FROM MARRIAGE-CENTRIC TO RIGHTS-CENTRIC ABORTION LAWS: EVALUATING THE TRANSFORMATION OF INDIAN REPRODUCTIVE JURISPRUDENCE

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ABSTRACT

The abortion law in India has undergone a gradual transformation from being centered on the institution of marriage and medically regulated, to one that is more constitutionally based, premised on individual autonomy and reproductive justice principles. Before the passage of the Medical Termination of Pregnancy Act[1], abortion is classified as a criminal offence under the Bharatiya Nyaya Sanhita, 2023[2] except where it is performed in good faith to save a pregnant woman. The 1971 Act[3], as the first meaningful step towards legalizing abortion under certain circumstances, certainly represented a model change which favoured married women but still denied many unmarried women access to equal reproductive rights. Slowly this expanded the original legal conception of reproductive choice, as the constitutional jurisprudence under Articles 14 and 21 developed to recognize an increasing dimension of dignity, privacy, equality and personal liberty. This article discusses the shift from a marriage-based model to one based on rights, highlighting new jurisprudential trends. We argue here that while reproductive autonomy has been recognized as significant progress towards reproductive justice, limitations posed by social stigma, differential access to healthcare and medical gatekeeping hinder the full realization of reproductive justice in India. Reproductive autonomy we contend here is a critical step toward reproductive justice, but social stigma, differential access to health care, gestational limits and persistent medical gatekeeping prevent it from being fully realized in India requiring further legislative & institutional reform.

Keywords: Abortion Rights, Reproductive Autonomy, Medical Termination of Pregnancy Act, Article 21

[1] Medical Termination of Pregnancy (Amendment) Act, No. 8 of 2021, Acts of Parliament, 2021 (India).
[2] Bharatiya Nyaya Sanhita, No. 45 of 2023, Acts of Parliament, 2023 (India).
[3] Medical Termination of Pregnancy Act, No.34 of 1971, Acts of Parliament, 1971 (India).

I. INTRODUCTION

It was a rainy night at Delhi hospital, the waiting room was full with people and the young woman who sat there quietly by herself, had a medical report in her hand that would not have altered the course of her life but for that reason. She was twenty-four, educated, and financially independent enough to make her own choices. Yet, for a single woman seeking an abortion, the burden is rarely confined to personal doubt alone. Alongside the emotional complexity of the decision lies a deeper fear of judgement, stigma, and the reaction of others. This apprehension is often reinforced by societal attitudes, institutional barriers, and legal ambiguities, creating an environment in which a deeply personal choice becomes subject to external scrutiny and uncertainty. The questions that nagged her weren't all medical. Would her choice be respected? Would her autonomy be recognized? Was she not a person in law, capable of determining what was done to her body, aside from her status as wife? Women in India have been facing similar dilemmas for decades. One of the biggest hurdles to reproductive rights has been that many choices about reproduction were filtered through marriage, family honour and society rather than individual ones. So the legal framework accompanying abortion reflected that reality. The law has traditionally relied upon the criminalization of abortion, except for very limited exceptions. While the Medical Termination of Pregnancy Act[4] was progressive in moving away from total criminalization, the availability of abortion continued to be deeply rooted within a medicalized and marriage-focused paradigm. Underlying this assumption was the fact that pregnancy and motherhood were figure head ideas for women in marriage, pushing unmarried women to the side.

While sections 88 to 91 of the Bharatiya Nyaya Sanhita, 2023[5] continue to prescribe criminal liability for causing miscarriage, the Medical Termination of Pregnancy Act, 2021 operates as a statutory exception, permitting the termination of pregnancy under specified conditions and shielding such procedures from criminal prosecution. As a result, abortion in India still resides between criminal law and healthcare regulation. Although the MTP Act offers legal recourses for abortion, criminal sanctions persist, representing a lingering friction between state control and reproductive freedom. For nearly five decades, the development of Indian reproductive jurisprudence has been shaped by this underlying tension.

[4] Medical Termination of Pregnancy (Amendment) Act, No. 8 of 2021, Acts of Parliament, 2021 (India).
[5] Bharatiya Nyaya Sanhita, No. 45 of 2023, §§ 88–91, Acts of Parliament, 2023 (India).

The constitutional evolution with respect to abortion law started with the expansive interpretation of fundamental rights by the judiciary. Slowly Indian courts stopped thinking about abortion merely as a medical necessity and embraced it more and more in terms of personal liberty and human dignity. In *Suchita Srivastava v. Chandigarh Administration*[6], the Supreme Court reached a landmark decision clearly stating that the right of a woman to make reproductive choices is part of her personal liberty under Article 21 of the Constitution. The Court acknowledged that reproductive freedom includes the decision to bear a pregnancy to term as well as the right to terminate it, and that personal choice lies at the heart of constitutionally protected liberty. The Court laid a firm foundation for protecting reproductive decision-making by identifying respect for bodily integrity, decisional autonomy, and individual dignity as key components of constitutional liberty. The response reiterated that sensitive personal life choices, including reproduction, were protected by the freedom to privacy and autonomy guaranteed under Articles 14, 19 and 21 of the Constitution. The landmark decision of Justice *K. S. Puttaswamy v. Union of India*[7] which recognized the fundamental right to privacy, further accelerated this rights-based approach in which, an overarching sexual right is grounded as a human right as recognized by conventions internationally.

The most telling moment on this jurisprudential journey was the passing of the Medical Termination of Pregnancy (Amendment) Act[8], and the Supreme Court's ruling in *X v. Principal Secretary, Health and Family Welfare Department*[9]. The revision expanded abortion access and used more equitable language, which aligned with contemporary social realities. Drawing from this legislative change, the Supreme Court in X outrightly ruled that marital status cannot preclude legal benefits of abortion law. As the Court explained, constitutional rights attach equally to married and unmarried women; "reproductive autonomy is linked" with dignity, equality, privacy and bodily integrity. Most critically, the judgment challenged understandings of conventional family structures and recognized diversity in modern-day relationships and reproductive lives.

The shift from a marriage-based paradigm to rights-based paradigm stands as one of the most important advances in modern Indian constitutional law. It embodies a wider change in legal

[6] Suchita Srivastava v. Chandigarh Admin., (2009) 9 S.C.C. 1(India).
[7] K.S. Puttaswamy v. Union of India, (2017) 10 S.C.C. 1.
[8] Medical Termination of Pregnancy (Amendment) Act, No. 8 of 2021, Acts of Parliament, 2021 (India).
[9] X v. Principal Secy., Health & Family Welfare Dep't, (2022) 14 S.C.C. 1 (India).

perspective moving away from treating women simply as wives and mothers to treating them as free and independent right holders. The abortion law is no longer primarily concerned with protecting the procreative interests of marriage or regulating reproductive conduct; it aims to protect personal liberty, marital equality and reproductive justice.

Nevertheless, the transition remains incomplete. Obstacles still exist for proper realization of reproductive rights, for instance, legal restrictions based on gestational limits, limited access to health facilities, social stigma, insufficient qualified medical providers involved in delivery and the continuing power of criminal law over women. Moreover, marginalization and power differentiation make the exercise of autonomy formally recognized by courts and legislation often ineffective for many women from marginalized groups in rural areas and from vulnerable socio-economic backgrounds.

In such a backdrop, this paper analyses the doctrinal and jurisprudential transformation of Indian abortion law from a marriage-centric paradigm to one that circles around rights anchored in constitutional values. The analysis traces the history of reproductive jurisprudence in India, evaluating key legislative developments, landmark judicial pronouncements and changing conceptions of what reproductive justice looks like to argue that Indian reproductive jurisprudence has increasingly internalized autonomy, dignity, privacy, and equality. It additionally evaluates the degree to which this change has materialized in terms of actual access to reproductive health services with a focus on identifying reform requirements to implement a genuine rights-based reproductive justice paradigm in India.

RESEARCH HYPOTHESIS

The key hypothesis of the study is that Indian abortion law has been reformulated from a marriage-centric framework to a rights-based model, predominantly through constitutional interpretation rather than legislative reform. Although the scope of abortion services had been expanded through the Medical Termination of Pregnancy Act and its amendments, it was the judicial recognition that reproductive autonomy is an element of dignity, privacy and personal liberty that revolutionised moral framing on legal aspects related to abortion. Part of this paper argues that the Supreme Court judgment in X v. Principal Secretary is a milestone leaning towards substantive equality as it takes away marriage status as one of the grounds to be considered while restricting reproductive rights. However, even with this important

jurisprudential progress, concrete obstacles still obstruct fundamental administrative proclivity that allow women to practice reproductive autonomy rights, a realisation that remains out of reach for many vulnerable and marginalized women who continue to face risks of coercion, ignorance and misinformation.

RESEARCH METHODOLOGY

This research is conducted as doctrinal research on the basis of exploration of primary and secondary legal sources. It is not just confined to constitutional provisions or Legislative enactments but also incorporates judicial principles, committee reports and government documents related to abortion regulation and reproductive rights in India which are primary sources. Special focus is given on the study of the Medical Termination of Pregnancy Act, 1971, the Medical Termination of Pregnancy (Amendment) Act, 2021, seminal Supreme Court decisions that have influenced reproductive law jurisprudence, and various journal articles, academic books, white papers and reports of International Organisations or other recent legal commentaries. This literature is used to help situate legal developments within wider discussions of reproductive justice, gender equity and constitutional order. It then adopts a historical approach, tracing the development of abortion law and a normative constitutional analysis, to assess whether current jurisprudence meets standards of dignity, equality and freedom of choice. This paper attempts to analyse the change in Indian reproductive jurisprudence and how it impacts women through this paradigm.

II. COLONIAL FOUNDATIONS AND THE MARRIAGE-CENTRIC STRUCTURE OF ABORTION LAW

Abortion regulation in India finds its genesis from the colonial legal system, laid down by the Indian Penal Code in 1860[10]. The Penal Code was drafted in the colonial era of British India and offered criminalisation, with an expected victorian moral compass on sexuality, reproduction and their social ramifications for women under Sections 312 to 316[11]. The law had framed abortion as a crime against public morality and fetal life, not as an issue of

[10] Indian Penal Code, No. 45 of 1860, Acts of Parliament, 1860 (India).

[11] *Id.* §§ 312–316. Section 312 criminalised the causing of miscarriage; Section 313 penalised miscarriage caused without the woman's consent; Section 314 dealt with death caused by an act done with intent to cause miscarriage; Section 315 addressed acts done with intent to prevent a child from being born alive or to cause it to die after birth; and Section 316 penalised causing the death of a quick unborn child by an act amounting to culpable homicide.

women's health or self-determination. Abortion was illegal, except in a few cases where the life of the pregnant woman depended on it, so that left women with little recourse in unwanted pregnancies.

But this colonial architecture created a big shortage of reproductive choice. Women were not considered competent decision-makers who would choose whether or not to continue or to end a pregnancy. The law, however, assumed that reproductive questions were objectively public questions and therefore must be regulated by the State. Pregnancy was understood in terms of family, morality, and social order, not as a matter of individual freedom. As a result, they commonly turned to unsafe and illegal abortion services which was a leading cause of maternal mortality and morbidity across the post-colonial period[12]. At the same time it criminalized abortion. Ideas about marriage and motherhood were also shaped by patriarchal stereotypes. The patriarchal legal system assumed that the reproductive roles of women were intrinsically tied to families and marriage. Even after independence, this assumption continues to shape legislative developments[13]. The idea that reproduction belongs within marriage lingered in more institutional domains, though it was eventually reformulated through health concerns. Consequently, the end of colonial rule brought no real change to the marriage-centric foundation of Indian abortion law, the same underlying assumptions simply continued into the laws of independent India, taking on a new form without any change in substance.

The 1971 Medical Termination of Pregnancy Act[14] attempted to balance the public health risks of unsafe abortion but left intact many features (both medical and social) of a control context for reproductive decisions. While the Act was a departure from absolute criminalization, it still upheld a marriage-centric conception of sex work interspersed with notions memorializing earlier legal regimes. Instead, it established a system in which abortion was still conditional on statutory grounds[15] and ongoing medical approval, thus curtailing

[12] *See* Govt. of India, Report of the Committee to Study the Question of Legalisation of Abortion 4–7 (1966) (Shantilal Shah Committee Report) (documenting high rates of maternal mortality attributable to illegal and unsafe abortions in pre-legislative India).

[13] *See generally* Flavia Agnes, Law and Gender Inequality: The Politics of Women's Rights in India 102–18 (1999) (examining the persistence of patriarchal assumptions in post-independence Indian legislation governing reproduction and family).

[14] Medical Termination of Pregnancy (Amendment) Act, 2021, No. 8 of 2021, Gazette of India, Ex., Mar. 25, 2021, pt. 2, sec. 1 [hereinafter MTP Amendment Act 2021]; Indian J. Med. Ethics, The Medical Termination of Pregnancy (Amendment) Act, 2021.

[15] Id. § 3 (providing that a pregnancy may be terminated by a registered medical practitioner only where the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health, or where there is a substantial risk that the child, if born, would suffer from such physical or mental abnormalities as to be seriously handicapped).

women's ability to exercise their reproductive autonomy[16].

III. THE MEDICAL TERMINATION OF PREGNANCY ACT, 1971: A PUBLIC HEALTH RESPONSE WITHIN A PATRIARCHAL FRAMEWORK

The introduction of the Medical Termination of Pregnancy Act[17], was a major milestone in India's legal history regarding abortion. In contrast to the colonial model of a criminal law-based framework for abortion, the MTP Act acknowledged that unsafe and illegal abortions have public health consequences. The legislation was passed in accordance with recommendations by the Shantilal Shah Committee[18], which noted that restrictive abortion laws were a major factor in maternal mortality and that legalization of safe abortion services was essential for safeguarding women's health.

The Act was very progressive for its day, but the philosophy behind it was that women's reproductive rights were not about autonomy but basic medical paternalism[19]. Abortion was not a legally recognized right of women, rather it established vestigial exceptions in which registered medical practitioners could legally procure abortions[20]. Under this framework, informed consent laws and the statute's structure gave medical practitioners a significant control over abortion decisions, and the legislature set out specific requirements which women had to fulfil before obtaining an abortion[21].

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[16] Id. § 3(2) (requiring the opinion of one registered medical practitioner for termination up to twelve weeks of gestation and the opinion of two registered medical practitioners for termination between twelve and twenty weeks of gestation, thereby placing the decisive authority with medical professionals rather than the pregnant woman herself).

[17] Medical Termination of Pregnancy (Amendment) Act, 2021, No. 8 of 2021, Gazette of India, Ex., Mar. 25, 2021, pt. 2, sec. 1 [hereinafter MTP Amendment Act 2021]; Indian J. Med. Ethics, The Medical Termination of Pregnancy (Amendment) Act, 2021.

[18] Govt. of India, Report of the Committee to Study the Question of Legalisation of Abortion 3–9 (1966) (Shantilal Shah Committee Report) (recommending legalisation of abortion on public health grounds and documenting the widespread prevalence of unsafe illegal abortions and their contribution to maternal mortality across India).

[19] *See* Rupsa Mallik, *Abortion in the Law: From Crime to Right*, 38 Econ. & Pol. Wkly. 4190, 4191 (2003) (observing that the MTP Act was conceived primarily as a public health measure rather than a recognition of women's reproductive autonomy, placing the locus of decision-making with the medical profession rather than the pregnant woman).

[20] MTP Act, § 3(1) (providing that notwithstanding the provisions of the Indian Penal Code, a registered medical practitioner shall not be guilty of any offence where a pregnancy is terminated under the conditions prescribed by the Act, thereby framing legal abortion as a medical exception rather than a woman's entitlement).

[21] *Id.* § 3(2) (requiring the opinion of one registered medical practitioner for termination of pregnancies up to twelve weeks of gestation and the opinion of two registered medical practitioners for termination between twelve and twenty weeks of gestation, vesting decisive authority in the medical profession rather than the pregnant woman).

The Act created a framework that mirrored contemporary societal assumptions about sexuality and family life. The contraceptive failure provision, the most significant of these was for married women only at first[22]. The underlying assumption in the legislation was that sexual relations outside marriage were somehow less natural or socially desirable and therefore needed no legal protection. As a result, unintended pregnancies among unmarried women often fell outside the category of legal protections assigned to married women[23]. The difference highlighted how the law continued to favour marriage as the proper order of procreation, whilst ignoring that forms of social relationships had changed.

Furthermore, the Act cast abortion primarily as a medical necessity instead of an exercise of autonomy[24]. The focus was protecting women from physical and mental injury rather than the respect for their autonomy in deciding whether to reproduce[25]. Although preferable to full-scale criminalization, yet this method kept a paternalistic framework wherein women's decisions were situated within a matrix of medical and legal authorities[26].

However, the effectiveness of MTP Act gradually started fading as social realities evolved. Increasing urbanization, changing family forms, increased access to education and opportunities to women, and shifting attitudes towards sexuality highlighted the shortcomings of a framework grounded primarily in marital status and medical discretion[27]. These developments, in turn, led to need for a rights-based model that could better reflect

[22] *Id.* § 3, Explanation I (originally providing that where the pregnancy is alleged to have been caused by failure of a contraceptive device or method used by a married woman or her husband, the anguish caused by such unwanted pregnancy may be presumed to constitute grave injury to the mental health of the pregnant woman, thereby limiting the contraceptive failure ground exclusively to married women at the time of enactment).
[23] *See* Alka Barua & Hilary Bracken, *Abortion Services in India: Providers' Perspectives*, 39 Econ. & Pol. Wkly. 4117, 4118 (2004) (noting the differential access to legal abortion services experienced by unmarried women arising from statutory provisions that tied certain grounds for abortion to marital status, leaving unmarried women in legally ambiguous positions in relation to unwanted pregnancies).
[24] *See* Suchita Srivastava v. Chandigarh Administration, (2009) 9 S.C.C. 1,11 (India) (observing that the MTP Act was designed primarily as a health intervention and did not, at the time of its enactment, articulate abortion access as a component of women's constitutionally protected personal liberty or reproductive autonomy).
[25] MTP Act, § 3(2)(b) (providing that a pregnancy may be terminated where its continuance would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health, confirming that the statutory framework centred harm prevention rather than reproductive self-determination as the basis for permitting abortion).
[26] *See generally* Poonam Muttreja & Sanghamitra Singh, *India's Family Planning Programme: Turnaround Needed*, 51 Indian J. Med. Res. 213, 214 (2018) (discussing the persistence of a medically paternalistic approach in Indian reproductive health policy and legislation, wherein women's reproductive decisions have historically been subject to medical gatekeeping and state control rather than treated as exercises of individual autonomy).
[27] *See* Leila Seth, *Talking of Justice: People, Politics and the Law in India* 156–62 (2014) (discussing how the social transformation of Indian society including urbanisation, changing family structures, and evolving gender norms gradually exposed the inadequacy of the MTP Act's marriage-centric and medically paternalistic framework for regulating abortion).

contemporary notions of gender equality and individual freedom[28].

IV. CONSTITUTIONALIZATION OF REPRODUCTIVE RIGHTS IN INDIA

The Indian abortion law trajectory cannot be examined exclusively from the perspective of legislative changes. Constitutional jurisprudence, especially extension of the Article 21 of the Constitution[29], was responsible for most changes. Through the years, till decades, the Supreme Court gave an ever-broadening interpretation of the right to life and personal liberty, starting as a limited procedural right (art 21), it turned into a sort of source for substantive rights[30].

The Court gradually recognized that personal liberty extends far beyond mere freedom from physical restraint. It encompasses a protected sphere of individual autonomy, including intimate personal choices, bodily integrity, family life and the ability to shape one's own future[31]. With time, notions of dignity, privacy, autonomy and bodily integrity became an integral part of constitutional adjudication[32]. These developments laid the ground work for treating reproductive choice as a constitutionally protected right.

A landmark case in this evolution, was the ruling by the Supreme Court in Suchita Srivastava v. Chandigarh Administration[33]. It centered on the reproductive rights of a woman with intellectual disabilities and brought forth key issues about bodily autonomy and informed consent[34]. The Court stated that reproductive choice is a part of personal liberty under Article

[28] X v. Principal Secy., Health & Family Welfare Dep't, (2022) 14 S.C.C. 1 (India).
[29] India Const. art. 21 ("No person shall be deprived of his life or personal liberty except according to procedure established by law.").
[30] *See* Maneka Gandhi v. Union of India, (1978) 1 S.C.C. 248,3–5 (India) (departing from the earlier narrow procedural interpretation of Article 21 in *A.K. Gopalan v. State of Madras*, A.I.R. 1950 S.C. 27 (India), and holding that the right to life and personal liberty under Article 21 is not limited to mere physical existence but encompasses a broad range of substantive rights essential to a life of dignity and meaning, and that any procedure curtailing such rights must be fair, just and reasonable).
[31] *See* Francis Coralie Mullin v. Union Territory of Delhi, (1981) 1 S.C.C. 608, 8 (India) (holding that the right to life under Article 21 includes the right to live with human dignity and all that goes along with it, including the bare necessities of life, and that personal liberty cannot be confined to freedom from physical restraint alone but must extend to the full range of freedoms that make a dignified human existence possible).
[32] *See* Unni Krishnan v. State of Andhra Pradesh, (1993) 1 S.C.C. 645, 29–32 (India) (affirming that the right to life under Article 21 must be construed expansively so as to include within its protective ambit the values of human dignity, personal autonomy, and bodily integrity, thereby laying the jurisprudential groundwork for the recognition of a broad spectrum of substantive rights emanating from Article 21).
[33] Suchita Srivastava v. Chandigarh Administration, (2009) 9 S.C.C. 1 (India).
[34] *Id.* 3–8 (setting out the factual background involving a woman with intellectual disabilities who had become pregnant as a result of alleged sexual assault and examining the competing considerations of state guardianship, medical opinion, and the woman's own reproductive choices in adjudicating whether she could be compelled to undergo or be prevented from obtaining an abortion).

21 and a woman has the right to life as well as the right to terminate her pregnancy[35]. The Court completely changed the legal conversation about abortion by recognizing reproductive autonomy as a constitutional value[36].

The importance of Suchita Srivastava is not only due to the final ruling, but also in its theoretical conception. It moved the locus of attention from State interest, medical supervision, to personal agency and self-determination[37]. For the first time in its history, constitutional liberty replaced statutory permission as a basis for reproductive choice[38].

The constitutional edifice laid down in Suchita Srivastava was bolstered further by the historic privacy ruling rendered by the Supreme Court in Justice K.S. Puttaswamy v. Union of India[39]. By establishing privacy as a fundamental right, the Supreme Court ruled, that it is well within the protected sphere of personal autonomy that areas such as family, marriage, procreation and bodily integrity may be decided[40]. The Court recognized that denying the access to reproductive choices, infringes a person's dignity and autonomy[41].

The Puttaswamy judgement had far-reaching implications on abortion law by firmly establishing privacy, bodily integrity, and decisional autonomy as fundamental constitutional rights. By recognizing reproductive decision-making within the constitutional right to

[35] *Id.* 11 ("We would like to emphasise that the right to make reproductive choices is also a dimension of 'personal liberty' as understood under Article 21 of the Constitution of India. A woman's right to privacy, dignity and bodily integrity should be respected. This means that there should be no interference whatsoever with the woman's body without her consent.").

[36] *See id.* 11–14 (marking a decisive shift in Indian reproductive jurisprudence by grounding the right to abortion access in the constitutional values of personal liberty, dignity and autonomy rather than confining the legal analysis to the statutory grounds and medical gateways prescribed by the Medical Termination of Pregnancy Act, No. 34 of 1971, Acts of Parliament, 1971 (India)).

[37] *See* Aparna Chandra, *Systemic Stigma*, in The Reproductive Rights Reader: Law, Medicine, and the Construction of Motherhood 145, 148–50 (Nancy Ehrenreich ed., 2008) (observing that *Suchita Srivastava* represented a conceptual reorientation in Indian reproductive law, relocating the normative centre of gravity from the interests of the state and the discretion of medical professionals to the personal agency and self-determination of the pregnant woman herself).

[38] *See* Suchita Srivastava v. Chandigarh Administration, (2009) 9 S.C.C. 1, 14 (India) (establishing that the constitutional right to personal liberty under Article 21 operates as an independent and self-sufficient basis for the protection of reproductive choices, supplementing and in certain respects transcending the statutory framework of the MTP Act, and thereby inaugurating a constitutional rather than merely legislative foundation for reproductive rights in India).

[39] K.S. Puttaswamy v. Union of India, (2017) 10 S.C.C. 1 (India).

[40] *Id.*114–21 (Chandrachud, J., concurring) (holding that privacy is a fundamental right protected under Articles 14, 19 and 21 of the Constitution and that its protective scope extends to decisional privacy the freedom to make intimate personal choices regarding one's body, family, marriage, procreation and sexuality free from unjustified state interference, thereby providing a robust constitutional foundation for the protection of reproductive autonomy).

[41] I*d.* 301 (Kaul, J., concurring) ("The right to privacy is a natural right which inheres in every person by virtue of being human. An individual's autonomy over intimate personal choices, including those relating to the body and reproduction, forms an indispensable component of the dignity and liberty guaranteed by the Constitution.").

privacy, it offered a powerful normative basis for contesting abortion restrictions that unjustifiably limit access and are explicitly discriminatory[42]. It reaffirmed that the State can't interfere willy-nilly in reproductive decisions and that personal liberty is a fundamental part of citizenship in a democracy[43].

Suchita Srivastava and Puttaswamy thus set out the foundation for a rights-first approach in reproductive jurisprudence, prepared the ground to allow higher judicial intervention within its ambit, particularly in, access to abortion rights[44].

V. THE MEDICAL TERMINATION OF PREGNANCY (AMENDMENT) ACT, 2021: LEGISLATIVE PROGRESS AND ITS LIMITATIONS

The Medical Termination of Pregnancy (Amendment) Act, 2021 was unarguably the most drastic change to Indian abortion law since the original statute became law[45]. The amendment stemmed from changing social realities, medical advances, and the increasing treatment of reproductive rights as components of liberty under the Constitution[46].

A key modification implemented by the amendment was the new gestational limits for lawful abortion. Under this amendment termination of pregnancy could be done up to twenty weeks on the basis of opinion by one registered medical practitioner and for special categories such as survivors of rape, minors and a woman with physical disabilities, it extended up to 24 weeks[47]. Such modifications demonstrated a much more complex understanding of

[42] *See* Vrinda Grover, *Privacy, Dignity and Reproductive Rights After Puttaswamy*, 53 Econ. & Pol. Wkly. 42, 44–46 (2018) (analysing the constitutional implications of *Puttaswamy* for reproductive rights jurisprudence in India and arguing that the recognition of privacy as a fundamental right provides a powerful normative framework for challenging discriminatory restrictions on abortion access, particularly those that subject women's reproductive decisions to arbitrary state or medical control).

[43] *See* K.S. Puttaswamy v. Union of India, (2017) 10 S.C.C. 1, 124–27 (Chandrachud, J., concurring) (India) (reaffirming that the state bears a heavy burden of justification before it may intrude upon the sphere of intimate personal choices protected by the constitutional right to privacy, and that reproductive decisions being among the most sensitive and personal choices an individual can make are entitled to the highest degree of constitutional protection against arbitrary or disproportionate state interference).

[44] X v. Principal Secy., Health & Family Welfare Dep't, (2022) 14 S.C.C. 1 (India).

[45] Medical Termination of Pregnancy (Amendment) Act, 2021, No. 8 of 2021, Gazette of India, Ex., Mar. 25, 2021, pt. 2, sec. 1 [hereinafter MTP Amendment Act 2021]; Indian J. Med. Ethics, The Medical Termination of Pregnancy (Amendment) Act, 2021.

[46] See K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1, § IX (recognizing reproductive autonomy as part of Article 21 right to privacy); OHRLaw.ox.ac.uk, India's New Abortion Bill Falls Short of Protecting Reproductive Autonomy, Apr. 21, 2020.

[47] MTP Amendment Act 2021, § 3(2)(b), 3(3); Reproductive Rights, THE MEDICAL TERMINATION OF PREGNANCY (AMENDMENT) ACT, 2021, §§ 3(b), 3B (2022).

reproductive decision-making and accepted that circumstances necessitating abortion may occur beyond the previously set statutory limits[48].

It also bolstered confidentiality provisions, banning the disclosure of any identifying information about woman seeking abortion[49]. The purpose of this provision was to safeguard a woman against the stigma that is attached to abortion, which makes it important for reproductive healthcare[50].

Despite these progressive elements, the amendment did not give full fidelity to a rights-based framework for abortion regulation[51]. Access to abortion remained largely conditional on medical approval, reinforcing the role of healthcare providers as gatekeepers[52]. In addition, the legal framework continued to be opaque as far as the rights of unmarried women is concerned and ambiguity persisted until it was resolved through judicial intervention[53].

The continuity of these restrictions indicate the more generic challenge of reforming abortion law in India. Although legislative changes have broadened the scope of availability the core framework for decision-making power has not fundamentally changed. Women still face obstacles to the exercise of reproductive autonomy due to medical discretion, procedural requirements or institutional practices in a way that may significantly restrict their ability. Therefore, while the 2021 amendment was a huge advancement, it did not, by itself finalize the transition from a marriage-centered framework to one premised on rights[54].

VI. X v. PRINCIPAL SECRETARY (2022): THE WATERSHED MOMENT IN INDIAN REPRODUCTIVE JURISPRUDENCE

X v. Principal Secretary, Health and Family Welfare Department[55] is perhaps the most

[48] See Indian J. Med. Ethics; WHO, India's Amended Law Makes Abortion Safer and More Accessible, Apr. 12, 2021.
[49] MTP Amendment Act 2021, § 5B (confidentiality clause).
[50] See Express Healthcare, Protecting Patient Privacy and Confidentiality During Medical Termination of Pregnancy, May 27, 2021; WHO.
[51] See Indian J. Med. Ethics; WHO, India's Amended Law Makes Abortion Safer and More Accessible, Apr. 12, 2021.
[52] See Aparna Chandra et al., Maternal Health Versus Reproductive Autonomy: India's Foreign Policy Consistently Frames Reproductive Health Within the Broader Context of Maternal Health, in Book IMPRI FFPF Feminist Foreign Policy Fellowship Cohort 2.0 (2021); Diya: Coerced Abortion and Reproductive Autonomy in India, Slavic Rev. (2025).
[53] X v. Principal Secy., Health & Family Welfare Dep't, (2022) 14 S.C.C. 1 (India).
[54] *Id.*
[55] *Id.*

monumental judicial development in abortion rights in India to date. The matter was initiated after an unmarried woman filed a petition in the Delhi High Court, seeking termination of pregnancy between twenty to twenty-four weeks, in the aftermath of breaking a consensual relationship[56]. The Court declined relief holding that the statutory framework limits the benefit of the extended gestational period to specific categories of women, which did not expressly include unmarried women[57]. The Supreme Court gave a purposive and constitutionally based interpretation of the Medical Termination of Pregnancy Act and rules governing it on appeal[58]. The Court, while dismissing a narrow reading of the legislation, concluded that restricting access to abortion services for unmarried women would violate constitutional values of equality, dignity, and personal liberty.

The judgment is historically significant because it acknowledges changing social realities. The Court also held that family structures in modern Indian society are varied and reproductive rights cannot be made subject to traditional notions of marriage[59]. It underscored that constitutional protections apply equally to all women, married or not and the law must accommodate societal changes in the nature of human relationships.

At the heart of the judgment is a strong reaffirmation of reproductive autonomy[60]. The Court determined that the decision to become, and remain, pregnant is a matter of profound personal consequence that is central to individual dignity and autonomy[61]. These decisions impact a woman's physical and mental health, professional status and opportunities over the rest of her life[62]. Many of us obviously hold that view, so the State cannot make unreasonable distinctions which hinder these decisions[63].

The reasoning in the judgement also made a wide use of constitutional principles developed from the past cases[64]. The Court grounded abortion rights in a larger natural rights paradigm,

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[56] NLS Repository, Two Courts, Two Conclusions: Abortion Law in India, Jul. 15, 2022, https://repository.nls.ac.in/popular-media/9/.
[57] X v. Principal Secy., Health & Family Welfare Dep't, (2022) 14 S.C.C. 1 (India).
[58] *Id.*
[59] *Id.*
[60] X v. Principal Secy., Health & Family Welfare Dep't, (2022) 14 S.C.C. 1 (India).
[61] *Id.*; PMC, Supreme Court of India Judgement on Abortion as a Fundamental Right, Jul. 2, 2023, https://pmc.ncbi.nlm.nih.gov/articles/PMC10321178/.
[62] X v. Principal Secy., Health & Family Welfare Dep't, (2022) 14 S.C.C. 1 (India).
[63] *Id.*; Tandfonline, Diya: Coerced Abortion and Reproductive Autonomy in India, Feb. 25, 2025, https://www.tandfonline.com/doi/abs/10.1080/14680777.2025.2468896.
[64] X v. Principal Secy., Health & Family Welfare Dep't, (2022) 14 S.C.C. 1 (India).; *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1, § IX (recognizing reproductive autonomy as part of Article 21 right to privacy).

linking reproductive autonomy to dignity, privacy, and bodily integrity. In doing so, it transformed the understanding of abortion from a matter of legislative indulgence to an essential component of constitutional liberty and individual self-determination[65].

One of the more lasting legacies of the decision is its rejection of marriage as a valid basis for limiting reproductive rights. The Court accelerated a shift the to a rights-based analysis of reproductive justice, by taking apart a core assumption underlying the marriage-centered model[66].

VII. EVALUATING THE TRANSFORMATION FROM MARRIAGE- CENTRIC TO RIGHTS-CENTRIC REPRODUCTIVE JURISPRUDENCE

The change in abortion law in India signals a significant shift in the evolution of constitutional governance itself from a paternalistic welfare-based approach to regulation towards a rights-oriented approach based on individual autonomy[67]. Historically, legal rules forbidding abortion were premised on the assumption that women's roles as reproducers were inherently tied to marriage and family[68]. Within this framework, reproductive decision-making was understood as a domain wherein State oversight and medical gatekeeping trumped personal autonomy[69]. Abortion was mainly legitimated through important considerations of health, morality and social welfare but with scant regard for women's independent agency.

However, this methodology has been fundamentally altered with the rise of rights centric jurisprudence. Modern constitutional theory acknowledges women as decisions makers and rights-holders not simply as objects of State parens patriae protection. This evolution is in line with the larger constitutional commitment to dignity, equality and freedom that has manifested through a judicial interpretation of the Constitution under Articles 14, 19 and 21[70].

A large part of this change entails reframing abortion as a medical exception to taking control of one's reproductive choices. The earlier framework only allowed abortion after certain

[65] X v. Principal Secy., Health & Family Welfare Dep't, (2022) 14 S.C.C. 1 (India).
[66] *Id.*
[67] See Indian J. Med. Ethics; WHO, India's Amended Law Makes Abortion Safer and More Accessible, Apr. 12, 2021.
[68] Aparna Chandra et al., Maternal Health Versus Reproductive Autonomy: India's Foreign Policy Consistently Frames Reproductive Health Within the Broader Context of Maternal Health, in Book IMPRI FFPF Feminist Foreign Policy Fellowship Cohort 2.0 (2021).
[69] OHRLaw.ox.ac.uk, India's New Abortion Bill Falls Short of Protecting Reproductive Autonomy, Apr. 21, 2020, https://ohrh.law.ox.ac.uk/indias-new-abortion-bill-falls-short-of-protecting-reproductive-autonomy/.
[70] Maneka Gandhi v. Union of India, (1977) 2 SCC 596, 622–23.

statutory conditions had been fulfilled and after genuine medical need had been established. In doing so, this kind of approach put women's decision-making in the service of a third-party evaluation of what were legitimate reasons to terminate a pregnancy. In comparison, the rights-centered model acknowledges that a woman's choice to continue her pregnancy bears upon every facet of her life from health care and academic advancement to job stability, economic independence, and family connections. As a result, reproductive choices are increasingly viewed as individual-human matters that should be resolved by the person concerned.

The concept of reproductive autonomy has produced substantive equality enhancements as well. In the past, traditional legal boundaries between married and unmarried women were based on doting patriarchal ideology. It assumed that only married women deserved statutory acknowledgment of their reproductive interests. Such divisions only bolstered gender stereotypes around sex and motherhood, while suffocating women who deviated from the traditional family structure. Judgment of the Supreme Court in X v. Principal Secretary directly countered these presumptions, establishing that constitutionally guaranteed rights can never be contingent upon matrimonial status. The Court revoked the retrospective views, and promoted an understanding of equality more consistent with the demands of modern social life, rather than clinging to formalistic and outdated conventions.

Moreover, the shift towards a rights-based framework has further promoted the constitutional importance of dignity. Dignity as a concept has a prominent and central role in modern constitutional jurisprudence due to its acknowledgment of individuals being rational beings capable of making vital decisions in matters pertaining to their identity and self-actualization. It also accounts for the physical, emotional and social ramifications of pregnancy and motherhood. Denial of real control to women over these decisions is inherently abusive, and reduces them to mere reproductive policy tools as opposed to capable adults. Although the reckoning with reproductive agency as a component of dignity has been limited, Indian courts have strengthened women's rights to govern their bodies and the direction of their lives.

The shift towards reproductive rights jurisprudence is also indicative of an ever-growing readiness of courts to grapple with the tides and principles of international human rights law[71].

[71] *Id.*; WHO, India's Amended Law Makes Abortion Safer and More Accessible, Apr. 12, 2021, https://www.who.int/india/news-room/detail/13-04-2021-india-s-amended-law-makes-abortion-safer-and-more-accessible.

Reproductive rights have gained recognition as an inherent part of gender equality and dignity by global human rights instruments, comparative constitutional jurisprudence[72]. While Indian courts have created their own jurisprudence largely through constitutional interpretation, they often rely on international principles as a means to buttress domestic safeguards. The interaction between domestic constitutional law and international human rights standards has played a large role in producing the new, broader vision of reproductive freedom.

Even though we have achieved so much, the changeover from marriage-oriented to rights-based jurisprudence remains unfinished and demands continued reform. The key value is still that of medical approval. Thus, even though constitutional doctrine has changed profoundly, the implementation remains fraught with deep difficulties.

VIII. CONTINUING CHALLENGES TO REPRODUCTIVE JUSTICE IN INDIA

While the Indian Constitution and judicial/legislative developments have broadened reproductive rights, many barriers stand in the way of achieving reproductive justice. Constitutional-level support for abortion rights does not easily translate into meaningful access to reproductive healthcare. But the gap between legal rights and actual realities is huge.

The greatest of these is the involvement of registered medical practitioners, and their consent continues to be required under the Medical Termination of Pregnancy Act. While medical oversight or the concept of "physician protection" is crucial for ensuring safety, overreliance on this notion may compromise reproductive autonomy. In practice, women often encounter providers who impose personal moral beliefs, ask for superfluous paper work or deny services based on subjective judgments. All of these practices essentially shift control of decision making from women to medical personnel, thus curtailing the real-world exercise of reproductive rights.

Another big problem is that many people still do not have access to the healthcare A considerable part of its population lives in rural and underdeveloped areas, lacking adequate reproductive health infrastructure. Moreover, widespread shortages of trained health workers and care facilities, as well as essential goods such as personal protective equipment (PPE) continue to hamper services in many districts. Many women from rural areas need to travel at

[72] Reproductive Rights, THE MEDICAL TERMINATION OF PREGNANCY (AMENDMENT) ACT, 2021, §§ 3(b), 3B (2022).

some distance for abortion care, delaying the access time putting them at medical risk as well as making accessibility within statutory time limit a challenge. These challenges are compounded by socio-economic inequalities where women from a disadvantaged-background cannot afford navigation through often convoluted health care systems.

Social stigma continues to represent as one of the biggest hurdles across reproductive justice. Many people still hope that, with legal reform, access to a safe abortion will be less associated with moral disapprovals and more recognized as a normal part of healthcare everywhere. Stigma surrounding single motherhood is of particular concern for unmarried women whose pregnancies are seen as transgressions against social norms about sexuality and family life. Many women do not seek timely medical attention for fear of social ostracization, familial pressure and damage to their reputation. Stigma is inherently sticky, which shows that legal change alone cannot transform a fundamental national attitude that has entered the psyche of the people.

A second key challenge relates to the intertwining of reproductive rights and wider forms of social disadvantage. Women belonging to marginalized communities often find themselves at the intersection of multiple forms of disadvantage, for instance, caste, class, disability status, religion and geographic location and in some cases even educational status. Such discrimination in turn rationalizes differential access to health care, information and legal remedies. As a result, for many women without access to the range of social and economic supports needed to give full effect to their rights, reproductive autonomy may be no more than an aspiration.

Judicial dependency is one more ongoing topic. Women whose pregnancies have progressed beyond legal limits are often forced to go to the courts for permission to terminate. Judicial intervention in such matters, however, is fraught with delays, procedural wranglings and stress, even though courts broadly approach these cases with sympathy for the family unit and a genuine concern for individual rights. Litigation for time sensitive reproductive choices prompts critical inquiries into the adequacy of existing legal tools.

Digital technology also raises new privacy and confidentiality challenges. With ongoing adoption of electronic record-keeping practices by health systems, it is critical to secure reproductive information. It is imperative that women who require abortion services are confident that any personal information provided will not be disclosed to anyone else except

as provided by the law. Therefore, strengthening privacy protections is also critical to the reproductive justice framework.

Combating these difficulties necessitates an all-encompassing solution that goes beyond constitutional amendment[73]. Reproductive justice goes beyond just the right to formal legal recognition, and demands social, economic and institutional conditions that allow women to be able to realize their rights in a way that is non-discriminatory.

IX. CONCLUSION AND SUGGESTIONS

This study of the abortion law in India shows an even deeper transformation in the relationship between law, gender and constitutional rights. Starting out as a colonial criminal law legacy in the Indian Penal Code, regulation of abortion developed into a domain more and more governed by autonomy, dignity, privacy and equality principles. This development is all part of a larger trend in constitutional law towards recognizing people as agents, as writers of their own life stories.

The Medical Termination of Pregnancy Act 1971, marked a landmark departure from complete criminalization of termination of pregnancy, recognizing the public health impact of unsafe abortions. Still, the Act reflected a marriage-based model of reproduction and did not recognize reproductive choice as an independent constitutional interest. Subsequent constitutional developments, particularly the rulings delivered in Suchita Srivastava and Puttaswamy, significantly broadened the dimension of personal liberty and laid down the jurisprudential underpinnings for assertions of a rights-based stance with respect to reproductive autonomy.

X v. Principal Secretary was the culmination of this transformation by the Supreme Court, whereby the Court rejected discriminatory assumptions underlying abortion law that had persisted for decades by holding that reproductive rights of a married woman and an unmarried woman are equal. This was a huge leap forward from substantive equality and the ruling affirmed that constitutional protections cannot be predicated on conforming to traditional family structures. Even more broadly, it represented a developing view of

[73] Medical Termination of Pregnancy (Amendment) Act, 2021, supra note 5, § 5B (confidentiality clause).

reproductive autonomy as a fundamental expression of citizenship in a democracy and human dignity.

Yet, for all these successes, the road to reproductive justice is not over. There cannot be reproductive rights without institutional reforms that can provide healthcare access to women, fewer barriers such as medical gatekeeping, focusing more on informed consent and using patient autonomy, improving and expanding the healthcare infrastructure, especially in rural and under-served areas to enable availability of reproductive services for all women irrespective of geographical location or socio-economic status. Also, awareness in reproductive rights is important, not only through stigma-reducing projects.

Further, the law must take a more expansive definition of reproductive justice that reflects the different realities women face in their lives. Further, the communities that are historically marginalized, need to be addressed in policies along with access to affordable and non-discriminatory reproductive healthcare. Furthermore, with the enhancement of digital technology we need more focus on privacy protections and confidentiality safeguards.

The eventual transition from marriage-centered to rights-based abortion law is an expression of a constitutional ideal aiming at a community rooted in dignity, equality and freedom. This represents not just a legal victory but a broader affirmation of women’s right to bodily autonomy, an acknowledgment that they are full citizens endowed with the ability to make choices about their bodies and futures. The continued evolution of Indian reproductive jurisprudence must remain vigilant against persistent inequalities, striving always to ensure that constitutional promises translate into tangible realities in women's every day lives.