

**ABORTION RIGHTS OF WOMEN: FOURTH WAVE OF FEMINISM**

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**Abstract**

This research paper will look into the current status of reproductive rights of women in India and will also deal with the consequences of the overturned judgement of US Supreme Court. There have been various instances where women in particular have to go through a much harsher route to prove their capability and feminism as a movement has been a conclusive approach towards a better society which is based on equality. Here equality does not always mean in terms of physical strength or emotional well-being, equality implies equal opportunities and better understanding of equal distribution of resources. India, in its broad sense has been patriarchal in nature and if we look at the sources and origin of different personal laws and emergence of Indian civilization, we find a number of texts giving importance to son and males of the family having the authority to decide what is right and wrong for all the other members of the clan. Now coming to abortion rights of women, we know that right to reproduce is something which is intrinsic to being a woman and infringement or any kind of state control over this right would be equal to violation of the right to privacy. Right to life and liberty is an all-encompassing right and it includes under its purview right to privacy which is an important and basic part of liberal democracies. The current judgement of US Supreme Court which overturned *Roe v. Wade* has been subject to various criticism. This paper will analyse the evolution of abortion rights of women conclusively.

**Keyword:** Abortion, Rights of Women, *Roe v. Wade*, Feminism, Reproductive Health

**Introduction**

Albeit most of individuals agree that right to life has always been inclusive of right to reproduction but how to accomplish this has forever been a combative issue. Current culture has perceived that regenerative privileges are deficient for ladies as well as for other orientation minorities, from period freedoms to fetus removal operations. This much of the time doesn't, be that as it may, address global regulation. Current meanings of woman's rights incorporate "correspondence among all sexes and sexuality." Even on the off chance that the thought of a non-binary world is continuously turning out to be more acknowledged, involving this belief in our laws is as yet significant.

"Reproductive privileges are, by and large, an individual's capacity to pick the choice about whether to have kids and to keep up with great regenerative well-being. This might incorporate the opportunity to have youngsters, to end a pregnancy, to utilize conception prevention, to get reproductive medical services, to find out about sex education with safe practices in state funded schools, and to use contraception."<sup>1</sup>

All couples and people reserve the option to make their own, mindful choices on the number, dividing, and timing of their kids. It additionally incorporates the right to information and the resources to get it, the right to the best degree of reproductive well being, and the option to pursue contraceptive choices liberated from viciousness, intimidation, and separation.

Practically speaking, courts have driven the charge in broadening, protecting, and progressing contraceptive freedoms.

**Present Context of Reproductive Health in India**

Ladies and girls keep on confronting critical hindrances to completely practicing their reproductive freedoms, for example, low quality well-being, administrations and dissents of ladies' and girls' dynamic power, regardless of India being perhaps the earliest country on the planet to create legitimate and strategy systems ensuring admittance to fetus removal and contraception.

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<sup>1</sup> Arnold, S.B., 2014. Reproductive rights denied: The Hyde Amendment and access to abortion for Native American women using Indian health service facilities. *American Journal of Public Health*, 104(10), pp.1892-1893.

A ladies' rights-based approach has generally been missing from reproductive well-being regulations and strategies in India, which have rather focused on segment objectives like population control while additionally certainly sabotaging ladies' regenerative independence with arrangements like spousal assent necessities for admittance to reproductive well-being clinics.

India continues to have the highest rate of child marriages and 20 percent of all maternal fatalities worldwide, despite a national legislation that makes it illegal for girls under the age of 18 to get married, as well as laws and programmes to ensure women have access to maternity healthcare.

Despite the fact that India's National Population Policy guarantees women voluntary access to the full range of contraceptive methods, state governments still implement programmes that encourage female sterilisation, including through targets, which can result in coercion, risky subpar sterilisation procedures, and the denial of access to non-permanent methods.

Additionally, courts in India have a significant responsibility to uphold the constitutional and human rights protections for women's reproductive rights.

### **Relevant Provisions of IPC**

Despite the fact that there have been a few articles composed on ending pregnancies using the IPC 1860 previously, the IPC provisions were intended to control constrained premature delivery, not to offer guidelines on how early terminations ought to be done. Because of an absence of regulation at that point, there were numerous unlawful early terminations performed, which affected the health of the ladies looking for safe abortions.

“The State of Madhya Pradesh on August 7, 2014, where the litigant had documented an allure under the watchful eye of the High Court, gave current proof that this proviso is still active. The High Court came to the conclusion that the trial court had not taken into account the fact that the miscarriage was brought on in good faith to save the prosecutrix's health. As a result, the petitioner was not subject to Section 312 of the IPC.”<sup>2</sup>

Despite the fact that this component is desperately required, no law was created to support it. This demonstrates that not enough information was provided on the situation's actual circumstances. Starvation, torture, and other cruel methods are also used to induce forced miscarriage. These methods frequently go unreported since women frequently lack the resources and independence to report the abuse they endure, sometimes at the hands of their own family.

### **Acts and Bills concerning Termination of Pregnancy**

The Maternity (MTP) Act of 1971 may be regarded as India's first abortion-related law. It included restrictions on not just who may have an abortion but also set out details on where they might lawfully end their pregnancies. “The Act stipulated that the lady would need to get one medical professional's written permission within a 12-week window. If the gestational period is more than twelve weeks, at least two practitioners are required.

The requirement of "good faith" was the "sine qua non" of this legislation, which meant that even if a woman planned to stop her own pregnancy, a threat to her physical health was one of the key determinants of whether the termination would be approved.”<sup>3</sup>

A woman may also be permitted an abortion

- if she believes her pregnancy was brought on by rape, among other circumstances.
- If a pregnancy arises as a result of a married woman or her husband failing to utilise a contraceptive device or other method intended to reduce the number of children they have,

“The legislation stated that the procedure of abortion may only be carried out in a hospital established or maintained by the government or a location currently approved for this purpose. It also stated that the pregnancy of a minor or a lunatic (as defined by law) may not be terminated without the consent

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<sup>2</sup> Shanthi, K., 2004. Feminist bioethics and reproductive rights of women in India: Myth and reality.

<sup>3</sup> Chattopadhyay, S., 1974. Medical Termination of Pregnancy Act, 1971: A Study of the Legislative Process. Journal of the Indian Law Institute, 16(4), pp.549-569.

of their guardian. The preservation of the woman's privacy was required by law. The rules for the same, nevertheless, were later found to be unclear.”<sup>4</sup>

Although this Act was a bright spot in an otherwise dark situation, it was unable to achieve its intended outcome of halting unlawful abortions.

By employing just "guidelines" and denying women physical autonomy, it neglected to take into account the breadth of executive failure. The law was unable to offer the much-needed relief in situations when the cause of the pregnancy did not fit into one of the listed subcategories, such as a married woman without children. This demonstrated how Indian society views women, who are only permitted to have abortions if they have "enough children."

### **The MTP Act, 2003**

This act clarified the previous Act and made other changes to it. “The purpose of this legislation was to make the procedure of termination safer by limiting consultations with unqualified practitioners, even if it was still possible to end a pregnancy with the advice and consent of an authorized medical practitioner. Specifically authorizing the locations where the treatment may be performed, providing for the inspection of the approved location, and indicating the method for the cancellation or reconsideration of an approved certificate were used to accomplish this. For the protection of women, this was a commendable action. Non-cis gender females, however, were not mentioned in the Act”<sup>5</sup>. Indian law's blatantly gendered wording limits the Act to cis gender females.

Abortion was not an option for trans males who opted against surgery or hormone therapy and may be physiologically capable of producing children. Additionally excluded from these laws were members of the intersex community. This rendered reproductive health inaccessible to many populations and rendered abortion illegal.

### **The MTP Act of 2021**

This act like other Acts, restricts the definition of "women" and does not extend its advantages to transgender people or those who identify as members of other gender minorities. It is crucial to keep in mind that the transgender population in India experiences severe discrimination, rape, and sexual abuse.

In such cases, a member of the transgender or intersex population would not have the same legal options as a cis female. The primary concern with this Act has been related to bodily autonomy, which has been extensively debated in instances like “**Suchita Srivastava v. Chandigarh Administration (2009) and ABC v. Union of India**”<sup>6</sup>. The MTP Rules specify an upper gestation restriction of 20 to 24 weeks for particular groups of women, which is added by the Act. Modifications include provisions for rape survivors, incest victims, and other vulnerable women (including children and women with disabilities). Only one medical professional's assessment is needed up until the 20th week of pregnancy. Even while it's not "perfect," this can still be considered an improvement.

### **The Transgender Persons (Protection of Rights) Act, 2019**

If they underwent gender confirmation surgery, transgender people can be recognised under the Transgender Persons (Protection of Rights) Act of 2019. Due to the District Magistrate's mysterious control over such recognition, this initiative to raise the social standing of the community falls short of its intended purpose. In addition, legislation that let transgender people to preserve their sperm or eggs so they can later utilise them to have biological children, if they want, are urgently needed.

“Despite the fact that gender confirmation medical procedure, otherwise called gender reassignment medical procedure in India, is permitted, there aren't any regulations that put down rules and guidelines

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<sup>4</sup> Chatterjee, P., 2016. Medical Termination of Pregnancy Act: A Boon or a Bane for a Woman in India-A Critical Analysis. *International Journal of Science and Research*, 15, pp.236-240.

<sup>5</sup> Duggal, R. and Ramachandran, V., 2004. The abortion assessment project—India: key findings and recommendations. *Reproductive health matters*, 12(sup24), pp.122-129.

<sup>6</sup> Priya, K., *Legislation Review-Medical Termination of Pregnancy Act*, 1971.

like those that apply to early terminations in India.”<sup>7</sup> Notwithstanding the serious segregation experienced by the transsexual and intersex networks in India, there is likewise a confounding circumstance where numerous transsexual individuals are denied orientation affirmation medical procedures and can't raise the issue with specialists because of the shame related with it, while numerous intersex kids are compelled to go through "reassignment rectification" without their consent to "make them" fit into the parallel.

### **Important Case Laws Related to Reproductive Rights**

#### **● Justice K.S. Puttaswamy (Retd.) and Ors. vs. Union of India & Ors**

A nine-judge bench of the Supreme Court (the "SC") unanimously “recognised the right to privacy as a right that falls under the purview of the Right to Life under Article 21 and should, therefore, be regarded as receiving the proper constitutional protection in Justice K.S. Puttaswamy (Retd.) v. Union of India (the "Puttaswamy" case). According to the SC, the right to privacy is not only protected by Article 21 but also by other freedoms and rights found in the Constitution's Part III (Fundamental Rights). The bench specifically stated that women's reproductive freedom is protected under Article 21's right of personal life and liberty.”<sup>8</sup>

#### **● Suchita Srivastava v. Chandigarh Administration**

“The Supreme Court's three-judge panel reviewed this case, in which a mentally retarded orphaned lady became pregnant after being raped. Without the woman's agreement, the Punjab & Haryana High Court ruled that it was in the foetus' best interests to be terminated under Section 3 of the Medical Termination of Pregnancy Act, 1971 (MTP Act), since she lacked the competence to care for a kid and lacked a parent or guardian to do so.

The Supreme Court upheld Article 21's right to liberty and stayed the Punjab & Haryana High Court's ruling, concluding that the right to reproductive freedom stems from that right. It was stated that restricting a woman's ability to make decisions about her own body would violate her right to privacy.”<sup>9</sup> It went on to create a distinction between mental illness and mental retardation and held that the woman's mental retardation did not deny her the ability to choose how to get pregnant. As a result, it was decided that a pregnancy abortion without her agreement could not be authorized.

#### **● Parmanand Katara v Union of India**

Every person has to be aware of their legal rights. The right of accident victims to get urgent medical attention is one such important issue that the general public needs to be aware of. This right was established in the aforementioned decision, "Pt. Parmanand Katara vs. UOI," which also emphasized the need of providing accident victims with prompt medical attention. “As has been well noted, there have been uncertainties and apprehension among individuals about helping those injured in traffic accidents. This is due to the presumption that a person critically hurt in a car accident must only be aided and treated after all legal requirements have been met.

The court observed that : According to Article 21 of the Indian Constitution, the state is obligated to safeguard the right to preserve precious human life.

The importance of preserving precious human life cannot be overstated. This is the case since the pre-loss situation will not be reinstated.

The decision to save a person's life based on whether or not they are guilty and subject to legal punishment is not one that should be made by healthcare professionals. Healthcare professionals' duties are strictly confined to giving patients rapid medical attention and preserving their lives without taking into account the condition of the injured.”<sup>10</sup>

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<sup>7</sup> Bhattacharya, S., 2019. The transgender nation and its margins: The many lives of the law. South Asia Multidisciplinary Academic Journal, (20).

<sup>8</sup> Justice K.S. Puttaswamy (Retd.) and Ors. vs. Union of India & Ors,(2017) 10 SCC 1.

<sup>9</sup> Suchita Srivastava v Chandigarh Administration,(2009) 9 SCC 1.

<sup>10</sup> Parmanand Katara v. Union of India,1989 SCR (3) 997.

### **Roe v. Wade**

The historic 1973 legal case *Roe v. Wade* prompted the Supreme Court to rule on the constitutionality of abortion rights. Unmarried pregnant lady Jane Roe filed a lawsuit on behalf of others and herself to contest Texas's abortion restrictions. A Texas physician joined Roe's lawsuit, claiming that the state's abortion rules were too ambiguous for medical professionals to adhere to. He had already been taken into custody for breaking the law.

Texas had a law at the time that made abortions illegal unless the mother's life was in danger. Obtained or attempted abortions were illegal.

The Supreme Court made two significant rulings in *Roe v. Wade*:

- The "right to privacy" guaranteed by the US Constitution safeguards a person's ability to decide whether to get an abortion.
- But the right to an abortion is not unalienable. It must be weighed against the interests of the government in preserving foetal and maternal health.

The two arguments put forth were divided by the court. First, the Court acknowledged that privacy rights do apply to abortion. As stated in the Due Process Clause of the Fourteenth Amendment, everyone has the fundamental right to privacy. The Supreme Court determined in *Roe v. Wade* that this right to privacy includes the ability to regulate pregnancy.

The state's claim that constitutional protections start at conception was disputed by the court. The term "person" is not defined in the Constitution. The Court came to the conclusion that "the unborn have never been acknowledged in the law as individuals in the whole sense" after reviewing earlier decisions involving unborn infants.

A consideration of the various perspectives on the beginning of life is also included in the *Roe v. Wade* ruling. For instance, many adherents of the Jewish faith think that life begins at birth. But in the Catholic religion, it is widely believed that life begins at conception. Although doctors have a variety of opinions, they frequently trend toward the notion that life begins before birth.

### **Critical Analysis of the Law**

Complete well being freedoms incorporate the privileges to sexual and reproductive health. A nation should have an advanced general well being framework set up to ensure the satisfaction of these freedoms. This framework should have the option to convey exhaustive, superior grade, generally available medical care benefits that are free at the mark of access and, above all, responsible to residents.

Sadly, various issues, including restricted public venture, lacking foundation, including clinical and symptomatic offices, and under qualified HR, represent a danger to India's general health framework. Furthermore, the medical care industry has become more privatized and corporate in late many years, and there has been an absence of severe oversight.

"Deficient, uncaring, and unforgiving treatment of ladies — particularly those from backward communities — at general health foundations denies them of their respect and organization. Ladies become hesitant to look for care at general health establishments subsequently, which influences access and reach. To safeguard the common liberties of ladies, particularly the people who have a place with underestimated and barred bunches like sex laborers, LGBTIQ (lesbian, gay, sexually open, transsexual/transgender, intersex, and addressing) gatherings, ladies with disabilities, reproductive freedoms should be maintained and sexual and contraceptive well being administrations are made accessible."<sup>11</sup>

### **Conclusion**

The advancement of women's human rights in general has been largely dependent on battles for women's rights to sexual and reproductive health. Women's status is intrinsically tied to how women are reduced via social and political processes to components of their physical identities, as human rights activists have pointed out. We get at "women centric" approaches to sexual and reproductive

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<sup>11</sup> Mokta, M., 2014. Empowerment of women in India: A critical analysis. *Indian Journal of public administration*, 60(3), pp.473-488.

health when it is realised that reproductive health encompasses more than simply the basic functioning of a woman's womb. This is having faith in women as independent people who can regulate their sexual and reproductive life and make choices based on having access to accurate information.

As a result of her situation in the public eye, a lady's on the right track to reproductive independence is much of the time split the difference. The capacity to practice this right relies upon her capacity to take part in common society as a grown-up with full lawful limit and to be liberated from all types of separation. It is in conflict with, any remaining basic liberties — common and political, financial and social — have just restricted capacity to further develop the prosperity of ladies without the right to reproductive decision.