



## REPRODUCTIVE RIGHTS IN INDIA: CONSTITUTIONAL FOUNDATIONS, LEGAL EVOLUTION, AND CONTEMPORARY CHALLENGES

**Astha Mishra\***

### INTRODUCTION

Reproductive rights are extremely important in modern democratic countries because they protect a person's ability to make decisions about their own body. These rights include choosing whether or not to have children, accessing safe healthcare during pregnancy, using contraception, and getting correct information about reproductive health. They also relate to bigger ideas like privacy, gender equality, health, and human dignity.

In India, reproductive rights have changed a lot over the years. In the past, the government mainly focused on population control and public health programs. People did not have much legal protection over personal reproductive decisions. But now, courts in India recognise reproductive rights as fundamental human rights. They are understood as part of the Constitution:

1. Article 21 protects the right to life and personal liberty, which includes the right to make decisions about one's own body and pregnancy.
2. Article 14 ensures equality before the law, meaning everyone should have equal access to reproductive healthcare.
3. Articles 15 and 19 protect individuals from discrimination and allow them freedom in personal decisions, including reproductive choices.

Even though these rights are recognised, India still struggles to fully protect them. Many problems stand in the way:

- Poverty makes it hard for many people to access quality healthcare.
- Patriarchal attitudes often deny women control over their own bodies.

\*LLB, SECOND YEAR, AMITY UNIVERSITY LUCKNOW.

- Weak healthcare infrastructure in rural and tribal areas limits safe medical services.

**Legal gaps** sometimes create confusion or unnecessary barriers to getting safe abortions or reproductive care. These issues affect various groups differently. The impact is harsher on women, adolescent girls, transgender persons, sex workers, Dalit and Adivasi women, and others who already face discrimination.

This article explains how reproductive rights have developed in India over time. It focuses on the Medical Termination of Pregnancy (MTP) Act, 1971, which made abortion legal under certain conditions, and its 2021 amendment, which expanded access in several ways. The article also covers rights related to:

- Contraception (birth control methods),
- Sterilisation (permanent birth control),
- Maternal healthcare (health services for pregnant women),
- Assisted reproductive technologies such as IVF and surrogacy.

It also discusses major Supreme Court judgments, such as:

1. Suchita Srivastava v. Chandigarh Administration, which recognised reproductive choice as part of personal liberty.
2. Devika Biswas v. Union of India, which criticised unsafe sterilisation camps.
3. KS Puttaswamy v. Union of India, which confirmed privacy as a fundamental right.
4. X v. Health & Family Welfare Department, which allowed unmarried women access to abortion like married women.

These cases show how the Indian judiciary has slowly built strong protections for reproductive rights and connected them to constitutional values like dignity, freedom, and equality. Finally, the article points out what still needs improvement. India needs clearer laws, better healthcare facilities, less discrimination, and more awareness to fully protect reproductive rights. It suggests that India should move toward a rights-based approach, one that prioritises people's autonomy, equality, and dignity and matches global human rights standards so that everyone can exercise these rights safely and freely.

## CONCEPTUAL FOUNDATIONS OF REPRODUCTIVE RIGHTS

**International Human Rights Framework:** Reproductive rights are recognised in several international instruments -

1. **International Covenant on Civil and Political Rights (ICCPR):** Protecting liberty, privacy, and bodily integrity.
2. **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW):** Requiring states to ensure access to family planning and prevent discrimination in reproductive healthcare.
3. **International Covenant on Economic, Social and Cultural Rights (ICESCR):** Ensuring the right to the highest attainable standard of health.
4. **International Conference on Population and Development (ICPD), Cairo 1994:** Defining reproductive rights as encompassing bodily autonomy, reproductive decision-making, and access to healthcare.

India is a signatory to all major reproductive rights treaties and has incorporated many of these principles into domestic constitutional jurisprudence.

## CONSTITUTIONAL FOUNDATIONS OF REPRODUCTIVE RIGHTS IN INDIA

Although the Constitution does not expressly mention reproductive rights, the Supreme Court has interpreted several fundamental rights expansively to include them.

**Article 21: Personal Liberty, Privacy, and Bodily Integrity:** Article 21 protects life and personal liberty and has been interpreted to include:

- The right to bodily integrity,
- Reproductive autonomy,
- Access to reproductive healthcare,
- Decisional privacy.

In *Suchita Srivastava v. Chandigarh Administration*, the Court held that a woman's right to make reproductive choices is a dimension of "personal liberty" under Article 21. The Court emphasised bodily integrity, stating that reproductive rights include the right to carry a pregnancy to its full term, to terminate it, and to use contraception.

In *KS Puttaswamy v. Union of India* (Privacy Case), the nine-judge bench formally recognised privacy as a fundamental right, explicitly stating that privacy includes decisional autonomy related to reproduction, sexual orientation, and bodily integrity. This judgment forms the constitutional bedrock for reproductive rights.

**Article 14: Right to Equality and Non-Discrimination:** Reproductive rights are closely tied to gender equality. Discriminatory barriers to reproductive healthcare violate Article 14's guarantee of equality before the law. In *X v. Health & Family Welfare Department* (2022), the Supreme Court held that denying unmarried women access to abortion constituted unconstitutional discrimination.

**Article 15: Prohibition of Discrimination:** Article 15(1) prohibits discrimination "on grounds of sex." Article 15(3) permits special measures for women. The Court has interpreted these provisions to justify state interventions that expand reproductive healthcare access.

**Article 19: Autonomy and Expression:** The freedom to make intimate decisions, including reproductive decisions, flows from decisional autonomy under Article 19(1)(a) and (d), especially post-*Puttaswamy*.

## STATUTORY FRAMEWORK GOVERNING REPRODUCTIVE RIGHTS

**Medical Termination of Pregnancy Act (MTP Act), 1971 and Amendments:** The MTP Act legalised abortion under specific conditions, primarily to protect women from unsafe abortions. It allowed termination up to:

- 12 weeks with one medical opinion,
- 20 weeks with two medical opinions,
- In cases where continuation posed a risk to life, physical or mental health, or in cases of fetal abnormalities.

**2021 Amendments:** The Medical Termination of Pregnancy (Amendment) Act, 2021, brought significant reforms:

- Abortion up to 20 weeks: one doctor's opinion.
- 20–24 weeks: for "certain categories of women," requiring permission of a Medical Board.
- No time limit for substantial fetal abnormalities.

- Use of “woman” was replaced by “pregnant woman or person,” implicitly acknowledging transgender persons.

However, the requirement of medical boards has been widely criticised for causing delays.

### **Criticisms of the MTP Framework:**

- The law is provider-centric, not rights-centric.
- Lack of clarity on access for transgender persons.
- Uneven implementation and absence of infrastructure in rural areas.
- Judicial permission is often required in late-term pregnancies.

**Rights Related to Contraception and Sterilisation:** India’s family planning history is marked by coercive sterilisation campaigns during the Emergency (1975–77). Recent jurisprudence emphasises informed consent.

In *Devika Biswas v. Union of India*, the Court condemned coercive sterilisation practices in Bihar and held that reproductive rights include the right to informed access to contraception. It ordered reforms in sterilisation camps and emphasised accountability of healthcare providers.

**Maternal Healthcare and Safe Delivery:** The Supreme Court has repeatedly recognised maternal health as an essential component of the right to life. In *Laxmi Mandal v. Deen Dayal Hospital*, the Delhi High Court held that the state must ensure adequate maternal healthcare, calling it integral to Article 21. The government programs, such as Janani Suraksha Yojana and Poshan Abhiyaan, attempt to improve maternal healthcare; however, gaps persist in availability, quality, and accessibility.

**Assisted Reproductive Technologies (ART), IVF, and Surrogacy:** India’s booming fertility industry led to the passage of two major statutes:

- Assisted Reproductive Technology (Regulation) Act, 2021 regulates ART clinics, donor rights, and consent.
- Surrogacy (Regulation) Act, 2021 permits only altruistic surrogacy, prohibits commercial surrogacy, and restricts eligibility.

Critics argue that the surrogacy law infantilises women by restricting their economic choices and discriminates against single men, LGBTQ+ persons, and foreign nationals.

## JUDICIAL EVOLUTION OF REPRODUCTIVE RIGHTS

**Suchita Srivastava v. Chandigarh Administration, (2009):** A mentally disabled woman was ordered by the High Court to undergo termination. The Supreme Court reversed, holding that reproductive autonomy is central to Article 21. The woman's consent was indispensable.

Significance:

- Reproductive choice is fundamental.
- Mental disability does not negate autonomy.
- The state must respect bodily integrity.

**Javed v. State of Haryana, (2003):** The Court upheld a law disqualifying persons with more than two children from contesting local elections. Critics argue the judgment failed to engage with bodily autonomy and disproportionately impacted women.

**Devika Biswas v. Union of India, (2016):** The Court condemned substandard sterilisation camps as violations of reproductive rights and Article 21. It emphasised informed consent, dignity, and safe reproductive healthcare.

**KS Puttaswamy v. Union of India, (2017):** The privacy judgment expanded the constitutional foundation for reproductive rights, recognising:

- Decisional autonomy,
- Bodily integrity,
- Reproductive choices,
- Sexual autonomy.

The Court connected reproductive rights with liberty, dignity, and equality.

**X v. Health & Family Welfare Department, (2022):** An unmarried woman sought termination at 23 weeks. The High Court denied relief. The Supreme Court overturned the decision, holding that marital status cannot determine access to abortion.

Key Principles:

- Reproductive autonomy applies equally to married and unmarried women.
- The state may not impose paternalistic barriers.

- Denial of abortion violates equality and dignity.

**Murugan Nayakkar v. Union of India, (2017):** Allowed abortion for a 13-year-old rape survivor at 32 weeks on humanitarian grounds, marking judicial willingness to expand access in exceptional cases.

## **SOCIO-LEGAL CHALLENGES AFFECTING REPRODUCTIVE RIGHTS**

**Patriarchal Norms and Gendered Control Over Bodies:** Women often lack decision-making authority regarding contraception, abortion, and pregnancy. Cultural pressure for son preference leads to both forced pregnancies and sex-selective abortions.

**Economic Inequality and Rural–Urban Divide:** Access to quality reproductive healthcare is deeply unequal. Rural women, migrants, and Adivasi women face systemic barriers to safe abortions and maternal care.

**Criminalisation of Abortion Outside the MTP Act:** Sections 312–318 of the IPC still criminalise abortion, leading to fear of prosecution among both women and healthcare providers.

**Barriers for Minors Under the POCSO Act:** Mandatory reporting under the Protection of Children from Sexual Offences (POCSO) Act discourages minors from seeking safe abortions.

**Reproductive Rights of LGBTQ+ Persons:** Neither ART nor surrogacy laws fully recognise the reproductive rights of LGBTQ+, single persons, or transgender individuals, despite constitutional protections post-Navtej Johar.

## **ASSESSING INDIA'S PROGRESS: STRENGTHS AND WEAKNESSES**

India has made good progress in recognising reproductive rights, but several problems remain. Below is a simple and detailed explanation of the strengths and weaknesses.

### **Strengths**

**Reproductive Choice is Recognised as a Fundamental Right:** The Indian courts, especially the Supreme Court, have clearly said that choosing whether to continue a pregnancy or not is a basic human right. This means the law must respect a person's right to make decisions about their own body, including abortion, contraception, pregnancy, and childbirth.

**Progressive Judgments Supporting Autonomy and Equality:** Several court decisions have helped expand reproductive rights. For example, courts have said:

- You do not need to be married to access abortion,
- Women have the right to privacy and bodily integrity,
- The state cannot force women to undergo sterilisation or pregnancy.

These judgments help protect individuals from control and discrimination.

**Better Access to Abortion under the MTP Amendment 2021:** The Medical Termination of Pregnancy (Amendment) Act 2021 made abortion easier to access by:

- Allowing one doctor's opinion for abortions up to 20 weeks,
- Extending the limit to 24 weeks for certain groups (like rape survivors),
- Allowing abortion at any stage if there is a serious fetal abnormality.

This makes safe abortion more accessible and reduces unsafe practices.

**Legal Regulation of ART and Surrogacy:** India has introduced new laws to regulate:

- ART (Assisted Reproductive Technology) like IVF, sperm donation, egg donation,
- Surrogacy, ensuring it is altruistic (not commercial) and properly monitored.

These laws help protect both the intending parents and the women providing reproductive services.

### **Weaknesses**

**Abortion Law is still Provider-Centric, not Rights-Centric:** Even though abortion is legal, the final decision is often in the hands of doctors, not the pregnant person. A woman or pregnant person cannot simply request an abortion; they must fit within the legal conditions of the MTP Act. This limits personal autonomy.

**Access is Inconsistent Because of Medical and Legal Barriers:** Even when abortion is legally allowed, many people cannot access it due to:

- Lack of trained doctors,
- Fear of legal consequences,

- Hospitals refusing services,
- Mandatory reporting under POCSO for minors,
- Delays in medical boards for abortions after 20 weeks.

So, rights exist in theory but are not always available in practice.

**Marginalised Women Face Greater Barriers:** Women from poor, rural, Dalit, Adivasi, migrant, or marginalised backgrounds often face:

- Poor-quality healthcare,
- Long distances to hospitals,
- Lack of safe abortion services,
- Social stigma and discrimination,
- Less knowledge about their rights.

Because of this, reproductive justice is not equal for all.

**Coercive Population Policies Still Exist in Some States:** Some states use indirect pressure to control population, such as:

- Denying government jobs or benefits to people with more than two children,
- Promoting sterilisation over other contraceptive methods,
- Targeting poor or marginalised communities.

These policies violate personal freedom and often force women into unwanted procedures.

**Abortion is Still Partly Criminalised:** Sections of the Indian Penal Code still treat abortion as a crime, unless it fits within the MTP Act. This creates:

- Fear among doctors about being prosecuted,
- Hesitation to provide abortions,
- Confusion about what is legal or illegal.

As a result, many safe abortions are denied, and unsafe abortions continue.

India has made strong progress in recognising reproductive rights through court judgments and legal reforms. But at the same time, many barriers, legal, social, economic, and medical, still prevent people from fully exercising these rights. To ensure reproductive justice for all, India

must focus on strengthening autonomy, improving healthcare access, and removing outdated restrictions.

## **RECOMMENDATIONS FOR A RIGHTS-BASED REPRODUCTIVE FRAMEWORK**

1. Decriminalize abortion by amending IPC Sections 312–318.
2. Make MTP a rights-based law, allowing abortion on request up to a reasonable gestational limit.
3. Expand access for LGBTQ+ persons in ART and surrogacy.
4. Strengthen public healthcare infrastructure, especially in rural India.
5. Ensure functional Medical Boards to avoid delays.
6. Train healthcare providers to respect autonomy and informed consent.
7. Integrate reproductive rights into sex education in schools.
8. Address socio-economic inequality through targeted policies.

## **CONCLUSION**

Reproductive rights in India have changed greatly over the years. Earlier, the government mainly focused on controlling population growth, and people did not have much freedom to make their own reproductive choices. Today, India is moving toward a rights-based approach, which means that decisions about pregnancy, abortion, contraception, and reproductive health should be left to the individual. This new approach respects a person's autonomy (freedom to choose), dignity, equality, and privacy.

The courts, especially the Supreme Court, have played a very important role in this change. Through several major judgments, the judiciary has:

- Expanded the right to safe and legal abortion,
- Recognised privacy as a fundamental right,
- Accepted that reproductive decisions are a part of personal liberty,
- Stressed the importance of bodily integrity and dignity.

These decisions have helped shift the focus from government control to individual freedom and rights. However, despite this progress, India still faces many serious challenges. Some laws are outdated or restrictive, many social norms continue to be patriarchal, and healthcare facilities are not equally accessible to everyone. Women and marginalised communities,

including poor women, rural women, Dalit and Adivasi women, adolescents, transgender persons, and sex workers, often face more difficulties in getting safe reproductive healthcare. These issues show that reproductive rights are not yet fully enjoyed by all.

To make reproductive rights truly meaningful, India needs a stronger commitment to reproductive justice. This means that everyone should have:

- Equality in accessing healthcare,
- Autonomy to make personal decisions without pressure,
- Good quality healthcare before, during, and after pregnancy,
- Dignity, meaning their decisions should be respected.

India must also work toward a more modern and inclusive legal system, one that removes unnecessary barriers, protects bodily autonomy, and supports the reproductive rights of **all** persons capable of pregnancy, not just married women. Laws should also be sensitive to the needs of LGBTQ+ individuals and other marginalised groups.

Building such a legal and social framework is essential not only for protecting constitutional rights but also for fulfilling India's promises to the international community under human rights treaties. Ultimately, ensuring universal access to reproductive healthcare and respecting personal freedom will help create a society that is fair, equal, and truly committed to human dignity.

## REFERENCES

1. Suchita Srivastava v. Chandigarh Admin., (2009) 9 SCC 1.
2. KS Puttaswamy v. Union of India, (2017) 10 SCC 1.
3. Devika Biswas v. Union of India, (2016) 10 SCC 726.
4. X v. Health & Family Welfare Dep't, (2022) 10 SCC 1.
5. Javed v. State of Haryana, (2003) 8 SCC 369.
6. Murugan Nayakkar v. Union of India, W.P. (Crl.) No. 749/2017.
7. Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.
8. International Covenant on Civil and Political Rights (ICCPR).
9. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).
10. International Covenant on Economic, Social and Cultural Rights (ICESCR).

11. ICPD Programme of Action (1994).
12. Flavia Agnes, Law, Justice and Gender (Oxford Univ. Press 2011).
13. Ratna Kapur, Reimagining Women's Rights, 13 Hum. Rts. Rev. 203 (2012).
14. Joanna Erdman, The Constitutionalization of Abortion, 13 Int 'l J. Const. L. 646 (2015).