



**Review Article**

## **Right to freedom of choice: Securing reproductive rights through the Indian judiciary**

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### **Abstract**

Reproductive health, encompassing a wide array of issues such as family planning, access to healthcare, contraception, and maternal health, is a fundamental aspect of an individual's well-being. The right to make choices related to one's reproductive health is of profound significance. This paper explores the critical theme of the right of choice in Reproductive Health from a legal perspective, shedding light on how the Indian judiciary interprets and safeguards the reproductive health rights of its citizens. It examines evolving jurisprudence, landmark court cases, and legislative developments that have shaped the landscape of reproductive health rights in India. Further more, this study explores the broader societal implications of these legal perspectives. It discusses how legal decisions and interpretations impact individuals, healthcare providers, policy makers, and society at large. This analysis underscores the role of the Indian judiciary in upholding individuals' rights to make choices regarding their reproductive health, contributing to a more equitable society.

**Keywords:** Right to choice, Health, Abortion, Legal framework, Indian judiciary

### **Introduction**

The right to make choices about reproductive health is a fundamental human right that intersects with individual autonomy, gender equality, and public health. It embodies the concept that

individuals have the capacity and agency to make informed decisions about matters intimately tied to their well-being, family planning, and overall life trajectories. In the context of India, a nation renowned for its rich tapestry of cultures, traditions, and complexities, the right to choose reproductive health assumes profound significance. Sexual and reproductive health (herein after, SRH) refers to a state of complete physical, mental, and social well-being in all aspects relating to sexuality and reproduction. This encompasses the right to a fulfilling and safe sexual life, the ability to reproduce, and the freedom to choose if, when, and how many children to have. Reproductive rights, therefore, encompass the ability to make informed choices regarding these aspects of SRH.

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Through its multifaceted jurisprudence and evolving legislative framework, the Indian legal landscape endeavors to protect and promote these critical reproductive health rights. The Indian judiciary, a cornerstone of the country's democratic fabric, plays an instrumental role in interpreting and safeguarding these rights.<sup>[1]</sup> This paper embarks on a journey to explore the intricate nexus between reproductive health and the Indian judiciary, delving into the legal foundations, landmark court cases, and legislative developments that have shaped the reproductive health landscape in India. This article aims to provide a thorough examination of the legal protections and challenges associated with reproductive rights in India, ultimately contributing to the ongoing discourse on individual autonomy, gender equality, and the right to make decisions about one's body without barriers or bias.

Reproductive health and rights empower individuals, particularly women, to make informed choices regarding their bodies, fertility, and family planning. It encompasses a wide range of issues, including maternal and child health, access to contraception, safe abortions, and comprehensive sexuality education.<sup>[2]</sup> These aspects are vital to individual well-being, gender equality, and sustainable development. The importance of reproductive health and rights in India is underscored by their impact on various social and economic indicators. They influence not only the health and quality of life of individuals but also have far-reaching implications for poverty reduction, educational attainment, and economic growth.<sup>[3]</sup>

### **Reproductive health and its legal significance in India**

Reproductive health encompasses a wide range of physical, mental, and social well-being related to the reproductive system and its functioning.<sup>[4]</sup> This includes not only the absence of diseases and disorders but also the ability to make informed choices regarding one's reproductive life without any coercion and discrimination. The United Nations International Conference on Population and Development (ICPD) in 1994 emphasized reproductive rights as human rights, encompassing the right to make decisions concerning reproduction, free of discrimination, coercion, and violence. Further, Article 21 of the Constitution of

India has been interpreted to include the right to reproductive autonomy.<sup>[5]</sup>

Reproductive health extends beyond the absence of illness or disability in a larger framework of public health and human rights. It extends to the ability of individuals to lead fulfilling and healthy reproductive lives, which entails the right to make choices that align with their values, beliefs, and circumstances.<sup>[6]</sup> Legal significance of reproductive health is a dynamic and evolving field, shaped by cultural, ethical, and scientific considerations.

Jurisprudence surrounding reproductive health rights in India has evolved over the years, reflecting changing societal norms and emerging healthcare challenges. Initially, the focus was on issues, such as abortion and maternal health. However, as the understanding of reproductive health expanded, the judiciary began addressing a broader range of issues, including access to contraception, comprehensive sexuality education, and the prevention of gender-based violence.<sup>[7]</sup> This evolution was influenced by both domestic and international factors. The judiciary has often looked to international human rights standards and conventions to interpret and expand upon domestic legal provisions related to reproductive health.<sup>[8]</sup> The recognition of reproductive health as an integral part of the right to life and personal liberty (Article 21 of the Constitution) has been a pivotal development in this evolution. The legality and morality of abortion remain contentious topics.<sup>[9]</sup> Debates centre on when and under what circumstances abortion should be permitted, taking into account ethical, religious, and cultural perspectives.<sup>[10]</sup>

### **Freedom of choice in reproductive health**

Choice is a fundamental component of reproductive health. It signifies an individual's autonomy to make informed decisions about their reproductive life, including the timing of pregnancies, and the use of contraception.<sup>[11]</sup> The concept of choice acknowledges that reproductive decisions are deeply personal and should be made free from coercion, discrimination, or undue influence.<sup>[12]</sup> In *Devika Biswas v. Union of India & Others*<sup>[13]</sup>, the Supreme Court held that the right to exercise reproductive rights includes making informed decisions about sterilization free from any coercion. The Supreme Court also highlighted

that government policies emphasizing female sterilization violated women's substantive equality. It stressed the need to protect the reproductive freedom of economically and socially marginalized groups, noting that informal targets and incentives have stripped them of meaningful choices.

The Supreme Court in *Suchita Srivastava & Anrv. Chandigarh Administration*<sup>[14]</sup> recognized women's reproductive autonomy as a fundamental right, affirming that a woman's right to make reproductive choices is a dimension of 'personal liberty' under Article 21. By interpreting the Article 21 of the Constitution 'choice' in reproductive health also extends to issues such as family planning and access to reproductive healthcare services.<sup>[15]</sup> It encompasses the right to access comprehensive information about reproductive options and to receive quality healthcare services that respect an individual's choices.<sup>[16]</sup>

India has a robust legal framework that recognizes and protects reproductive health rights as integral to human dignity and equality. The Constitution of India guarantees the right to life and personal liberty under Article 21, which has been interpreted by the judiciary as including the right to reproductive autonomy. Landmark judgments, such as the *Vishakha & Ors v. State of Rajasthan*<sup>[17,18]</sup> and the recent *Navtej Singh Johar v. Union of India*<sup>[18]</sup> have affirmed the right to privacy and non-discrimination, laying the foundation for broader reproductive rights.

### **Legal framework for reproductive health in India**

India is actively engaged in the global discourse on reproductive health as a fundamental human right, having signed various international conventions and agreements that emphasize its importance.<sup>[19]</sup> The International Conference on Population and Development (hereinafter, ICPD), held in Cairo, Egypt, in 1994, was a watershed moment in the recognition of reproductive health as a human right.<sup>[20]</sup> India, as a signatory to the ICPD Program of Action, has committed to various principles and actions aimed at improving reproductive health. Similarly, the Beijing Declaration and Platform for Action adopted at the Fourth World Conference on Women in 1995 reiterated the importance of reproductive health and rights. India's endorsement of this declaration highlights its commitment to

addressing gender-based discrimination and ensuring women's access to healthcare services, including those related to reproductive health.

India is a party to several international human rights treaties that recognize and protect reproductive rights. Notable among these are the International Covenant on Civil and Political Rights (ICCPR), 1966, and the Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW). These international commitments provide a framework for evaluating India's approach to reproductive health and influence domestic policy and legal decisions, emphasizing the nation's alignment with global human rights standards.

Part III of the Constitution of India outlines the Fundamental Rights and safeguards women's sexual and reproductive rights. Article 14 ensures equality before the law and women's legal protection. Article 15 prohibits discrimination based on various factors, allowing special provisions for women and children.<sup>[21]</sup> In the *Case of Neelam Choudhary v. Union of India*,<sup>[22]</sup> it was affirmed that Article 21 encompasses the right to "personal liberty". Undoubtedly, a woman's right to make decisions about reproduction is an integral aspect of this personal liberty under Article 21 of the Indian Constitution. It is crucial to acknowledge that reproductive choices encompass procreation options and the choice not to procreate. Notably, the Punjab and Haryana High Court in the case of *Surjit Singh Thind v. Kanwaljit Kaur*,<sup>[23]</sup> ruled that subjecting a woman to a medical examination to determine her virginity would constitute a breach of her right to privacy and personal liberty as guaranteed by Article 21 of the Constitution.

Article 51-A (e) underscores the need to promote unity and place responsibility on every Indian citizen to reject practices that demean the dignity of women. These provisions collectively demonstrate constitutional protection of women's sexual and reproductive rights. In the realm of reproductive health, India's legal framework, as outlined in the Indian Penal Code, includes provisions to address induced abortions and combat sexual violence. Sections 312-316 regulate abortions, with penalties varying by pregnancy stage. Sections 354 and 375 define sexual offenses, including rape, while Sections 354A-354D address

harassment, voyeurism, and stalking. In 2017, the Supreme Court extended the definition of rape to include minor wives, raising the age of consent to 18.<sup>[24]</sup> These legal measures aim to protect women's reproductive rights and ensure their safety and dignity. Section 3 of the Medical Termination of Pregnancy Act, 1971 (hereinafter, MTP Act, 1971) permits registered medical practitioners to terminate pregnancies between 12 and 20 weeks under conditions involving risks to the woman's life, physical/mental health, or severe physical / mental abnormalities in the child. Termination beyond twenty weeks of pregnancy may be permitted under certain circumstances.<sup>[25]</sup>

Furthermore, the primary goal of the Pre-Conception and Pre-Natal Diagnostic Techniques (Regulation) Act, 1994, is to detect genetic, chromosomal, metabolic disorders, and congenital malformations while preventing the inappropriate use of these techniques for gender-based foetal selection, which unfortunately contributes to the problem of female foeticide. The Prohibition of Child Marriage Act, 2006, safeguards the rights of girls and women, addressing the harm caused by child marriage, including early pregnancy risks, limited education and job opportunities, abuse vulnerability, and poverty.

In a recent case *X v. State (NCT of Delhi)*,<sup>[26]</sup> the Supreme Court expanded the MTP Act, 1971, to cover wives conceiving through forced sex by husbands, recognizing "marital rape" under the Act. In a recent ruling, the Delhi High Court stated that depriving a woman of the right to terminate pregnancy in sexual assault cases and forcing motherhood upon her violates her human right to live with dignity.<sup>[27]</sup> Despite legal provisions guaranteeing access to reproductive healthcare services, many regions in India still face disparities in service availability and quality.<sup>[28]</sup>

Rural areas and marginalized communities often lack access to essential reproductive health services, including family planning, maternal care, and contraceptives.<sup>[29]</sup> Gender discrimination remains a significant issue in India, affecting women's access to reproductive healthcare. In many cases, women may not have control over reproductive decisions, leading to issues like early and forced marriages, as well as limited access to contraception and safe abortion services.<sup>[30]</sup>

Addressing these challenges and filling these gaps in the legal framework are essential to ensure that individuals in India can fully exercise their reproductive health rights and choices, regardless of their background or location.

### The Indian judiciary and reproductive health rights

The Indian judiciary plays a pivotal role in safeguarding and upholding the rights and choices of individuals in matters of reproductive health. The judiciary's role is not confined to adjudication alone; it also includes ensuring that government policies and practices align with legal protection and human rights standards. This proactive stance is vital for addressing challenges and disparities in access to reproductive health services and choices. In 2012, the High Court of Madhya Pradesh echoed Delhi High Court's stance in *Sandesh Bansal v. Union of India*.<sup>[31]</sup> This public interest litigation sought accountability for maternal deaths and underscored that a woman's inability to survive pregnancy and childbirth violates her fundamental right to life under Article 21 of the Indian Constitution. The 2016 *Devika Biswas v. Union of India & Ors.*<sup>[32]</sup> Supreme Court judgment was pivotal for reproductive rights in India. It expanded these rights beyond health, prioritizing women's autonomy and gender equality.

The *Puttaswamy* judgment<sup>[33]</sup> recognized women's reproductive choices as part of personal liberty under Article 21 of the Indian Constitution. This aligns with *Suchita Srivastava and Anr. v. Chandigarh Administration*,<sup>[34]</sup> affirming reproductive rights, including pregnancy completion and child-bearing, as integral to a woman's privacy, dignity, and bodily integrity.<sup>[35]</sup> One landmark decision occurred in 2011, when the Delhi High Court issued a joint ruling in the cases of *Laxmi Mandal v. Deen Dayal Harinagar Hospital & Ors.*<sup>[36]</sup> and *Jaitun v. Maternity Home, MCD, Jangpura & Ors.*<sup>[37]</sup> These cases involved denial of maternal health care to two impoverished women. The Court highlighted the importance of reproductive rights within the right to life, asserting that no woman, especially a pregnant woman, should be denied treatment based on social or economic background. This judgment referenced international agreements such as CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women)

and ICESCR (International Covenant on Economic, Social, and Cultural Rights).<sup>[38]</sup>

Furthermore, in Sandesh Bansal's case,<sup>[39]</sup> the court rejected financial constraints as justification for violating reproductive rights. Additionally, the court emphasized immediate implementation of maternal health guarantees in the National Rural Health Mission, including essential infrastructure, timely services, skilled personnel, and effective grievance redressal mechanisms when maternal health care is denied.<sup>[40]</sup>

In the case of Himachal Pradesh & Ors. v. Sita Devi,<sup>[41]</sup> the Himachal Pradesh High Court held that all women, regardless of their employment status, have the right to maternity leave. The court highlighted that maternity leave serves to safeguard the dignity of motherhood while ensuring the well-being of both the mother and the child. This stance finds support in the precedent set by the Supreme Court in the case of Municipal Corporation of Delhi v. Female Workers (Muster Roll) & Anr. (2000), wherein the Apex Court clarified that the provisions of the Maternity Benefit Act, 1961 extend maternity leave rights to women engaged on a casual or daily wage basis, not limited solely to those in regular employment.<sup>[42]</sup>

In 2009, the Supreme Court acknowledged that a woman's right to make reproductive choices is an integral part of "personal liberty" under Article 21 of the Constitution.<sup>[43]</sup> This was a significant step towards affirming women's autonomy in reproductive matters. A notable case in 2011 involved the High Court of Punjab and Haryana dismissing a husband's suit against a doctor who performed an abortion without the husband's consent.<sup>[44]</sup> The court emphasized that a woman has the personal right to decide whether to continue or abort her pregnancy, and unwanted pregnancy can severely impact her mental health.

In 2013, the High Court of Madhya Pradesh highlighted the importance of providing rape victims with access to abortion without requiring judicial authorization.<sup>[45]</sup> The court recognized the potential mental health consequences of forcing a victim to give birth to a child conceived through rape, emphasizing the need to protect her well-being.<sup>[46]</sup> Since 2015, the Supreme Court has ruled three times in favour of permitting abortion past 20 weeks in cases where medical panels determined

that continuing the pregnancy would endanger the woman's mental and physical health.<sup>[47]</sup>

In 2017, the Supreme Court in Meera Santosh Pal & Others v. Union of India & Others<sup>[48]</sup> clarified that abortion at 24 weeks is legal in cases of an encephaly, a fatal foetal impairment that also poses a risk to the pregnant woman's life. In the X v. Principal Secretary Health and Family Welfare Department, Govt. of NCT of Delhi and Another case,<sup>[49]</sup> the Supreme Court ruled that abortion laws must consider current social realities and promote social justice. The landmark judgment emphasized the need for dynamic legal interpretations in a gender-equal society, resulting in an expanded scope of abortion rights in India through a recent Amendment Act.<sup>[50]</sup>

The 2016 case of High Court on its Own Motion v. State of Maharashtra<sup>[51]</sup> emphasized women prisoners' access to abortion and affirmed the right to abortion as a facet of the fundamental right to live with dignity under Article 21. The court recognized the adverse impact of unwanted pregnancies on women's mental health and firmly asserted the right of women to control their own bodies and fertility.<sup>[52]</sup> These legal developments underscore the evolving understanding of reproductive rights in India, emphasizing the importance of women's autonomy and well-being in pregnancy and motherhood.

## **Conclusion**

The Indian legal landscape for reproductive health is a mosaic of constitutional provisions, international commitments, and national legislation. Fundamental rights enshrined in the Constitution, such as the right to personal liberty and equality, provide bedrock for reproductive health rights. Key national legislation, including the Medical Termination of Pregnancy Act and the Prohibition of Child Marriage Act, serves as an essential component of this legal framework. The Indian judiciary emerges as a guardian of these fundamental rights, extending its role beyond adjudication to ensure that government policies and practices align with legal protection and human rights standards. Through landmark judgments, reproductive choices have been recognized as integral to personal liberty and gender equality, addressing issues ranging from maternal health to contraceptive access and abortion rights.

However, challenges persist because of disparities in access to reproductive healthcare services, stigma, and discrimination. Implementing reproductive health laws effectively across diverse regions remains a challenge; however, emerging issues demand legal clarity and comprehensive solutions. To move forward, there is a need to implement a multifaceted approach, including enhanced awareness and education, legal support and enforcement, improved healthcare infrastructure, engagement of all stakeholders in discussions about reproductive health, and continued research and evaluation. By taking these actions, India can work towards achieving better reproductive health outcomes and upholding the rights of all individuals, regardless of their background or location, in line with the pivotal role of the Indian judiciary in safeguarding these rights.

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