercise control over their reproductive health without requiring spousal consent.

Despite its progressive framework, the implementation of the MTP Act faces several challenges. Access to safe abortion services remains limited in rural and underserved areas due to inadequate medical infrastructure and a shortage of trained personnel. Social stigma and lack of awareness continue to hinder women from seeking legal and safe abortions. Judicial delays in cases requiring court approval can also obstruct timely medical intervention.

The MTP Act, especially after its 2021 amendment, represents a significant step toward reproductive justice in India. It balances medical ethics, legal safeguards, and women's empowerment, offering a framework that supports informed and autonomous reproductive choices. Continued efforts are needed to improve access, awareness, and implementation to ensure that every woman can exercise her reproductive rights safely and freely.

3. Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994

The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 commonly known as the PCPNDT Act was enacted by the Indian Parliament to curb the misuse of medical technologies for sex determination and to combat the growing issue of female foeticide. The Act was a response to the alarming decline in the child sex ratio, particularly in states where patriarchal norms and son preference were deeply entrenched.

The primary objective of the Act is to prohibit sex selection, both before and after conception, and to regulate the use of pre-natal diagnostic techniques for legitimate medical purposes only. These include detecting genetic or metabolic disorders, chromosomal abnormalities, congenital anomalies, and other specified conditions. The Act strictly forbids the use of such techniques for determining the sex of the fetus.

Section 3 – Regulation of Genetic Clinics and Laboratories

This section mandates that no genetic clinic, laboratory, or counseling center shall conduct pre-natal diagnostic techniques unless registered under the Act. It ensures that such procedures are carried out only for legitimate medical reasons and not for sex determination. In *CEHAT*

*v. Union of India*²⁵ the Public Interest Litigation (PIL) led to the Supreme Court issuing strong directions to improve enforcement of the PCPNDT Act. The Court emphasized the need for strict monitoring of ultrasound clinics and directed states to implement the Act rigorously, especially under Sections 3 and 4, which regulate diagnostic centers.

Section 4 – Permitted Use of Pre-Natal Diagnostic Techniques

Pre-natal diagnostic techniques may only be used to detect genetic abnormalities, metabolic disorders, chromosomal abnormalities, congenital malformations, haemoglobinopathies, or sex-linked disorders. The section strictly prohibits using these techniques for sex determination. In *Union of India v. Indian Radiological and Imaging Association (IRIA)*²⁶ the Supreme Court stayed a Delhi High Court order that had relaxed training requirements for radiologists. The case centered on Section 3 and Section 4, affirming that only qualified and registered professionals should conduct pre-natal diagnostics.

Section 5 – Written Consent of Pregnant Woman

This section requires that the pregnant woman must provide written consent before undergoing any pre-natal diagnostic procedure. She must also be informed about the risks and purpose of the procedure. This ensures informed decision-making and protects her autonomy.

Section 6 – Prohibition of Sex Selection

One of the most critical provisions, this section explicitly prohibits sex selection before or after conception. It bans any procedure, test, or treatment that aims to determine or influence the sex of the foetus.

Section 22 – Prohibition of Advertisement

This section prohibits any form of advertisement—whether in print, electronic, or online media—related to sex selection or sex determination. Violators are subject to penalties, including imprisonment and fines.

²⁵ (2018) SCC Online SC 1174

²⁶ (2018) SCC Online SC 1427.

Section 23 – Penalties for Contravention

Any person who contravenes the provisions of the Act, including conducting or facilitating sex determination, faces imprisonment up to three years and a fine. Repeat offenders may face harsher penalties, including cancellation of medical licenses.

Role of judiciary towards the protection of reproductive autonomy

The judiciary has been central to shaping abortion law in India, often stepping in where statutory language is silent or ambiguous. But its approach has been inconsistent, oscillating between affirming women's autonomy and reinforcing state control.

In *Justice K.S. Puttaswamy v. Union of India*²⁷, the Supreme Court affirmed that privacy is a fundamental right under Article 21, encompassing decisional autonomy in matters of family, procreation, and bodily integrity. When applied to abortion, this principle means that the decision to continue or terminate a pregnancy should rest primarily with the woman not the State, not the medical establishment.

The Supreme Court's landmark decision in *Suchita Srivastava v. Chandigarh Administration*²⁸ marked the first strong articulation of reproductive choice as a component of the right to personal liberty under Article 21 of the Constitution. The Court stressed that a woman's right to make reproductive choices including the decision to carry a pregnancy to term or terminate it is part of her bodily integrity, dignity, and privacy. This judgment has since become the bedrock for rights-based arguments in abortion cases.

In *Dr. Mangla Dogra vs. Anil Kumar Malhotra*²⁹, the Punjab and Haryana High Court reaffirmed that a woman's consent alone is legally sufficient for medical termination of pregnancy under the MTP Act, 1971. The case arose when the husband sued his wife and her doctors for performing an abortion without his knowledge, claiming emotional distress. The Court dismissed the claim, emphasizing that reproductive decisions lie solely with the woman and that doctors are obligated to obtain informed consent only from the patient herself. This judgment reinforced the principle of bodily autonomy and clarified that spousal consent is not

²⁷ (2017) 10 SCC 1

²⁸ (2009) 9 SCC 1

²⁹ AIR 2010 P&H 190.

a legal requirement for abortion.

In *X v. Principal Secretary, Health & Family Welfare Department*³⁰, the Court further expanded this principle, holding that marital status cannot determine access to abortion under the MTP Act. Crucially, it recognised that the law must account for the reality of marital rape, even though marital rape itself remains outside the penal code. The decision reframed the scope of woman under the MTP Act to include unmarried and non-traditional family structures.

However, progressive momentum was disrupted in *X v. Union of India*³¹, where the Court denied termination to a woman with postpartum psychosis at around 26 weeks. While acknowledging her mental health condition, the bench prioritised the rights of the unborn child and relied heavily on a medical board's cautious recommendation. This case reflected a paternalistic tilt, where the woman's decisional autonomy was subordinated to state-defined notions of protection.

These judgments illustrate a broader pattern where when courts adopt a rights-based lens, autonomy advances; when they lean into protectionism, women's agency recedes. The resulting jurisprudence is uneven, leaving reproductive rights vulnerable to shifts in judicial philosophy.

Conclusion

Change is unchangeable law of nature and same rule is applied while talking about emergence, recognition and validation of concept of reproductive rights. This, in other words, means that though the concept of reproductive autonomy of females always has become part of legal debates at different times, in our society, yet the journey of our civilization from past to contemporary times has witnessed the fact that after independence, the nature and scope of the concept of reproductive rights has widened because special laws were laid down from time to time for strengthening the position of females of our society. Tracing India, down the lanes of history, it is found that when dominated by patriarchal norms, the women of India were considered as commodities who being the homemakers, were busy in completing daily household chores during the day and in night were obliged to submit themselves without

³⁰ (2022) 10 SCC 1

³¹ W.P. (Civil.) No. 1137 of 2023 SC

raising any voice, in fulfilling all the physical, emotional and sexual demands of their husbands.

After independence of India, and with the coming of modernisation and industrialisation, sincere efforts were made to improve the plight of females so that they can stand on equal footing along with men and live their lives according to their own terms and conditions. When special laws were laid for women empowerment, there arose the need to take into consideration the concept of reproductive rights at serious note and pave way for establishment of such social order where reproductive liberalisation not only contributes in improving reproductive and sexual health of females but also assists both the males and females in laying down healthy foundation of a family where children are able to lead happy and healthy lives after their births.

The biological process of reproduction is not associated solely with the body of female, instead the mechanism of giving birth to the child relies upon equal contribution made by males as well, hence committing reproductive coercions against the females for the reason that they give birth to future generations does not seem to be right. Though with the advancements of medical technologies, we today are able to understand pros and cons connected with the child inside the womb of the mother, yet it cannot be declared that the act of giving birth to the child is easy one. The life of the mother is put at risk and then she struggles hard mentally and physically with her own self at the time when the delivery of the child takes place either in the hospital or at home.

The ancillary concepts such as abortion, sterilisation, contraceptive use, family planning are also integral and unavoidable part of reproductive rights and demand equal attention as the process of reproduction, when practiced by the married couples in their lives. Just because one human life is capable enough to give birth to another human life, this does not mean that no medical care is necessary to be given to the female at the time when she carries pregnancy or undergoes abortion in exceptional circumstances in her life. The responsibility of the State becomes multi fold in matters of reproductive rights especially when the nation is not developed one and majority of the population lives under poverty line or struggles hard in earning basic amenities of food, clothing and shelter for themselves.

The circumstances become more hard when the civil matters such as the concept of marriage, birth of child, adoption etc. are governed by customary practices, usages, rites and rituals

as they may create positive or negative impact upon the human beings and thus sometimes may push them to support those dysfunctional and baneful customs which negatively may influence the mind-set of people and provoke them to indulge in inhumane activities or disgraceful behaviors such as practice of child-marriage and female genital mutilation in India. In such scenario where right to education has not been availed and exercised by majority of the population of India, establishment and recognition of reproductive rights in scientific manner after shedding all the webs of baneful customary norms, is not an easy task. The majority of females in India are born under the influence of taboos, they live under such influences and even are surrounded by such taboos at the time of their deaths. For example, the birth of the girl child is always seen with suspicion and very many questions are put before the parents of girl child such as why should she be given education, till what age she can remain in her parents' home, when married is she having freedom to look after her parents etc. but when birth of male child takes place happiness and cheerfulness surrounds the family and such activity is embarked as an epitome of victory as parents are able to now pave way for carrying their patriarchy forward and for achieving moksha or salvation after the birth of male-child. In growing years, females are always instructed by her family members, to learn all the household works efficiently so that when she goes to her in laws' house, she is not taunted or ill-treated in any manner for not knowing the art of home –making but the harsh reality which makes everyone speechless is that after being efficient in the art of home making and in striking the balance between her professional and personal life yet majority of the females in India become victims of domestic violence, emotional abuse and dowry deaths. The offences like rapes, acid attacks etc when committed against females in brutal manner clearly bring to the screen the evil effect of norms of patriarchal society which are powerful enough to destroy the identity of the females in complete manner.