RIGHT TO ABORTION AS A PART OF REPRODUCTIVE AUTONOMY: A CRITICAL STUDY OF THE MTP ACT AND JUDICIAL INTERPRETATION IN INDIA

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ABSTRACT

The concept of reproductive rights has become an important element of constitutional rights in India, particularly, as per the general interpretation of Article 21, which safeguards the right to life and liberty. This paper is a critical analysis of the evolution of the reproductive rights in the Indian legal system and specifically in the Medical Termination of Pregnancy (MTP) Act, 1971 and its amendments. It discusses how the judiciary has brought reproductive autonomy to the level of criticality of dignity, privacy and bodily autonomy. It follows the change in perspective of a very narrow provider-focused approach to a more inclusive approach, particularly after the MTP (Amendment) Act, 2021, which opened up access to abortion and the need to be married. The paper also takes part in a critical analysis of the procedural and practical limitations of the MTP Act including the hurdles in the procedure, discretionary authority of registered medical practitioners and unequal access to health services. This paper analyses these developments with references to constitutional principles and the international human rights law, with the emphasis on the value of a rights-based and woman-centred approach. It concludes that even though significant progress has been made, reproductive autonomy in India still requires legal change, greater access to healthcare services, and elimination of social and systemic barriers.

Key Words: - *MTP Act, Abortion, Reproduction Autonomy.*

I. INTRODUCTION

The introduction of reproductive autonomy as a constitutional and legal right is an historic event in the constitutional and legal history of India. The courts have based their interpretation of reproductive rights on the right to life and personal liberty stipulated in Article 21 of the Constitution to incorporate dignity, privacy and bodily autonomy. This is a trend within a wider concern of constitutional law in which individual autonomy and choice is prioritized over social conventions and legal restrictions. In this respect, abortion and reproductive health control has become one of the major places of investigating the interplay of law, morality and gender justice.[1]

The abortion law in India is mainly regulated by the Medical Termination of Pregnancy (MTP) Act, 1971. Despite the fact that the Act was ahead of its time at the time of its enactment, with the aim of reducing maternal deaths associated with unsafe abortions, it was restrictive in nature because it centered care on the providers and conditional access. The Act has been modified over the years, most recently in 2021, to make it more inclusive and recognize the rights of unmarried women. However, it still has obstacles, which consist of procedure hurdles, implementation gaps and stigma.[2]

The judiciary has been instrumental in filling the gap between the law and the Constitution. Court precedents have over time determined that reproductive freedom is a component of individual liberty and it should not be limited arbitrarily and discriminately. This paper will discuss the constitutional, legislative and judicial processes that support reproductive autonomy in India. It also evaluates the sufficiency of the existing legal regime to offer equal access to reproductive health care and urges a more inclusive and rights-based approach.[3]

[1]B. Hewson, "Reproductive autonomy and the ethics of abortion," 27 *Journal of Medical Ethics* ii10–4 (2001).
[2]Josephine Johnston and Rachel L. Zacharias, "The Future of Reproductive Autonomy," 47 *Hastings Center Report* S6–11 (2017).
[3]Natalia Rueda, "Abortion and Reproductive Autonomy: Some Ideas About Differentiated Approaches," 73 *ZbornikPravnogfakulteta u Zagrebu* 769–92 (2023).

II. CONSTITUTIONAL ROOTS AND BROADENING SCOPE OF REPRODUCTIVE AUTONOMY

Reproductive autonomy in India is based on the right to life and personal liberty that is entrenched in Article 21 of the Constitution. The courts have over the years extended this right to include not only the right to live, but also the right to live with dignity, privacy and bodily integrity. This is in the broader context where the right of a woman to make decisions regarding reproductive health has been recognized as an aspect of individual freedom. The courts have emphasized severally on the importance of reproductive decision making such as the right to abort a pregnancy as part of the autonomy and dignity of a woman. This acknowledgment is a change over past limited interpretations which restricted such rights to a limited social and legal context which was usually influenced by traditional social norms of marriage and family.[4]

Conventionally, the Medical Termination of Pregnancy Act, 1971 has shaped the legal framework regarding reproductive rights in India. Even though the passing of this law was progressive in the then times as it aimed at limiting the maternal deaths due to unsafe abortions, it was also a reflection of the social environment of the period since it was aimed at married women. It was a very provider-oriented regime and a large amount of decision-making authority was in the hands of the registered medical practitioners, and women had very little autonomy. However, with the development of society, the increase of gender equality and the rights of individuals, this paradigm needed to be reconsidered. The constitutional law has played a critical role in the understanding of the reproductive rights and aligning them more closely with the dignity, equality and non-discrimination.[5]

A major judicial innovation in this respect has been the practice of purposive interpretation. This is a form of interpretation that is based on the intent of the legislature and social intent of the law as opposed to a literal interpretation of the statutory provisions. This has played a significant role in the interpretation of the MTP Act and its amendments. By focusing on the legislative intent of providing safe and accessible abortion services and protecting the health of women, the courts have been in a position to expand the scope of the application of the law beyond the narrow

[4]Nyinawagaba Beatrice R., "Reproductive Rights as Fundamental Human Rights: A Feminist Perspective on Bodily Autonomy and Social Justice," 5 *Eurasian Experiment Journal Of Humanities And Social Sciences* 9–15 (2024).
[5]Pamela Laufer-Ukeles, "Reproductive Choices and Informed Consent: Fetal Interests, Women's Identity, and Relational Autonomy," 37 *American Journal of Law & Medicine* 567–623 (2011).

restrictive reading that it originally bore. This method of interpretation recognises that the laws should keep up with the societal changes and that the rigid application of the old interpretations may be counterproductive to the law objectives.[6]

III. THE EVOLUTION AND INCLUSIVITY OF THE MTP APPROACH

The recent changes in the MTP Act in 2021 are an indication of a progressive shift in the more inclusive and rights-oriented approach to reproductive health. These reforms expanded the rights of women who have the right to legally abort a baby and eliminated the need of women to be married, so the right to reproductive rights was not limited by marital status. This amendment can be seen as an expression of a social change in the direction of the notion that women, no matter what their situation is, deserve the right to body autonomy. It is also indicative of the evolving relationships and the increasing number of women who might need reproductive health services beyond the institution of marriage. By eliminating the discriminatory grounds, the law is brought nearer to fulfilling the constitutional requirements of equality and non-discrimination.[7]

The reproductive autonomy is also affirmed which is a heavy burden on the State. Not only does the State have no right to interfere with individual rights according to Article 21, but it is also required to contribute to their successful enjoyment. Within the context of reproductive health, this can be understood to mean providing affordable and safe abortion services, having trained health practitioners and having access to information on reproductive health and contraception. The State must also address the structural barriers that impede the exercise of women rights such as unavailable health care, especially in marginalised and rural societies. The State also should preserve confidentiality and privacy in reproductive health services because women can be afraid of being stigmatized and ostracized by society in case they turn to medical assistance.[8]

The fact that India is a signatory to the international human rights law also highlights the position of reproductive autonomy as a right. The international treaties that India has signed such as the International Covenant on Civil and Political Rights and the Convention on the Elimination of

[6]"The Constitutional Aspects of Reproductive Rights and Reproductive Technologies in India | International Journal of Legal Science and Innovation," available at: https://ijlsi.com/paper/the-constitutional-aspects-of-reproductive-rights-and-reproductive-technologies-in-india/ (last visited March 31, 2026).
[7]Pamela Laufer-Ukeles, "Reproductive Choices and Informed Consent: Fetal Interests, Women's Identity, and Relational Autonomy," 37 *American Journal of Law & Medicine* 567–623 (2011).
[8]Syed. Nafisa Parveen, "Autonomy and Access: A Critical Look at the Medical Termination of Pregnancy Act ," 2 *International Journal of Web of Multidisciplinary Studies* 70–83 (2025).

All Forms of Discrimination against Women require India to respect and advance the rights of women including their reproductive rights. These treaties emphasize the importance of access to health services, gender equality and non-discrimination, which are important to the attainment of reproductive autonomy. These international standards have increasingly been used by the courts to interpret the domestic laws in the country, so that the laws are not out of sync with the international human rights standards.[9]

IV. A CRITICAL STUDY OF THE MEDICAL TERMINATION OF PREGNANCY (MTP) ACT, 1971

A critical Study of the Medical Termination of Pregnancy (MTP) Act, 1971 reveals a conflict between progressive law-making and practical issues of ensuring reproductive autonomy of women in India. Passed at a time when unsafe abortion was a significant cause of maternal deaths, the Act was a milestone in safeguarding the health of women by legalising abortion in some situations. However, the Act was by its very nature conservative and medicalised, and the decision-making process was to be left to the registered medical practitioners instead of the pregnant woman. This is a paternalistic approach to doctors, where the autonomy of women is subjected to the will of the medical opinion, and therefore, limiting the achievement of reproductive rights as a freedom.[10]

One of the greatest criticisms of the MTP Act is its restrictive nature on abortion. The Act does not recognize abortion as a right, but provides termination in certain conditions, such as risk to the life or physical and mental health of the woman, fetal malformations, or pregnancy due to rape or contraceptive accident. These are broad grounds, which nevertheless need interpretation and acceptance by medical practitioners, which is why there is a possibility of inconsistency and arbitrariness. This may lead to procrastination especially where several medical views are consulted which may prolong pregnancies beyond the stipulated gestation period in the law.

[9] H. Statham, W. Solomou and J. Green, "Late termination of pregnancy: Law, policy and decision making in four English fetal medicine units," 113 *BJOG: An International Journal of Obstetrics and Gynaecology* 1402–11 (2006).
[10] "A Critical Analysis OfThe Medical Termination Of Pregnancy Act: A Comparative Study With U.S. Abortion Laws," available at: https://lawfullegal.in/a-critical-analysis-of-the-medical-termination-of-pregnancy-act-a-comparative-study-with-u-s-abortion-laws/ (last visited March 31, 2026).

Such procedural obstacles are sometimes crippling and women are left to either keep the unwanted pregnancies or to use illegal and unsafe procedures.[11]

In 2021, the Amendment to the MTP Act provided certain improvements on these problems, extending the gestation period of certain groups of women and replacing the term husband with the term partner, which expanded the law to cover unmarried women. This was a move to the right direction of inclusiveness and the transforming nature of relationships. However, even with these progressive measures, the legislation is still lacking the rights-based approach. The classification of women and the fact that terminations that happen after the 24th week still require medical boards imply that autonomy is not absolute. Besides, the vagueness of the law application and its interpretation by the courts and healthcare providers contributes to the complications of access.[12]

Another issue with the MTP Act is that it does not reflect the reality on the ground particularly in rural and marginalised society. There is unequal access to trained medical practitioners and approved facilities, which generates unequal access to safe abortion services. Women with a disadvantaged economic background or geographical location have additional obstacles including information deficiency, stigma, and transport problems. This undermines the effectiveness of the legislation and creates doubts regarding the law enforcement. In addition, many women, especially single women fear social stigma and breach of confidentiality, which discourages them to seek legal medical services.[13]

The registered medical practitioners under the Act should also be questioned. Their discretionary authority can also be an obstacle to their role, which is vital due to safety reasons. The personal beliefs and their moral considerations or lack of knowledge of the law may affect their decisions, which will lead to denying the services even when it is legally allowed. This leads to a situation in which abortion is subjected to individual ideologies of the medical practitioners. This is augmented by the absence of stringent accountability.

[11] *Ibid.*

[12] "Privacy And Abortion: An Analysis Of Procedural Aspect Of Medical Termination Of Pregnancy Act, 1971," available at: https://articles.manupatra.com/article-details/Privacy-And-Abortion-An-Analysis-Of-Procedural-Aspect-Of-Medical-Termination-Of-Pregnancy-Act-1971 (last visited March 31, 2026).

[13] Satvik N. Pai and Krithi S. Chandra, "Medical Termination of Pregnancy Act of India: Treading the Path between Practical and Ethical Reproductive Justice," 48 *Indian Journal of Community Medicine: Official Publication of Indian Association of Preventive & Social Medicine* 510 (2023).

V. JUDICIAL TREND

"X v. *Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi"*[14]is a landmark case in the evolution of law on reproductive rights in India particularly regarding the rights of unmarried women. This case was a 25-year-old unmarried woman who sought the termination of her 23 weeks and 5 days old pregnancy on the ground that the pregnancy was conceived in a consensual relationship and that the man had refused to marry her. When pregnancy is a result of consensual sexual encounters, the Delhi High Court initially declined to grant relief, and took a narrow understanding of the Medical Termination of Pregnancy Rules, 2003 by not considering unmarried women under its scope. The Supreme Court of India on appeal gave ad-interim relief, allowing the termination based on a medical opinion of a board constituted by All India Institute of Medical Sciences. The Court resorted to a purposive interpretation of the MTP Act and the 2021 Amendment, as the replacement of the term husband by the term partner evidenced that the legislative body wanted to expand the scope of reproductive rights not to be confined to the institution of marriage. It found that it would be unconstitutional and contrary to Article 21 (right to dignity, privacy and liberty) to deny unmarried women access to safe and legal abortion. It further observed that this denial would adversely affect gender equality and empowerment of women that are constituent components of the constitutional fabric. By rejecting the narrow definition of change in marital status and applying the benefits of the law to all women irrespective of their marital status, the judgment affirmed that reproductive autonomy is a subset of bodily integrity and decisional privacy and that the law is now in accord with progressive constitutional values.

The case of *"Suchita Srivastava* v. *Chandigarh Administration"*[15] is considered a landmark in the evolution of reproductive autonomy in India. The case concerned a mentally disabled woman who was staying in a welfare home run by the government and had been raped. The Chandigarh Administration was interested in aborting her pregnancy against her wishes because she would not be able to take care of the child. The case was taken to the Supreme Court of India which strongly supported the reproductive autonomy of the woman as a facet of personal liberty that was safeguarded in Article 21 of the Constitution. It noted that reproductive autonomy not only

[14]C.A 5802/2022.
[15](2009) 9 SCC 1.

involves the right to have children but also the right not to have children and that the consent of a woman is paramount in pregnancy termination issues. It rejected the notion of forced abortion, even in cases of individuals with intellectual disabilities, unless they can be proven that the continuation of the pregnancy will pose a threat to the life or health of the woman. The Court also linked reproductive rights to the right to privacy, dignity and bodily autonomy, therefore, opening the way to the future jurisprudence of reproductive rights. Importantly, the Court pointed out that the State has no right to intervene into the decision-making of an individual, which once again confirms the central role of the choice of the woman in the reproduction issues. It is therefore a landmark in the development of reproductive rights as fundamental rights, and has also influenced later jurisprudence, such as the extension of abortion services and women empowerment in reproductive matters.

In "*High Court on its own Motion* v. *State of Maharashtra*"[16], the Bombay High Court grappled with pressing concerns around access to abortion services and the obstacles women, particularly rape victims, face in obtaining timely medical termination of pregnancy. The Court started the case on its own initiative following a series of cases in which women had been denied the right to abort out of the legal limit, in many cases because of technical complications and legal uncertainty. The Court took into account the practical issues of the rigid interpretation of the Medical Termination of Pregnancy Act, in particular, in the cases when the pregnancy is aborted because of the late discovery of fetal anomalies or pregnancy as a result of sexual assault. It acknowledged that it was necessary to be more sensitive and compassionate to safeguard the health, dignity and autonomy of women. The Court emphasized the necessity to create medical boards to assess such cases and proposed procedural modifications to make women not have to resort to judicial intervention in the emergency situation. It also emphasized the role of the State to develop a strong healthcare system and to avail safe abortion services. The Court tried to fill the gap between law and practice to streamline the process and reduce the judiciary input. The case has significantly impacted the future of judicial and legislative developments, including the liberalisation of abortion laws in the 2021 Amendment, by demonstrating the necessity of change to adequately protect the reproductive rights of women.

[16]W.P. (CRL) No. 1/2016.

VI. CONCLUSION

The development of reproductive rights in India is a step forward towards a more inclusive and rights-based approach to a more medicalised and restrictive model. Reproductive autonomy, based on the fundamental right to life and liberty in Article 21 of the Constitution has been confirmed as an essential part of dignity, privacy, and bodily autonomy. Courts have been instrumental in expanding the scope of such rights, particularly in claiming that reproductive choices are a personal prerogative and must not be interfered with without reason.

Nonetheless, the Medical Termination of Pregnancy Act, 1971, is structurally defective, thus hindering the practice of reproductive autonomy. Its conditional structure, medical judgment and procedural complexity often lead to barriers to access especially to vulnerable and single women. Though the 2021 Amendment is a move towards the right direction of inclusiveness, it fails to fully address the challenges of implementation, lack of infrastructures and social stigma.

The analysis of the landmark court cases shows that the judiciary has shown a devotion to the harmonisation of national laws and constitutional principles and international human rights law. However, the problem of the lack of correspondence between law and reality is still there. In order to realize reproductive autonomy in its authentic form, it is crucial that not only the legislation should be changed but also the infrastructural issues in the health care system should be tackled, the awareness should be raised, and the social bias should be eliminated. Lastly, there is a need to have a holistic and gender-sensitive approach in order to realise the promise of equality, dignity and freedom to all.