
REPRODUCTIVE RIGHTS OF WOMEN IN INDIA (SPECIAL EMPHASIS ON ABORTION LAWS)

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ABSTRACT

Reproductive Justice is not just about women but a freedom to every human being of any gender and providing them with sexual autonomy. It advocates for one thing to begin with, the law shall in no way not unduly interfere with the decision of a woman and at the same time has an obligation to fulfill her needs without coercion and with social support¹. This deals with the whole idea of how a woman should be let, or to put it in arbitrary words, not be stopped by any statutory or non statutory authority for making a decision about her body for she alone is in control of what she wants for her body. The controversy of whether or not reproductive rights should be fundamental without deprivation and, if a woman can do anything to a being inside the womb in the name of personal autonomy, is the real question at hand which has extraordinarily trapped the legal system with the women at issue. Universally, Reproductive Justice should mean that a person shall have a human right to not have a child, to have a child and, to parent a child in a safe & healthy environment. If this is applied, it would make the process the sole responsibility of the parents or the mother alone and make her the ultimate decision-making authority.

Keywords: Abortion laws, Reproductive Justice, Reproductive rights, Body autonomy, Right to privacy

¹ Loretta Ross & Rickie Solinger, *Reproductive Justice and the Right to Parent*, in *Reproductive Justice: An Introduction* 169 (2017)

I. Reproductive Justice as a controversy

The debate on reproductive rights of women, especially in the case of Abortion, whether it is legal and moral, has become a global controversy, spanning over decades. Life is the condition that distinguishes animals and plants from inorganic matter, *including the capacity for growth, reproduction, functional activity, and continual change preceding death*. Now this would mean that an organism only has a life if it is able to develop, procreate or has the means to at the least, and is a motor at least inside the body. The 'life' of a baby is a topic heavily argued upon where one side claims that it does not have life until after 20-24 weeks after conception, while the other argues that since it starts grow all organs in 8-10 weeks of conception, it is able to function on its own so life starts there. However, there are more notings made and the most contradictory points were *Life starts at conception* and *life starts at 24- 38 weeks*. There are 8 stages of the growth of a baby which is split in a trimester- a Zygote, an Embryo and at last a Fetus. The Fetus trimester (third) is when the baby starts to grow organs, limbs and other body parts, inside the womb with the support of the mother's umbilical cord through which nutrition is sent to the 'baby'.

The most critiqued topic- Reproductive rights faced a lot of toll especially in the case of women over the past few decades i.e., whether or not they get to decide what happens to their body or not in the case of abortion. The question- whether abortion is murder, is something that has over the years changed perspectives of men and women, wherein the idea of selfishness was brought up in the same case as the woman would essentially be "killing the baby" for her own so called 'right'. The two stances, *pro-life* and *pro choice*, refers to whether one was against abortion as it resulted in the ending of a 'life', or if one was on the side of abortion which meant that women had the choice to do what they want with their bodies which involved choosing herself over the unborn 'life'.

The debate over *pro-life* and *pro-choice* started in the mid 1960s when the movement to liberalise abortion laws took place in the United States.² Women of colour felt the need to address crimes against women of colour especially ones that disturbed their reproductive and sexual health and wellbeing. This was when an organisation by the name, "SisterSong"³

² *Pro-Life and Rescue Movements - Timeline Movement, The Association of Religion Data Archives*
<https://www.thearda.com/us-religion/history/timelines/entry?etype=3&eid=31>

³ *Sistersong, Women of colour reproductive justice collective*
<https://www.sistersong.net/about-x2>

initiated a movement in the United States in 1997 after emerging talks on abortion laws in the nation, to establish what it is now called, *Reproductive justice* and defined it to be, “The human right to maintain personal bodily autonomy, have children, not have children, and parent the children we have in safe and sustainable communities.” The same organisation in an editorial claimed that bodily autonomy is more about the right to parent the children one has or not lies within the one and that no authority can make the decision for them.⁴

The judiciary system of India prominently supported the need to legalise abortion and safe termination of babies for all women citizens under professional and authorised medical supervision. Abortion was legalised in India in the year 1971 under the Medical Termination of Pregnancy Act where the termination was to be done with⁵

Permissible Conditions for Abortion:

- When the pregnancy was fatal to the mother’s life.
- To prevent grave injury to the mother’s physical or mental health.
- If the pregnancy is a result of rape or incest.
- In cases of fetal abnormalities and anomalies.

Gestational Limits (up till 2021 amendment):

- Up to 20 weeks of pregnancy, with the approval of one registered medical practitioner.
- For pregnancies beyond 20 weeks, approval from two registered medical practitioners was required, and abortions were allowed only under stricter conditions.

However, the amendment in 2021 (MTP act 2021) made changes to the act where the gestation limit was extended from 20 weeks to 24 weeks for special case of pregnancies where the women are rape survivors, incest victims, minors, etc. There was no upper gestation limit if

⁴ SisterSong Women of Color Reproductive Health Collective. "Reproductive Justice Briefing Book." 2003.

⁵ The Medical Termination of Pregnancy act, 1971

there was a case of substantial fetal abnormalities, if the case was approved by the Medical Board of India⁶. And strengthened privacy laws surrounding the woman who sought abortion making it an offense to disclose her identity &/ her choice except to authorised persons.

II. Right to Privacy and Reproductive rights: the interlink

The privacy laws were the foundation of the abortion rights movement, particularly in its early stages in the United States. The right to privacy provided the legal standing for those advocating for the provision of abortion, arguing that a woman's decisions regarding her own body fall within the realm of personal privacy, and therefore, should not be subject to state interference or scrutiny. This was a crucial argument in the landmark case of *Roe v. Wade* (1973)⁷, where the Supreme Court recognized that the right to privacy, under the Fourteenth Amendment of the United States Constitution, extends to a woman's decision whether or not to have an abortion.⁷ This decision established a woman's right to choose, based on the privacy of her body and personal medical decisions. The significance of privacy in this context cannot be overstated. It underscores the principle that individuals have a protected sphere of autonomy into which the state cannot intrude without a compelling reason. In the context of reproductive rights, this means that decisions about whether to continue a pregnancy, access contraception, or undergo other medical procedures related to reproduction are fundamentally personal and should be shielded from unwarranted state regulation.

In India, the right to life and personal liberty is enshrined in Article 21 of the Constitution. This article is a cornerstone of Indian jurisprudence, guaranteeing that "no person shall be deprived of his life or personal liberty except according to procedure established by law." The Supreme Court of India has interpreted Article 21 expansively, going beyond a narrow reading focused solely on physical existence.

The dimensions of Human Dignity is to be connected to bodily autonomy and the Courts have done so and make it within the scope of privacy laws. Taking the case of *K.S. Puttaswamy v. Union of India* (2017)⁸ which helped decide that the right to privacy is protected under Article 21 of the Indian Constitution. The court's decision was based on the consensus that right to privacy is a part of Personal liberty and dignity, which falls under the roof of article 21, a

⁶ The Medical Termination of Pregnancy (Amendment) Act, 2021

⁷ *Roe v. Wade*, 410 U.S. 113 (1973)

⁸ *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1

fundamental right guaranteed nationally in India, which in turn means that a person's bodily autonomy is within oneself to decide for and against and, a government or the state cannot interfere in the decision, so in the case of reproductive rights. The question of whether a state can create restrictions on abortion, if done, till what extent it can be placed and how much authority a woman has over her own body in the same case, is purely based on the idea of how the fetus is a 'baby' and how it is a life, moral conditions apply here rather than just scientific finds. Any law restricting a woman's access to abortion and any other reproductive healthcare is subject to exclusive scrutiny which is a direct infringement of Fundamental rights. The basic right must be given to a woman, the decision to make sure she has power over what happens to her body or not. If the decision to kill a fetus living inside you is murder, then so is not consenting to treat yourself with medical care that might save your life, as it leads to the violation by themselves of their right to life. In a case of termination of a pregnancy of a woman who was mentally challenged, a High court considered the termination against her expressed wish to carry the pregnancy, the Supreme Court ruled in the favour of the woman stated that the ultimate decision rests with herself. The primacy of individual choice is important as it underscores the respect of individuals which includes even people with disabilities ⁹.

In places of healthcare, the concept of *Informed Consent* where the risks and benefits of a medical procedure are informed to the patient before getting into the procedure. This can be applied to the situation of women getting abortions as well where places like *Planned Parenthood* in the USA operate in the same way, where a woman seeking abortion will go through a series of terms and conditions which specify the details of the risk and the consequences of the termination. Medical paternalism (a physician or other healthcare professional undertakes actions designed to limit the exercise of the patient's autonomy) can be prevented if this is practiced. An individual will be under their own care¹⁰, their own purview, which would mean that they have full autonomy over their body. All of these would stop unintended pregnancies¹¹, which would mean that, an unplanned pregnancy, let's say one which was brought into a world of poverty and lack of resources for inhabitation, the parents will have the right to abort the baby to avoid its lifelong struggle to potentially reach a ladder. The World Health Organization notes, "The ability of women to control their fertility is a

⁹ *ABC v. State of Maharashtra*, (2016) 10 SCC 1.

¹⁰ Beauchamp, T. L., & Childress, J. F. (2019). *Principles of biomedical ethics* (8th ed.). Oxford university press.

¹¹ United Nations Population Fund (UNFPA). (2022). *Unintended pregnancy and abortion: A global review of incidence and unmet need*. New York: UNFPA.

fundamental aspect of their autonomy and has far-reaching implications for their health, education, economic status, and empowerment."¹²

There are many other treaties and declarations that aim to achieve the goal to give individuals the right to make decisions about their bodies, out of free will i.e., without coercion and discrimination. The Universal Declaration of Human Rights (UDHR)¹³, the International Covenant on Civil and Political Rights (ICCPR)¹⁴, and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).¹⁵ The UDHR's principle lies in bodily autonomy as a whole where it ensures that laws are prohibited from a practice that discriminates one from access to healthcare, making any reproductive decision, or just simple control over their body, it works on the fundamental right to life as interpreted to include the right to make choices about one's own body, especially about health and reproduction.¹⁶ Practices like female genital mutilation (FGM) and forced sterilisation are inhumane, degrading treatment which violate bodily autonomy are all addressed by the UDHR's prohibition.¹⁷ Reproductive autonomy must be protected as it guarantees that individuals are free from coercive exercise of their reproductive rights. Provision of access to the resources and services essential for a person to exercise the aforesaid reproductive rights, which includes healthcare, education, and social support.¹⁸

Conclusion

The problem of choice still prevails in the case of abortions and one's extent of personal bodily autonomy as it is debated over whether or not a fetus can be considered a baby or not, whether as a life or not. The Reproductive Justice (RJ) framework transcends traditional advocacy, offering a comprehensive lens through which to view abortion rights and access. This framework invites us to consider abortion not merely as a medical procedure, but as an integral aspect of comprehensive sexual and reproductive healthcare, firmly rooted in the broader

¹²World Health Organization. (2023). *Sexual and reproductive health and rights: A human rights-based approach*. World Health Organization.

¹³ Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/RES/217A(III) (1948).

¹⁴ International Covenant on Civil and Political Rights, adopted 16 December 1966, 999 U.N.T.S. 171 (entered into force 23 March 1976).

¹⁵ Convention on the Elimination of All Forms of Discrimination against Women, adopted 18 December 1979, 1249 U.N.T.S. 13 (entered into force 3 September 1981).

¹⁶ Beauchamp, T. L., & Childress, J. F. (2019). *Principles of biomedical ethics* (8th ed.). Oxford university press.

¹⁷ World Health Organization. (2023). *Sexual and reproductive health and rights: A human rights-based approach*. World Health Organization.

¹⁸ Center for Reproductive Rights. "The Case for Sexual and Reproductive Rights as Human Rights." 2014.

context of social justice. As we confront ongoing legislative attacks on abortion rights and access, the relevance of the RJ framework becomes increasingly clear. It provides critical insights into the complex factors that shape decisions around abortion and can help dispel the enduring stigma associated with it.