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# REPRODUCTIVE AUTONOMY AND CONSTITUTIONAL JUSTICE: A COMPARATIVE STUDY OF ABORTION RIGHTS

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## ABSTRACT

Abortion laws are among the most debated issues in constitutional and human rights discussions worldwide. Although more countries now view reproductive autonomy as integral to the rights to privacy, dignity, and bodily integrity, the legal approaches to abortion remain very different. This article examines the rights to abortion and access, focusing on the Indian context, and draws lessons from the United States, the United Kingdom, and South Africa. It always traces how the Indian abortion law has changed from the Medical Termination of Pregnancy Act of 1971 to the 2021 amendments by highlighting how courts increasingly view the choice of reproductive rights as a key part of personal liberty under Article 21 of the Indian Constitution. Abortion rights jurisprudence has tremendous theoretical value since it explains the inter-concept relationship between autonomy, dignity, and constitutional freedoms. Other comparative jurisdictions increasingly treat reproductive choices as aspects of both personal autonomy and human dignity, shifting the ambit of privacy from simple protection against intrusion to a right of decisional freedom. Abortion cases also show how courts weigh individual rights against the State's interest in the protection of the potential life of a child, demonstrating how different models of rights adjudication-proportionality analysis in India, equality-based reasoning in Canada and South Africa, and evolving standards in Europe work. Abortion, in terms of feminist and equality jurisprudence, reveals how the denial of abortion fosters structural inequalities, necessitating substantive and not merely formal equality. The debates also question the traditional public-private divide since reproductive choices are evidenced to be influenced by state power, access to healthcare, and social norms. Abortion of jurisprudence, therefore, becomes a site to further the examination of constitutional morality, judicial responsibility, and the interdependence of rights.

The study critically examines how the Indian Supreme Court has expanded the concepts of privacy and autonomy—especially in the wake of Justice K.S. Puttaswamy v. Union of India (2017)—to situate reproductive rights

within the broader framework of constitutional guarantees.

There are some comparative studies on these landmark cases, like *Roe v. Wade* (1973), *Dobbs v. Jackson Women's Health Organization* (2022), *R (Smeaton) v. Secretary of State for Health* (2002), and *Christian Lawyers Association v. Minister of Health* (1998), that help us to understand how the global movements are affecting Indian law.

## **I. Introduction**

The issue of abortion is connected to the right to abortion, which includes the legal system, moral standards, gender equity, and the human rights framework. The issue is associated with fundamental questions such as autonomy and the role of the state in controlling the body, and the limits to which the constitution can ensure reproductive autonomy. The discussions surrounding the issue of abortion have appeared in moral conservatism and transformative movements across the world.

In the Indian legal system, the subject of abortions represents the paradoxical stances between the protection of potential life and the rights of women.

There exists the Medical Termination of Pregnancy Act, 1971, amended in 2021, which holds the key to the legal regime of abortions in the country. The Medical Termination of Pregnancy Act was primarily formulated to diminish illegal abortions. It initially protected doctors against prosecution under the Indian Penal Code of 1860.

Although the United States has progressed from the "*Roe vs. Wade*" era to "*Dobbs vs. Jackson Women's Health Organization*"—moving back on the federal recognition of the constitutional right to abortion—the "*Abortion Act, 1967*," in the United Kingdom, and the "*Choice on Termination of Pregnancy Act, 1996*," in South Africa are exemplars of liberal frameworks that, rather than focus on 'access' and 'health,' put 'choice' upfront. The Indian experience is placed in the larger international landscape of this debate, and it is argued that the autonomy of women is not merely a 'medical' topic but is rather the 'sine qua non' of the Constitution.

The study of reproductive rights and constitutional justice shows a global situation where abortion rights are a key measure of personal freedom against government interests. Many Western countries have generally become more liberal, but recent legal differences reveal

two main constitutional views. One sees reproductive choice as a fundamental part of privacy and bodily autonomy. The other gives priority to the government's interest in potential life or traditional morals. In the United States, the 2022 Dobbs decision marked a move away from federal constitutional protections. This shift handed authority to the states, leading to a fragmented system of access. On the other hand, countries like France are working to constitutionalize these rights, ensuring they are protected from changing political majorities. In India, the Medical Termination of Pregnancy (MTP) Act has helped develop the framework. Courts there have increasingly connected the right to choose with Article 21 (Right to Life and Personal Liberty). However, access still requires medical approval instead of being granted on demand.

## **II. Historical Context**

The history of the regulation of abortion in India cannot be studied in a disjointed manner from the colonial background and health care policies. Under the pre-MTP Act era, the regulation of abortion was criminalized through sections 312-316 of the India Penal Code, 1860, that criminalized the 'voluntary causing of miscarriage' except when done in the interests of saving the life of the pregnant woman.

The decade of the 1960s saw the recognition of unsafe abortion as a serious issue across the globe. The MTP Act of 1971 in India, formed following the suggestions of the \*Shantilal Shah Committee Report of 1964\*, can be regarded as the first abortion legislation in the developing world. Although liberal for the period, regulation of abortion in this act is couched in highly medicalized and paternalist language and focuses on the discretion of doctors rather than the autonomy of women. Judicial constructions of the act have been conservative until the beginning of the 2000s, when the courts allowed the applicability of constitutional analysis in the narrative of reproductive choice.

## **III. Comparative Legal Framework**

India's legal framework, in essence, is covered by the MTP Act and its amendments in 2021, making the abort ability discussion focus on legalities with some caveats but with a persisting doctor-centric legal environment in India. Moving to the United States, abortability is legal in *Roe vs. Wade* (1973), but in *Dobbs* (2022), it denounced this, thus emphasizing the vulnerability of such rights in law, with the United Kingdom's Abortion Act

(1967), which is liberally interpreted, and in South Africa's Choice on Termination of Pregnancy Act (1996), which is constitutional as a right in itself, Indian law's position remains in between these two settings and is slowly progressing toward becoming right-based and normalized as in those settings.

In India, the shift from focusing on "population control" or "family planning" to a rights-based framework marked a historic moment with the 2022 Supreme Court ruling in *X v. Principal Secretary, Health and Family Welfare Department*. The Court took an interpretive approach, which prioritizes the goal and intent of the law over its literal wording. This approach connected the Medical Termination of Pregnancy (MTP) Act to modern constitutional values. As a result, reproductive rights are now associated with a woman's individual agency rather than her marital status. The Landmark Case: *X v. Principal Secretary (2022)* The case involved a 25-year-old unmarried woman who was denied an abortion at 22 weeks by the Delhi High Court because her pregnancy resulted from a consensual relationship. The Supreme Court reversed this decision, stating that: Marital Status is Irrelevant: The Court determined that making a distinction between married and unmarried women regarding access to abortion at 20 to 24 weeks is "constitutionally unsustainable" and violates Article 14 (Right to Equality). Bodily Integrity under Article 21: The Court recognized reproductive autonomy as a key aspect of the Right to Life and Personal Liberty. It acknowledged that an unwanted pregnancy can seriously affect a woman's "actual or reasonably foreseeable environment," including her mental health and economic stability. Expansion of "Rape" to include Marital Rape: To align with the MTP Act, the Court decided that "rape" must encompass marital rape. This ruling enables married women to access the 24-week limit if they become pregnant through non-consensual sexual acts within marriage, bypassing the "marital rape exception" found in criminal law.

#### **IV. Constitutional and Human Rights Perspectives**

The Indian Constitution, under Article 21, provision of life and personal liberty, has been generously extended to include privacy, dignity, body integrity, among other rights inherent in life. *Suchita Srivastava v. Chandigarh Administration (2009)* established reproductive autonomy as a part of personal liberty under the Indian Constitution, while the ruling in *Puttaswamy (2017)* reiterated privacy as a basic right in Indian law, which was strengthened in *X v. Principal Secretary (2022)* in the abortion laws, which extended reproductive

autonomy in abortion in 24 weeks for unmarried women in India, bringing Indian provisions closer to international human rights norms, especially CEDAW and ICESCR provisions. Yet, the legislation is severely restrictive in comparison to the Indian Constitution.

## **V. Access and Implementation Challenges**

Despite progressive judicial pronouncements and legislative amendments, access to abortion in India is still impacted by various barriers in all four dimensions: administrative, medical, social, and infrastructural.

### **A. Barriers Administratives et Procedure**

Under the MTP Act, the procedural laws like the need for medical opinions, certification, and approval by the State and Union Governments and even the Medical Boards within the statutory time limit acts as a hindrance, and in rural areas, it is even more difficult. In the case of *Murugan Nayakkar vs. Union of India*, (2017) SCC Online SC 901, the Supreme Court allowed the termination of pregnancy for a 13-year-old rape survivor beyond the statutory time limit but held that approvals of this kind should not become the rule.

Further, being required to have multiple medical practitioners is a restricting factor for regions that lack such facilities. According to the Ministry of Health and Family Welfare, more than 70% of abortions in India are performed outside authorized institutions. The major dependency of abortion sessions on urban medical boards is another barrier to abortion accessibility.

### **B. Stigma and Social Conditioning**

Social stigma about abortion remains stigmatized within society due to patriarchal attitudes associated with female virginity and motherhood. Single women, adolescents, and other marginalized groups receive increased surveillance and discriminatory provision or denial of abortion access. Women may also fear that if they undergo an abortion, the abortion may be disclosed to others.

The judicial affirmation of the rights of unmarried women, as stated in *X v. Principal Secretary* (2022), indicates a major advancement towards destigmatization, whereas social norms progress at a far slower pace than legislation. The issue is, rather, both cultural and

legal, where issues of reproduction continue to be considered within a moral, rather than autonomous framework.

### **C. Public Health and Infrastructure Deficits**

The issue of access to abortion care is linked to health inequities. As shown from the National Family Health Survey (NFHS-5), the fact that abortion services are legally accessible remains alarming due to the low levels of awareness among rural and poorer women. Moreover, the lack of well-trained practitioners, adequate education on sexuality, and inequitable distribution of health facilities have been associated with unsafe abortion, which is among the major reasons for maternal mortality in India.

According to the World Health Organization, unsafe abortion contributes to approximately 13% of maternity-related deaths, and India is responsible for many of them. Both figures demonstrate the fact that the legalization of abortion doesn't necessarily lead to safe abortion unless there is proper health care infrastructure and advertisement campaigns regarding the same.

### **D. Intersectional Inequal**

Accessibility is further influenced by factors such as caste, class, religion, and disability. For example, Dalit and Adivasi women's vulnerability is multi-folded, considering they are systematically denied access to health systems. For the disabled, accessibility of health infrastructure and prejudice of medical personnel may mean the same thing: no access.

The inclusion of intersectionality by the Supreme Court in the case of *Navtej Singh Johar v. Union of India*, [2018] 10 SCC 1, in a sexual orientation context, can be applied to the case of reproductive justice as an extension of the logic.

"Reproductive justice requires not only that the right is granted but that it is accessible."

## **VI. Socio-Legal Analysis & Feminist Views**

### **A. Reproductive Choice to Reproductive Justice**

"Feminist legal theory sees a distinction between 'reproductive choice', or autonomy, and 'reproductive justice', or the social context in which choice is exercised." The focus of

"reproductive justice" is on "the determinants of the ability to realize freedom to exercise reproductive autonomy," such as economic status and identity. Indian law, although considering the element of choice, rarely takes cognizance of these disparities. The judicial preoccupation with the language of privacy and autonomy, although very effective, can neglect the collective, social aspects of the right to reproductive choice. As feminist scholars have argued, reproductive rights cannot exist in a vacuum that is devoid of materiality, accessibility, and egalitarianism.

### **B. Paternalism in Legal and Medical Discourse**

The continued existence of medical paternalism, whereby doctors rather than women are the principal decision-makers, indicates the distrust of female decision-making that exists beneath the law's surface. The legalization of requiring a medical certification continues the implication of female irrationality regarding reproductive choice.

This paternalistic attitude is seen in instances where courts abdicate their decision-making role in medical boards when constitutional rights are involved. "A feminist jurisprudence would turn such jurisprudential focus on consent-based autonomy, where medical regulation will only serve to ensure safety, not legitimacy."

### **C. Role of the Judiciary in the Development of Feminist Constitutionalism**

Recently, the Indian Supreme Court has also taken to feminist constitutional interpretation and have drawn connections between reproductive rights and dignity, equality, and non-discrimination. This is evident in *Suchita Srivastava and Principal Secretary*. The fact that gender is used in a neutral sense in these decisions and recognizes that trans and non-binary people may also have pregnancies is clearly indicative of this transformative approach.

Nevertheless, inconsistency in judgments is still a challenge. Low courts tend to be conservative in the interpretation of the MTP Act. Additionally, extralegal obstacles imposed by state authorities are still in place.

### **C. The Global Nature of Feminist Solidarity and Transnational Reach**

A comparison analysis indicates that the transnational feminist movement has had implications for abortion reforms across the globe. The abortion decriminalization campaign

in both Ireland and Argentina has proved the viability of the abortion fight in human rights and equality rather than health reforms alone.

The country's involvement in international forums on human rights and its obligation under various international instruments such as CEDAW, ICESCR, and UDHR generate normative and moral imperatives on making the domestic laws compatible with international laws on these issues. The issue of reproductive rights is reinforced through feminist solidarity principles of unity and cooperation across national boundaries by emphasizing the universality of such right principles in protecting women's rights through these. In a global context, reproductive autonomy is increasingly examined through the lens of constitutional justice. Abortion is seen either as a fundamental right based on privacy and dignity or as a legislative issue. Over the last thirty years, a significant shift toward liberalization has occurred, with more than 60 countries expanding access.

However, the situation remains deeply divided. Some countries, like France in 2024, have constitutionalized these rights, while others, like the United States after Dobbs, have removed that protection. This difference reveals a conflict between negative rights, which protect individuals from government interference, and substantive equality, which requires the government to ensure access to healthcare regardless of socioeconomic status. In India, the legal approach has leaned toward a more progressive, rights-based interpretation of the Medical Termination of Pregnancy (MTP) Act. The Supreme Court has increasingly connected reproductive choice to the Right to Life under Article 21, but access is still medically regulated rather than entirely elective.

## **VII. Conclusion and Recommendations**

Reproductive rights relating to abortion in the Indian legal system fall within an ever-unfolding realm that, while regulated through statutes, is still to be formally granted recognition through the provision of the Indian constitutional framework, particularly Article 21, which is being increasingly broadened by judicial intervention to include the concepts of privacy, dignity, and the autonomy of the human body, placing the right to reproduction at the heart of the fundamental rights provisions.

### **A. Key Recommendations:**

1. Legislative Reform: The MTP Act should be modified to permit abortion on demand

up to at least 20 weeks of pregnancy and beyond, on medical grounds, without having to secure approval from several doctors.

2. **Comprehensive Reproductive Healthcare Services.** The government needs to include abortion in Comprehensive Primary Health Care, with equal access to rural and marginalized groups.
3. **Public Awareness/Awareness & Education Campaigns.** National educational programs should be implemented regarding Reproductive Rights & Gender Equality.
4. **Judicial Sensitization:** Judges, as well as medical boards, could be constantly trained on gender sensitivity, human rights, and the constitution, which could help in applying the law uniformly.
5. **Harmonization of Human Rights Standards:** Incorporate international standards, in particular CEDAW, ICESCR, and General Comment, ICCPR.

### **B. Concluding Reflections:**

The issue of abortion is where freedom and equality and dignity come together—from these three; a constitutional democracy is built. The evolution of the Indian juridical tradition is a move towards realizing the autonomy of reproduction as a right and not a favor. Yet within a changing legal paradigm, transformation is required to be worked upon. A rights-based framework must also incorporate decriminalization, destigmatization, and democratization. Through the comparative lens, it was discovered that the states that were most successful in ensuring the protection of abortion rights were those that ensured a fetus was protected by the constitution and that reproductive health facilities were accessible. There will be no contradiction between India's constitution and the need for reproductive health. This is because of the constitution's morality of justice and equality. By combining feminist legal theories and social viewpoints, this article talks about the ongoing limits to access, the intersectional impacts of reproductive justice, and the need to research abortion as a fundamental human right. It ends with proposals for constitutional and policy reforms to ensure meaningful access to abortion services in India, following international human rights standards.

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