

Reproductive Autonomy in a Globalized Context: The Supreme Court's Impact on Abortion Laws in India

Arunav Bhattacharjya¹

Abstract

In any democracy, for a vibrant and dynamic judiciary to perform, it is not always about doing justice but rather paving the way on how the justice is done, as per facts and circumstances and the dynamism of the society. In arriving at the same, the courts employ different tools/aids to interpret the Constitution, the supreme law of the land, in a way that it furthers both the purpose and text of the provision. Over the years, owing to the dynamic interpretation of the courts and various legislation actions, women in India has achieved a certain degree of protection and social status, nearly meeting the required international standards. The Indian Constitution as an empowering document consists of equality clauses. But mere existence of it as black letters of law serves no purpose to further the gender justice discourse. While gender justice remains an ongoing discourse in India, several special legislations exist to further the rights of women and in the process reducing gender disparities and inequalities. These include the Protection of Women from Domestic Violence Act, 2005, Medical Termination of Pregnancy Act, 1971, the Maternity Benefit Act, 1961 to name a few. Even in the recent X v. Principal Secretary, the Supreme Court by virtue of purposive interpretation, brought ripple effects to feminist jurisprudence by extending abortion rights to unmarried women. This paper will thus seek to explore the evolving jurisprudence on abortion and the growing call for the liberalization of such rights, outline the concept of gender justice with reference to the role played by the Supreme Court of India to meet global legal standards of rights of women, and an analysis of the aforesaid case wherein the court dealt with the social stigma on unmarried women. The paper also seeks to delve into the philosophical discourse and ethical dilemmas women have to endure as regards their reproductive autonomy and its challenges in a multicultural society.

Keywords- *Dynamic Judiciary, Equality, Feminist Jurisprudence, Rights Of Women, International Legal Standards, Liberalization, Unmarried Women, Stigma.*

Bodily Autonomy and The Reproductive Rights Of Women

Bodily autonomy in this context refers to the freedom of a woman to make decisions and choices about her sexual orientation and the exercise of her reproductive rights, in the absence of any abuse or coercion. This understanding is based on the principle of how one defines coercion and abuse, and the interpretation of choice is crucial. Informed consent and right to confidentiality extensively increase the freedom of choice of choice in healthcare services. And for the exercise of these rights, healthcare professionals and service providers are obligated to fulfill a number of allied responsibilities.² They must respect the women's right to refuse treatment, and provide her with information about the intended healthcare therapies and available alternatives in order to

¹ Advocate, Gauhati High Court.

² Dr. Carmel Shalev, *Rights to Sexual and Reproductive Health - the ICPD and the Convention on the Elimination of All Forms of Discrimination Against Women*, INTERNATIONAL CONFERENCE ON REPRODUCTIVE HEALTH, 1998.

obtain her informed consent. Subsequently, they also have a duty to maintain confidentiality so that the woman can make choices unaffected by those who might not consider for her best interests. Women have a right to full disclosure regarding all the medical care options available to them, including the disclosure of any probable undesirable effects as well as the probable benefits of the recommended treatment and can also exercise the option to decline treatment.³

Autonomy also refers to the right of a woman to be treated as an equal when seeking treatment for her sexual and reproductive health. To be treated as equal here, refers to being put on an equal pedestal on par with men in the exercise of her legal rights.⁴

The CEDAW guarantees women the freedom to exercise control over their sexual rights and reproduction. This freedom to make informed decisions regarding one's health, including sexual and reproductive health, is rooted in the fundamental right to personal liberty. Despite the fact that the phrase "autonomy" does not find a mention in the Convention, the principle of autonomy is clearly embedded in the fundamental freedoms it provides to the women. Autonomy is also inherently attached to many other human rights fundamental in nature, such as privacy, dignity, and bodily integrity. In the field of medicine and treatment, these rights operate as the keystone for protecting the women's right to provide informed consent and seek confidentiality. Article 15 of the Convention, thus guarantees women the equality before the law.

Isaiah Berlin in his essay *Two Concepts of Liberty* provides an articulate definition of "autonomy". He claims that the traditional description of "liberty" is that of a "negative" right to freedom and to be unhindered by external forces. Nevertheless, "liberty" also has a "positive" sense which includes both the freedom "to" and "from". "Autonomy" connotes the recognition of one's capability as a human to commit to choices that significantly impact the course of their way of life, and it is a positive right to freedom.⁵

Equality and Non-Discrimination

The Convention's definition of discrimination against woman is all-encompassing regardless of their marital status. This is significant from two different perspectives. Firstly, it conveys an implicit recognition that women's social status is constructed by the institution of marriage, which is important considering that unmarried women are occasionally denied medical treatment and services. Furthermore, it articulates an essential principle of feminist theory concerning gender equality, which holds that discrimination against women as a group occurs in a society that is collectively shaped by gendered patterns of power rather than pertaining to a woman's personal relationships with men.⁶

The CEDAW also recognizes that women in their exercise of the maternal role, the societal and cultural norms recurrently prioritize parenting in a way that limits their freedom to make their own decisions. The capacity of women to bear children is often regarded as a measure of their value in cultural and communitarian beliefs. As a result of which, the women endure frequent case of pregnancies in an attempt to give birth to a male child, which in the process may endanger their health. When she fails to do so, she might be excluded from her immediate society. In case of pregnancies, women at times might not be even allowed to receive non-

³ Id.

⁴ Id.

⁵ Id.

⁶ Id.

reproductive health treatment, and their needs might be viewed as less important than those of their fetuses or children.⁷

Based on certain preconceptions about women's sexuality, certain practices on celibacy impose restrictions on women's freedom of movement and participation in public life. Certain detrimental practices for women are associated with prejudiced ideas on their sexuality that denies them their right to sexual autonomy. These includes but not limited to the practices such as female genital mutilation, forced virginity testing, and hymen repairs. Owing to the unequal power relations based on gender, sexual violence and abuse against them are commonplace. Lack of standard medical care and other services also prompts the danger of contracting HIV/AIDS and other STDs.⁸

Such discriminatory practices based on health may have some biological roots, even though gender discrimination is undoubtedly a mediating factor in many social phenomena. According to modern feminist legal theory, the idea of gender equality recognizes these differences (in the discriminatory practices) rather than holding women to the expectations of males. In order to be considered equal, people with similar interests must be treated equally and those with diverse interests in a way that honors their distinctions. When women's health requirements are ignored in the process of ensuring that they have access to pertinent health information and services, discrimination has taken place.⁹ Ensuring equality is a substantive task that focuses on fighting intentional discrimination and also ensuring that the women have the same rights as men which ensures the actual enjoyment of equal outcomes in health well-being. Failure in ensuring that the special health requirements of women are not amounts to discrimination.

Right to Life and Reproductive Choice

A major contributing cause to the high rate of pregnancy and childbirth-related deaths and complications is discrimination against women. When resources are allocated, the lack of maternal health services frequently indicates how little importance is placed on the exclusive needs of women. Reproductive health services, including safe abortion, necessary and urgent obstetric care, and contraception, can significantly reduce the risk of maternal death and morbidity.¹⁰ When a woman dies needlessly during pregnancy or childbirth, her fundamental right to life is obviously violated. Whether or not affordable, first-rate healthcare that lowers maternal death rates meets a state's basic minimal requirements under international human rights standards is up for debate. A noteworthy cause of maternal death and morbidity is unsafe abortion practices.

Criminalizing the practice of abortion is on the whole dreadful as it infringes upon the right to life, to the integrity of their bodies, and to make decisions that are essential to their bodily autonomy. Criminalizing such a practice induces women to be exposed to severe health hazards associated with improper abortion practices. Many countries have legal exceptions to their penal laws that allow abortion only if it qualifies certain criteria, like when the life of the intending mother or the life of the fetus is in danger or when the pregnancy was the result of rape.

⁷ Id.

⁸ Id.

⁹ Id.

¹⁰ HUMAN RIGHTS WATCH, <https://www.hrw.org/topic/womens-rights/reproductive-rights-and-abortion> (Oct. 30, 2023).

Women must be bestowed with the freedom to resolve whether or not to bear the child, including the preference of bringing the undesired pregnancy to term or end it prematurely, as well as the freedom to select the family planning and contraception methods that best suits them. This is known as the right to reproductive choice. Women's sexual and reproductive health, as well as their right to family planning education, information, and services, is crucial to their ability to make an informed reproductive decision. Services for family planning are particularly crucial in states where abortion is prohibited. Often, there are inadequate family planning options available to support the legal option of abortion. The ideals of liberty, social justice, and equality are the three human rights that are all violated, with the numerous incidents stated in the preceding paragraphs.¹¹

The fuller exercise of the fundamental human rights is also hindered without proper access to reproductive rights. Such rights must strive to empower women to make the best decisions for their own life, including deciding whether or not to have. Furthermore, the youth, people of color, and women from marginalized communities who already struggle to have access to essential health services are most negatively impacted by such prohibitions. Women are better qualified to make decisions about their physical and emotional health than males are.¹²

GLOBAL GENDER JUSTICE- A PHILOSOPHICAL ENQUIRY

The foundation of justice lies in the notion of moral fairness. In common parlance, wanting to make sure that individuals contribute and receive what they are owed is what it means to be concerned about justice. The normative disagreement among political philosophers centers on the appropriate substantive interpretation and practical application of this abstract idea.¹³ Three main types of concerns correlate to justice that is commonly distinguished by Western philosophers. Retributive justice is one part of the legal system that addresses just retribution for wrongdoers. Reparative justice, the second branch, deals with the problem of making amends for past wrongs. Distributive justice, the third branch, addresses the fair distribution of benefits and expenses associated with joining a cooperative business.¹⁴

Western feminist philosophy emerged in the 1970s as a result of the second wave of women's liberation movements which began in the 1960s. Similar to critical race theorists, feminists challenged some of the core tenets of Western political theory while also utilizing its easily accessible assets, such as its unwavering commitments to equality and liberty.¹⁵

Initially, feminist philosophers distinguished between sex, which they perceived as a biological trait and gender which they perceived as a convoluted set of social rules that are applied to people who identify as either masculine or feminine. Based on the idea that people are positioned differently based on their gender, feminist philosophers highlighted both overt and covert forms of institutional gender inequality.¹⁶ Covert gender bias existed in many seemingly gender-neutral

¹¹ Id.

¹² Id.

¹³ Alison M. Jaggar, *The Philosophical Challenges of Global Gender Justice*, 37 No. 2 PHILOSOPHICAL TOPICS 1, 1, 2009.

¹⁴ Id. at 2.

¹⁵ Id. at 6.

¹⁶ Id.

institutions of daily life, such as a typical working day structured on the assumption that workers have no care-taking responsibilities, in addition to overtly discriminatory policies, such as those that explicitly forbade women from certain occupations. Feminist intellectuals raised concerns about this kind of inequality, arguing that different institutions affected women differently.¹⁷

Generally, it is debated that philosophers advocating global gender justice deal with just a slim set of issues seen to be particularly important to women. Genital mutilation, religion based legal systems governing personal laws, and sex trafficking are examples of such. But limiting the arena of global gender justice to such issues would be excessively restrictive. The preceding subjects that theorists have addressed have gendered implications, and it is imperative of feminist philosophers to critically examine these features. Thus, gendered aspects of war, human rights, global governance, political freedom, nationalism, migration, debt, poverty, and climate change are investigated in the context of global gender justice initiatives.¹⁸

Since the issue of abortion and reproductive rights is centered on the moral significance of state boundaries, framing these concerns in terms of the debate between cosmopolitanism and nationalism may omit or misconstrue their gendered elements. One worldwide distinction that particularly worries feminists is the gender gap. Women experience more poverty, overwork, sex abuse, and political marginalization than men of the same ethnicity, class, or even family, despite the fact that conditions for women range widely across the globe.¹⁹

Tracing how modern transnational organizations and current global policies operate has been one task for philosophers of global gender justice. Many of these policies, which are ostensibly gender-neutral, have systematically disadvantaged and burdened particular groups of women in both the global North and the global South.²⁰

When these and other transnational gender differences become apparent, it is difficult to ignore the possibility that the world's fundamental institutions perpetuate prejudice against women. Philosophers need to consider the advantages and disadvantages of international cooperation for groups that are partially classified by gender in order to respond to this question. Normative political philosophers, however, are not just accountants using a predetermined moral calculation; they also need to evaluate the suitability of the metrics employed to weigh these costs and advantages. The absence of gender bias in such metrics is an essential, if not sufficient, requirement for their adequacy. To put it another way, the measures shouldn't place an excessive or insufficient emphasis on the advantages and disadvantages that differing gendered groups bear disproportionately.²¹

Thus, studying whether gender bias may be present in some of the key notions employed in philosophical discussions of global justice presents a second, deeper philosophical job for philosophers interested in the topic of global gender justice. It's reasonable to assume that many of these ideas are not gender-neutral based on feminist literature that currently exists. For instance, it was only lately that sexual torture and combat rape were included in the definition of war crimes.

¹⁷ Id.

¹⁸ Id.

¹⁹ Id.

²⁰ Id. at 9.

²¹ Id. at 10.

It is debatable whether forced domestic labor should be included in the definition of slavery and whether family structures where fathers and husbands strictly regulate their wives' sexuality, attire, speech, and mobility should be included in the concept of state-sanctioned repression. Furthermore, it is debatable whether the term "genocide" ought to be interpreted to cover female infanticide, the deliberate deprivation of food, medicine, and education from girls, as well as the starving, death, mutilation, and even the beating of adult women. It is crucial to consider if patriarchal gender divisions are idealized or overemphasized in national cultural representations. For normative philosophical research on justice to have any practical significance, it needs to be grounded in sufficient empirical data. Knowledge of actual gender inequality is one of the many aspects that must inform work on gender justice.

ABORTION RIGHTS AND FEMINISM- A MULTICULTURALIST VIEW

Minority cultures are often threatened by the idea that the dominant culture centered on individual rights is insufficient to preserve their existence within the prevailing national majority culture. In addition to calling for the state to refrain from interfering with minority groups' group rights, they also want the state to support them to fully exert their rights, including but not limited to the right to self-determination, establishment of autonomous regimes to negative rights like the right to equality and freedom from discrimination.²² Feminist legal scholars are concerned about how group rights affect women's rights. Because it allows group leaders to discriminate against their weaker members, a legal commitment to group rights may be detrimental to women. When coupled with the notion that the rights of women are subservient to those of groups, group rights appear to be established by the group's leaders, who are usually male.²³

Governments must establish a framework that defends women's rights within a multicultural framework since nearly all countries are multicultural and because some traditional cultures have historically persecuted women. India has had a protracted history of democracy evidenced by a strong commitment to upholding the civil and political rights of every human being. Owing to the extreme diversity of the Indian population, policy officials have had a difficult time balancing the protection of women's rights with the creation of opportunities for diverse minority groups to flourish.²⁴

Will Kymlicka argues that under a liberal democratic framework, multicultural ideals can be upheld. "Liberal values require both individual freedom of choice and a secure cultural context from which individuals can make their choices," he says in reference to the significance of culture in the formation of a person's self-identity.²⁵ Thus, liberals insist that we be allowed to acknowledge, uphold, and promote cultural membership as a basic right. Consequently, leaders of multicultural liberal societies need to protect both individuality and group identification because culture and group identity are important facets to the development of an individual as a contributing part of society.²⁶

²² Pratibha Jain, *Balancing Minority Rights and Gender Justice: The Impact of Protecting Multiculturalism on Women's Rights in India*, 23 (1) BERKLEY JOURNAL OF INT. LAW 201, 202 (2005)

²³ Id. at 203.

²⁴ Id.

²⁵ Id. at 205.

²⁶ Id.

ETHICS ARGUMENT ON TERMINATION OF PREGNANCY

The ethical opposition to patriarchal society's persecution of women in nearly every sphere of life gave rise to feminism. One of the aspects of life where oppression is most intensely felt, both historically and currently, is the termination of an undesired pregnancy. A common procedure in the field of gynecology is the termination of pregnancy, commonly referred to as an induced abortion.²⁷ For a very long time, the only reliable option for an abortion was by invasive methods; however, since the late 1980s, medical physiological procedures have been accessible for an early pregnancy termination. Even though the same procedures are used worldwide to end pregnancies, nearly every nation in the world has different laws and regulations. Before the 1960s, most governments either outlawed abortion outright or only allowed it in situations where the mother's life was in danger due to her pregnancy. The legislation regarded the other justifications for which women sought abortions as unlawful.²⁸

Following *Roe v. Wade*, the world saw a surge of abortion regulations in Western countries being mitigated. In many countries, women have the choice to end a pregnancy if it poses a threat to their physical or mental well-being, or if the child was conceived through incest or rape. Even in modern times, not all nations permit women to end their pregnancies, despite a steady shift towards more permissive abortion laws.²⁹

PRO-CHOICE v. PRO-LIFE

While dwelling on the philosophical discussions surrounding abortion, it is apparent that there is a conflict between two morally contradictory perspectives. These relates to the *autonomy of mother* and the *right to life of the fetus*.³⁰ This conflict is fuelled by the questions as to whether fetuses are humans, and if the sanctity of a fetus' life equal to that of its mother. Feminist often weigh the autonomy of the mother above all the other claims of rights made by other parties, such as the father, the state, or the fetus. They also recognize that the pregnancy of the mother depends on her will. The "pro-choice" and "pro-life" labels gained popularity in the United States throughout the 1970s. In essence, pro-choice proponents say that a mother's right to abort her pregnancy takes precedence over the life of the fetus. However, pro-life advocates contend that the mother should not be permitted to terminate her pregnancy since the fetus has a right to life.³¹

Laura M. Purdy advocates for abortion on the basis that rights of the woman necessitate the same, contending that women are both the subjects and the objects of moral dilemmas. For this reason, women are entitled to choose whether or not to terminate a pregnancy. She also sees one of the primary tenets of liberal society's respect for women's beliefs as being the ability to terminate a pregnancy.³² Feminists often oppose abortion using classic pro-life arguments, and other times they use reasons unique to feminism. The main thrust of these particular arguments is that feminism's goals are the source of the immorality of pregnancy termination. The most

²⁷ Berat Alp Çevlikli, *Feminist Ethical Approach to Termination of Pregnancy*, 4(4) TURKISH JOURNAL OF BIOETHICS 158-167, 159 (2017).

²⁸ Id. at 160.

²⁹ Id.

³⁰ Id.

³¹ Id.

³² Id. at 161.

prominent pro-life feminist argument holds that abortion is against the claimed value of feminism, which is a commitment to childcare.

Some women lack the necessary means to raise a child. Adding a child to her already "oppressed" situation will only make it worse. She might thus be forced to "become dependent on men," possibly for the remainder of her life, and this will "exacerbate the social and economic forces already stacked against her by virtue of her sex." Women's economic, social, and sexual dependence on males is only one more way that their gender oppresses them. Women need to be free from both the responsibility of having children and sexual duties in order to be fully autonomous.³³

Reproductive Rights Framework in India

The reproductive rights of women are now recognized by Indian courts in a number of significant rulings as a component of the "inalienable survival rights" that are implicitly guaranteed by the fundamental right to life. A few landmark decisions have also specified that women's autonomy and freedom to make reproductive decisions be respected, acknowledging that reproductive rights are essential to women's equality.³⁴ In issues pertaining to child marriage, abortion, contraception, and maternal health, courts have adopted an expansive interpretation of "reproductive rights" that are consistent with international human rights standards. Although such decisions are not always consistent, it has gallantly affirmed the right of the women to seek remedy in case of violations of their reproductive rights, including the recognition of maternal health as a right.³⁵

In order to protect women's health, including lowering the rates of unsafe abortions and maternal mortality, the states must uphold these rights and ensure that women of all ages have affordable and comprehensive access to information on reproductive health and services. Additionally, women must be free to make fully informed choices about their reproductive health and sexuality without fear of abuse, prejudice, or coercion. Protection of these rights is indispensable to protect and uphold gender equality justice.

Rights such as the right to equality and non-discrimination (Articles 14 and 15) and the right to life (Article 21) are recognized by the Indian Constitution as fundamental rights that the state must protect. Moreover, India has ratified a number of international agreements that uphold the right to an unrestricted pregnancy, including CEDAW, ICCPR, ICESCR, and UNCRC. Article 51(c) of the Constitution and the courts has ruled that the government is required to uphold treaty obligations and international law.³⁶

India was among the first countries to set up legal and policy frameworks guaranteeing access to abortion and contraception, but women still encounter major barriers to fully utilizing their reproductive rights, including inadequate healthcare and subsequently being deprived of their

³³ Callie Edgington, *Reflections on Feminist Views of Abortion and Motherhood*, CENTRE FOR BIO-ETHICS, 2 (2002).

³⁴ CENTRE FOR REPRODUCTIVE RIGHTS, <https://reproductiverights.org/sites/default/files/documents/Reproductive-Rights-In-Indian-Courts.pdf> (Oct. 30, 2023).

³⁵ Id.

³⁶ Id.

autonomy. Historically, India's laws and policies on reproduction, family planning focused on demographic objectives such as population control with less priority on women's rights. They have also implemented discriminatory provisions, such as those demanding spousal approval in order to access reproductive health treatments, which have subtly or blatantly undercut women's reproductive autonomy.

Even though women in India have access to the wide range of contraceptive techniques according to the National Population Policy, state governments are nevertheless promoting female sterilization. This results in the restriction of access to non-permanent treatments, hazardous and substandard sterilisation procedures, and coercion. The Apex Court has made significant strides in recognizing that denying women and girls the ability to procreate is in contravention of their fundamental human rights.³⁷

INTERPRETATION BY THE COURTS

The Indian judiciary's steady progression in articulating reproductive rights is also reflected in the country's recent jurisprudence regarding abortion. The Supreme Court's decision in 2004 that the choice of a woman to undergo abortion/sterilisation without the husband's consent could amount to mental cruelty weakened women's reproductive autonomy. But later court rulings have strengthened the right's constitutional protection.³⁸

The Supreme Court declared in 2009 that "there is no doubt that a woman's right to make reproductive choices is also a dimension of 'personal liberty' as understood under Article 21," acknowledging women's autonomy over their reproductive systems as fundamental rights.³⁹ Reiterating the right of reproductive autonomy, the Punjab and Haryana High Court dismissed a lawsuit filed by the husband against a doctor who had conducted an abortion without the husband's consent in 2011, stating that it "is a personal right of a woman to give birth to a child."⁴⁰

The Bombay High Court upheld women's access to abortions in *High Court on its Own Motion v. State of Maharashtra*⁴¹, and supported women's right to abortion as a component of the fundamental right to live with dignity under Article 21. The Court held that forcing a woman to carry a pregnancy "represents a violation of the woman's bodily integrity and aggravates her mental trauma which would be deleterious to her mental health," acknowledging that unintended pregnancies disproportionately burden women.

The Supreme Court categorically declared in *Devika Biswas*⁴² that the "reproductive rights of a person" are covered by Article 21. The right to "access a range of reproductive health information, goods, facilities and services to enable individuals to make informed, free, and responsible decisions about their reproductive behavior" is one of the reproductive rights that the Supreme Court recognised as part of both the right to health and an aspect of personal liberty under Article 21. The right to make an educated decision about sterilisation free from coercion is part of the freedom to exercise reproductive rights, according to the Supreme Court's ruling.

The case of *Suchita Srivastava v Chandigarh Administration*⁴³ concerned the Punjab & Haryana High Court's decision, directing abortion without the consent of the mother, in accordance with

³⁷ Id.

³⁸ Id.

³⁹ *Suchita Srivastava & Anr v. Chandigarh Administration*, (2009) 11 SCC 409.

⁴⁰ *Dr. Mangla Dogra & Others v. Anil Kumar Malhotra & Others*, C.R. 6337/2011.

⁴¹ W.P. (CRL) No. 1/2016.

⁴² W.P. (C) 81/2012.

⁴³ (2009) 11 SCC 409.

Section 3 of the Medical Termination of Pregnancy Act, 1971 (MTP Act). Her inability to care for the child and the fact that she lacked a parent or guardian to do so were the grounds cited. The Supreme Court stayed the High Court's decision, arguing that Article 21 ensures the right to liberty, which encompasses in its ambit the freedom to choose one's reproductive path.

The mental impairment of the woman did not deprive her of the ability to make reproductive decisions, the court noted, and it decided that restricting her autonomy over her body would violate her right to privacy. It was decided that she could not get an order against her will to terminate her pregnancy.⁴⁴

The Court ruled that her right to "*privacy, dignity, and bodily integrity*" should be upheld. While the Court determined that a woman had complete control over her body, she only had a "qualified 'right to abortion,'" as such right is constrained by a "compelling state interest" in preserving the life of the unborn.⁴⁵

X v. Principal Secretary, Health and Family Welfare Department, Govt. of Nct of Delhi And Anr. (2022)

The Apex Court ruled that unmarried women might get an abortion between weeks 20 and 24 of pregnancy if their change in marital status.⁴⁶ A 25-year-old woman appealed a Delhi High Court ruling that denied her request for an abortion during the 23rd week of her pregnancy to the Supreme Court. She said that although she had become pregnant through a voluntary relationship, her partner had declined to get married. She claimed that because of this, Rule 3B of the MTP Rules—which permitted women to get an abortion between 20 and 24 weeks of pregnancy—caused a change in her marital status.⁴⁷

The Court also held that the right to reproductive autonomy of woman encompassed also carries in its ambit the right to privacy, enabling her to decide whether to end her pregnancy if her marital status changed. It would be against the act's constitutional mandate to read Rule 3B of the MTP Rules narrowly so as to exclude single women in such a situation. As a result, the Court decided that to give unmarried women access to safe and authorized abortions during the 20–24 week gestational period, Rule 3B of the MTP Rules would need to be read more liberally.⁴⁸

The Court ruled that women's rights to equality, privacy, and control over their reproductive systems must all be taken into account while interpreting the MTP Act. It restated the ruling in *K.S. Puttaswamy v. Union of India*⁴⁹, which maintained that the freedom to decide whether to get pregnant or not was protected by the right to privacy. Bodily autonomy, or the capacity to make choices regarding personal relationships, is a component of the right to privacy. The Court acknowledged that, in the event of an unintended pregnancy, the woman would bear the majority of the burden, which would negatively impact her physical and emotional well-being, regardless of her marital status.

⁴⁴ Supra Note 33.

⁴⁵ Id.

⁴⁶ PRIVACY LAW LIBRARY, <https://privacylibrary.ccgmlud.org/case/x-vs-principal-secretary-health-and-family-welfare-department-govt-of-nct-of-delhi-and-another> (Oct. 29, 2023).

⁴⁷ Id.

⁴⁸ Id.

⁴⁹ (2017) 10 SCC 1.

The Court ruled that the woman would be the sole individual having control over her body and the final say over whether or not she wanted to have an abortion.⁵⁰

The Court made a statement about how laws must adapt to reflect shifting social and family dynamics. It went on to say that the new MTP Act's declaration of goals and reasons focused mostly on expanding access to safe and authorised abortions in order to lower maternal mortality and morbidity. Recognising that women's material circumstances would frequently alter as a result of a change in marital conditions, the acceptable gestation limitations for pregnancy termination under Rule 3B were increased.⁵¹

Conclusion

Abortion law reform and expanded access to abortion services have been the dominant global trends for several decades. Since 1994, the legalisation of abortion has been expanded in approximately 60 nations worldwide by liberalising their abortion legislation. Only four nations have eliminated the legal basis for abortion during that time: the United States, El Salvador, Nicaragua, and Poland. When the U.S. Supreme Court struck down the constitutional right to an abortion earlier this year, the country joined this club of international outliers. Legal norms have been evolving in favour of women over time, aside from abortion. Welfare regulations, for example, do not discriminate between married and single women when it comes to things like adoption rules, maternity benefits, and certain religious succession laws. When combined, these statutes and the most recent court decision represent the decisional autonomy that every woman has to make important decisions about her body and well-being. However, material, social, and cultural transformations will be necessary for the genuine realisation of such sovereignty.

India has traditionally had a society based on patriarchy. The personal, social, and economic sectors of existence are dominated by and governed by male ideals. In actuality, selective abortion of female fetuses occurs in India due to a long-standing societal preference for boys over daughters. India has strong regulations that forbid sex-selective abortion and make female feticide a crime in an effort to stop this practise. However, damaging societal and cultural conventions prevent women from reaching their full potential and from having goals outside of marriage. Moreover, premarital sex is taboo and premarital partnerships are sometimes looked down upon or labelled as "illicit."

In spite of changes in society, access to healthcare facilities is restricted by resource limitations. A necessary component of true equality and freedom is expanding access to medical professionals and healthcare facilities. In its capacity as the guardian of the Constitution, the Indian judiciary—particularly the Supreme Court—has taken the lead in defending minorities and preserving the multicultural spirit of the nation. The government has been obliged to steer away from population control measures and consequently challenge the discriminatory assumptions that limits the women's authority, and instead prioritize their rights to dignity, autonomy, and bodily integrity in laws and policies linked to reproductive health. Prolonged trial periods and the challenge of implementing judgments are just two of the challenges that come with litigation.

⁵⁰ Id.

⁵¹ Id.