JOURNAL OF SOCIAL STUDIES
ISSN: 3107-5835
DOI: 10.5281/zenodo.21917345

Reproductive Rights under Indian Constitutional Law: From State Control to Decisional Autonomy

Dr. Yuvraj Khare
Associate Professor, JS College of Law
Prithvipur, Madhya Pradesh
yuvrajkhare88@gmail.com

Abstract
Indian constitutional law has travelled a remarkable distance on the question of reproduction: from a legal order in which reproduction was primarily an object of State demographic policy, to one in which the Supreme Court describes the decision whether to bear a child as an intimate exercise of personal liberty, privacy and dignity under Article 21. This paper reconstructs and evaluates that journey. It first situates reproductive rights within international human rights law and within the constitutional triad of liberty, equality and dignity. It then traces four doctrinal streams: the recognition of reproductive autonomy in Suchita Srivastava and its constitutional deepening in Puttaswamy; the jurisprudence of abortion under the Medical Termination of Pregnancy Act, culminating in the 2022 decision in X v. Principal Secretary, which extended the law's protection to unmarried women and acknowledged marital rape for the purposes of termination; the accountability jurisprudence on sterilisation camps and maternal health; and the emerging regulatory law of surrogacy and assisted reproduction. The paper argues that Indian law exhibits a persistent paradox- rights declared in the register of autonomy are administered through structures of medical and bureaucratic gatekeeping- and that the constitutional promise will remain incomplete until the pregnant person, rather than the doctor, the Medical Board or the family, is placed at the centre of the legal design. Concrete legislative and institutional reforms are proposed.

Keywords: reproductive autonomy, Article 21, Medical Termination of Pregnancy Act, privacy, sterilisation, surrogacy, decisional autonomy

1. Introduction

Few questions test a constitution as searchingly as the question of who decides about reproduction. It implicates the body, and therefore liberty; it implicates women disproportionately, and therefore equality; it implicates the most intimate of choices, and therefore privacy; and it implicates the State's oldest anxieties - population, lineage, morality- and therefore power. The Constitution of India contains no clause that speaks of reproduction. Everything the law now says on the subject has been built interpretively upon Article 21's guarantee that no person shall be deprived of life or personal liberty except

according to procedure established by law,[1] read through the transformative lens of *Maneka Gandhi*, which demanded that any such procedure be fair, just and reasonable.[2]

The interpretive edifice is now substantial, but it is also unevenly built. The same legal system that declares reproductive autonomy a fundamental right retains a criminal prohibition on abortion to which the Medical Termination of Pregnancy Act operates only as a scheme of exceptions administered by doctors; the same system that condemned coercive sterilisation camps once upheld the disqualification of panchayat candidates for having a third child; the same system that celebrated privacy as decisional autonomy regulates surrogacy through a statute organised around marital status and altruism. This paper maps these tensions as a single constitutional story- the unfinished migration of reproduction from the domain of State control to the domain of individual autonomy- and asks what remains to be done.

2. The Normative Framework

Before the case law can be assessed, the standards against which it falls to be assessed must be assembled. Reproductive rights in India draw their normative content from two reservoirs that operate at different altitudes but flow into one another. The first is international human rights law, which supplies both the vocabulary- the very phrase "reproductive rights" is a product of the international conferences of the 1990s- and a set of State obligations concerning health, information, non-discrimination and freedom from coercion that India has accepted by ratification. The second is the domestic constitutional text, which contains no express reproductive guarantee but furnishes, in the guarantees of liberty, equality and the judicially elaborated value of dignity, materials from which such a guarantee has been constructed. The relationship between the two reservoirs is interpretive rather than hierarchical: Indian courts treat the international instruments as aids in giving content to Article 21, so that the Cairo definition and the CEDAW obligations surface repeatedly in the judgments examined in Part 3. This Part sets out each reservoir in turn - the international framework first, then the constitutional triad - and concludes by identifying the analytical standard the two together yield: that any law touching reproduction must justify itself before the combined bar of liberty, equality and dignity.

2.1 International Human Rights Law

The international baseline was fixed at Cairo in 1994, when the Programme of Action of the International Conference on Population and Development defined reproductive rights as embracing the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children, and to attain the highest standard of sexual and reproductive health, free of discrimination, coercion and violence.[3] CEDAW obliges States to eliminate discrimination against women in health care, including family planning,

[1]Constitution of India, Article 21.

[2]Maneka Gandhi v. Union of India, (1978) 1 SCC 248.

[3]United Nations, Programme of Action of the International Conference on Population and Development (Cairo, 1994), para 7.3 (defining reproductive rights as resting on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so).

and secures equal rights to decide on the number and spacing of children;[4] and the Committee on Economic, Social and Cultural Rights has read into Article 12 of the ICESCR a right to sexual and reproductive health whose elements- availability, accessibility, acceptability and quality- furnish a usable template for judicial review of health systems.[5] India is party to these instruments, and Indian courts have repeatedly used them as interpretive aids to Article 21.

2.2 The Constitutional Triad

Domestically, reproductive rights stand at the intersection of three guarantees. Liberty supplies the core: the freedom to make decisions about one's own body. Equality supplies the critique: because the burdens of reproduction, contraception and its failure fall on women, any regime that constrains reproductive choice is presumptively a regime of sex discrimination, engaging Articles 14 and 15. Dignity supplies the register in which the modern cases speak: the recognition, articulated across *Puttaswamy*, *Navtej Singh Johar* and *Common Cause*, that decisional autonomy over intimate matters is what it means to be a person whom the Constitution respects.[6] In *Puttaswamy* itself, the nine- Judge Bench expressly located decisions about procreation within the protected zone of privacy, and thereby gave reproductive autonomy a foundation no longer dependent on legislative grace.[7]

3. The Jurisprudence of Reproductive Autonomy

The constitutional law of reproduction in India has been made almost entirely in the courtroom, and it has not been made in a straight line. Four streams of case law, developed at different times and in response to different provocations, together compose the jurisprudence: a foundational stream recognising reproductive choice itself as a facet of Article 21; a statutory-interpretive stream working upon the Medical Termination of Pregnancy Act and progressively enlarging the woman's place within it; an accountability stream disciplining the State's population-control apparatus and its maternal health obligations; and a regulatory stream responding to assisted reproduction and surrogacy. The streams do not always run in the same direction- the autonomy the Court celebrates in one line of cases coexists with the demographic paternalism it tolerates in another - and part of the analytical task of this Part is to hold the contradictions in view rather than smooth them over. The sub-sections that follow take the streams in turn, tracing in each the same underlying movement: the slow displacement of the State, the doctor and the family from the centre of the reproductive decision, and the emergence of the pregnant person as the constitutional protagonist.

[4]Convention on the Elimination of All Forms of Discrimination against Women, 1249 UNTS 13 (1979), Articles 12 and 16(1)(e); ratified by India in 1993 with declarations.

[5]Committee on Economic, Social and Cultural Rights, General Comment No. 22 (2016) on the Right to Sexual and Reproductive Health (Article 12 ICESCR), U.N. Doc. E/C.12/GC/22.

[6]Navtej Singh Johar v. Union of India, (2018) 10 SCC 791; Common Cause v. Union of India, (2018) 5 SCC 1 (dignity and decisional autonomy as facets of Article 21).

[7]Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1 (nine-Judge Bench).

3.1 The Foundational Recognition

The foundational modern statement is *Suchita Srivastava v. Chandigarh Administration*, where the State sought termination of the pregnancy of a woman with intellectual disability living in a State-run institution, against her wishes. The Supreme Court refused, holding that a woman's right to make reproductive choices- to carry a pregnancy to term as much as to terminate it- is a dimension of personal liberty under Article 21, and that the State's parens patriae jurisdiction could not be used to override the choice of a person capable of expressing one.[8] The decision is doubly significant: it framed reproductive choice as autonomy rather than welfare, and it did so in favour of continuing a pregnancy, demonstrating that the right protects the decision, not a particular outcome.

3.2 Abortion: From Physician's Defence to Women's Right- Almost

The Medical Termination of Pregnancy Act, 1971 was not enacted as a charter of rights. Drafted in the idiom of its time, it operates as an exception to the offences in the Penal Code, permitting termination when a registered medical practitioner- or, at later stages, two- forms an opinion in good faith that statutory grounds exist.[9] The pregnant woman's own assessment is legally relevant only as filtered through medical opinion. The 2021 Amendment liberalised the framework- extending the outer limit to twenty-four weeks for specified categories of women, substituting "any woman or her partner" for "any married woman or her husband" in the contraceptive-failure explanation, mandating confidentiality, and creating Medical Boards for terminations beyond twenty-four weeks on grounds of substantial foetal abnormality - but it did not alter the statute's basic architecture of medical gatekeeping.[10]

It fell to the Supreme Court to complete, interpretively, what the legislature had left half-done. In *X v. Principal Secretary*, a three-Judge Bench held that the benefit of Rule 3B - the categories of women eligible for termination between twenty and twenty-four weeks- extends to unmarried and single women whose relationship status has changed, reasoning that a classification confined to married women would perpetuate the stereotype that sexual activity, and therefore its consequences, belong only within marriage, and would violate Article 14. The Court went further on two fronts of lasting importance: it held that for the purposes of the MTP Act the meaning of rape includes marital rape, so that a wife made pregnant by a coercive husband is a survivor of sexual assault under the statute; and it read the mandatory reporting obligation under the POCSO Act harmoniously, permitting a minor's termination without disclosure of identity where the minor and guardian so request, so that fear of prosecution does not drive adolescents to unsafe abortion.[11] In a sequence of

[8]Suchita Srivastava v. Chandigarh Administration, (2009) 9 SCC 1.
[9]The Medical Termination of Pregnancy Act, 1971 (Act 34 of 1971).
[10]The Medical Termination of Pregnancy (Amendment) Act, 2021 (Act 8 of 2021); The Medical Termination of Pregnancy (Amendment) Rules, 2021, Rule 3B.
[11]X v. Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi, 2022 SCC OnLine SC 1321.

earlier orders, the Court had itself become an ad hoc abortion tribunal, permitting terminations beyond the then twenty-week ceiling in cases of severe foetal abnormality, and revealing in the process the cruelty of a rigid statutory limit that forces women into petitions rather than clinics.[12] In *Z v. State of Bihar*, the Court awarded compensation to an HIV-positive rape survivor whose termination was delayed into impossibility by institutional indifference - a reminder that the denial of a lawful abortion is a compensable constitutional wrong.[13] Most recently, the Court has reiterated that where the statutory conditions are met, the decisive voice is that of the pregnant person, whose consent and welfare are paramount.[14]

A comparative footnote sharpens the picture. The overruling of *Roe v. Wade* in the United States has returned abortion there to legislative contest;[15] Indian law, by contrast, has moved in the opposite direction, from statute toward constitutional right- yet without ever quite declaring an unqualified right to abortion, and while leaving the criminal prohibition intact as the default. The Indian position is thus more secure than the American but less candid than it appears: the right exists at the sufferance of medical opinion.

3.3 Sterilisation, Population Control and the Body of the poor

The darker lineage of Indian reproductive law is demographic. The excesses of the Emergency's sterilisation drives left a constitutional memory, but the practice of target-driven, camp-based sterilisation - overwhelmingly of poor rural women - persisted. In *Ramakant Rai* the Supreme Court issued directions on consent, competence and audit in sterilisation procedures,[16] and in *Devika Biswas v. Union of India*, after documented deaths in mass camps, the Court held that such camps violate Articles 14 and 21, directed their discontinuation, and - crucially - named reproductive rights of both men and women as encompassing health, dignity and the freedom to make informed choice, condemning the informal targets that converted family planning into coercion of the poorest.[17] Yet the demographic impulse survives elsewhere in the law: *Javed v. State of Haryana* upheld the disqualification of persons with more than two living children from panchayat office, subordinating reproductive choice to a State interest in small families,[18] over the more autonomy-respecting note struck earlier by the Andhra Pradesh High Court in *B.K. Parthasarathi*, which had recognised procreation as an aspect of privacy even while sustaining the provision.[19] The tension between Devika Biswas and Javed- between

[12]Meera Santosh Pal v. Union of India, (2017) 3 SCC 462; Sarmishtha Chakraborty v. Union of India, (2018) 13 SCC 339.
[13]Z v. State of Bihar, (2018) 11 SCC 572.
[14]A (Mother of X) v. State of Maharashtra, 2024 SCC OnLine SC 835 (reiterating that the pregnant person's consent and welfare are paramount in termination decisions).
[15]Roe v. Wade, 410 U.S. 113 (1973), overruled in Dobbs v. Jackson Women's Health Organization, 597 U.S. 215 (2022).
[16]Ramakant Rai v. Union of India, (2009) 16 SCC 565.
[17]Devika Biswas v. Union of India, (2016) 10 SCC 726.
[18]Javed v. State of Haryana, (2003) 8 SCC 369.
[19]B.K. Parthasarathi v. Government of Andhra Pradesh, AIR 2000 AP 156.

reproduction as right and reproduction as policy variable- remains unresolved, and proposals for coercive two-child laws periodically revive it.

3.4 Maternal Health as a Justiciable Right

Reproductive rights are hollow where childbirth kills. In *Laxmi Mandal*, the Delhi High Court connected two deaths - of destitute women denied maternal health services to which schemes entitled them- to Article 21, holding that the denial of benefits under maternal health programmes to below-poverty-line women violates the rights to health and life, and awarding compensation.[20] The decision translated the international framework of availability and accessibility into enforceable administrative duty, and stands at the head of a body of High Court jurisprudence treating preventable maternal death as constitutional failure rather than misfortune. Article 42's directive on maternity relief and the Maternity Benefit Act supply the labour-law complement, though their protection remains confined largely to the formal sector - a serious equity gap in an economy where most working women are informal workers.[21]

3.5 Surrogacy and Assisted Reproductive: Autonomy Regulated

The newest chapter is technological. After *Baby Manji Yamada* exposed the legal vacuum surrounding commercial surrogacy,[22] Parliament enacted the Surrogacy (Regulation) Act, 2021 and the Assisted Reproductive Technology (Regulation) Act, 2021, prohibiting commercial surrogacy in favour of an altruistic model and confining access, in the main, to married heterosexual couples and specified categories of women.[23] The statutes answer real exploitation concerns, but their eligibility architecture sits uneasily with the constitutional jurisprudence this paper has traced: if procreational decision-making is a facet of privacy and dignity for every person, exclusions keyed to marital status and sexual orientation demand a justification more compelling than legislative morality, particularly after Navtej Singh Johar. Petitions challenging these exclusions, and the blanket ban on compensated surrogacy, are working their way through the courts, and the outcome will test whether the autonomy principle extends to building families and not only to avoiding them.[24]

Two clarifications of the consent architecture deserve separate emphasis. The first is that the MTP Act requires the consent of the pregnant woman alone: no provision conditions termination on the concurrence of the husband or partner, and the Punjab and Haryana High Court has expressly held that a husband cannot maintain an action against his wife or her doctors for a termination to which she consented - the decision is hers.[25] The second is the treatment of persons with disability. Suchita Srivastava distinguished between mental illness

[20]Laxmi Mandal v. Deen Dayal Harinagar Hospital, 172 (2010) DLT 9 (Delhi High Court).
[21]Constitution of India, Article 42; The Maternity Benefit Act, 1961 (Act 53 of 1961), as amended in 2017.
[22]Baby Manji Yamada v. Union of India, (2008) 13 SCC 518.
[23]The Surrogacy (Regulation) Act, 2021 (Act 47 of 2021).
[24]The Assisted Reproductive Technology (Regulation) Act, 2021 (Act 42 of 2021).
[25]Dr. Mangla Dogra v. Anil Kumar Malhotra, 2011 SCC OnLine P&H 16646 (husband's consent not a statutory requirement for termination under the MTP Act).

and intellectual disability, insisting that the latter does not extinguish the capacity to choose; the enduring principle is that substituted decision-making is the exception, supported decision-making the rule, and the shortcut of institutional convenience is constitutionally foreclosed. Both clarifications point the same way: the circle of persons whose veto the law recognises over a pregnancy has been progressively narrowed toward one.

3.6 Beyond the Binary: Gender Identity and Reproductive Rights

A constitutional account written in 2026 cannot assume that the reproductive rights-holder is always a cisgender married woman. Since *NALSA v. Union of India* recognised the right to self-identification of gender as part of Articles 14, 19 and 21,[26] and Navtej Singh Johar decriminalised consensual same-sex intimacy, the reproductive aspirations of transgender persons and queer couples have acquired constitutional weight. Yet the statutory order has not kept pace: the surrogacy and ART legislation of 2021 defines eligibility in terms that exclude transgender persons, same-sex couples and single men altogether, and the MTP framework is drafted in the vocabulary of "woman" even though transgender men and non-binary persons may be pregnant and require its protection. X v. Principal Secretary gestured toward inclusivity by noting that its use of "woman" includes persons other than cisgender women who may require access to safe termination. Translating that gesture into statutory text - and testing the 2021 exclusions against Articles 14, 15 and 21- is among the clearest items of unfinished business in this field.

4. The Central Critique: Autonomy Administered by Gatekeepers

Across these streams a single structural feature recurs: the interposition of a gatekeeper between the right-holder and the right. Under the MTP Act the gatekeeper is the registered medical practitioner, whose good-faith opinion - not the woman's decision - is the legal trigger; beyond twenty-four weeks it is a Medical Board, whose composition, delays and conservatism have been repeatedly criticised even by the courts that must rely on them.[27] In sterilisation it was the camp and the target; in surrogacy it is the certifying authority and the eligibility certificate; for the adolescent it is the mandatory reporting regime that converts a health-seeking act into a criminal complaint.[28] Gatekeeping is not always illegitimate - the State has real interests in safety, in preventing sex-selective abortion under the PCPNDT Act, and in protecting persons whose capacity is genuinely in doubt[29] - but a regime in which every exercise of the right passes through another's discretion is a regime in which the right is systematically fragile for precisely those with least bargaining power: the poor, the rural,

[26]National Legal Services Authority v. Union of India, (2014) 5 SCC 438.

[27]The Medical Termination of Pregnancy Act, 1971, Sections 3(2), 3(4) and 5; the Amendment of 2021 substitutes Medical Boards for pregnancies beyond twenty-four weeks in cases of substantial foetal abnormality.

[28]The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), Sections 19 and 21; see X v. Principal Secretary (n 10) on reading the reporting obligation harmoniously with the minor's and guardian's request for confidentiality in termination cases.

[29]The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (Act 57 of 1994); Voluntary Health Association of Punjab v. Union of India, (2013) 4 SCC 1.

the unmarried, the disabled, the imprisoned.[30] The National Family Health Survey's consistent findings- female sterilisation as the overwhelmingly dominant contraceptive method, substantial unmet need for spacing methods - confirm that the burden of the entire reproductive order continues to rest on women's bodies.[31]

The unresolved frontier is marital rape. The Delhi High Court's split verdict on the constitutionality of the exception in the Penal Code- carried into the new penal statute - has placed before the Supreme Court the question X v. Principal Secretary answered only for abortion law: whether a wife's sexual and reproductive autonomy survives marriage as a constitutional matter, not merely a statutory one.[32] It is difficult to see how the logic of Puttaswamy and X can stop at the threshold of the matrimonial home; the coherence of the entire jurisprudence awaits that decision.

5. Suggestions

Six reforms would align the statutory order with the constitutional one. (i) *Rights-based recasting of the MTP Act*: termination on request up to a defined gestational limit, with the pregnant person's decision - not medical opinion - as the legal trigger, and medical involvement confined to safety. (ii) *Time-bound, reviewable Medical Boards*: statutory decision deadlines measured in days, reasoned orders, the presence of a rights-trained member, and deemed permission on default. (iii) *Adolescent-sensitive harmonisation*: statutory codification of the confidentiality accommodation crafted in X, decriminalising consensual adolescent relationships within a close-in-age window so that health care is not deterred by prosecution. (iv) *Quality and consent infrastructure in family planning*: full implementation of Devika Biswas, abolition of informal targets, expansion of male and spacing methods, and grievance-linked compensation for sterilisation failure and injury. (v) *Equality audit of surrogacy and ART law*: eligibility de-linked from marital status and orientation, and a regulated compensation model that protects surrogates through contract standards, insurance and independent representation rather than through prohibition. (vi) *Justiciable maternal health entitlements*: a statutory guarantee of emergency obstetric care and referral transport, with Laxmi Mandal-style compensation as the default remedy for denial, extending maternity protection to informal workers.

6. Conclusion

The constitutional career of reproductive rights in India is a story of interpretive courage working upon reluctant statutes. Article 21, which says nothing of reproduction, has been made to say almost everything: that the choice to bear or not to bear a child belongs to the

[30]High Court on its Own Motion v. State of Maharashtra, 2016 SCC OnLine Bom 8426 (directions on access to termination services for women prisoners).

[31]National Family Health Survey-5 (2019–21), Ministry of Health and Family Welfare (indicators on unmet need for contraception, institutional deliveries and female sterilisation as the dominant contraceptive method); figures to be updated from the latest round at the time of submission.

[32]RIT Foundation v. Union of India, 2022 SCC OnLine Del 1404 (split verdict on the constitutionality of the marital rape exception; appeal pending before the Supreme Court).

person who must bear it; that the State may not sterilise its way to demographic targets over the bodies of poor women; that an unmarried woman stands equal to a married one before the abortion law; that a preventable maternal death is a constitutional event. Yet the statutes through which these rights must be lived - the MTP Act's medical gatekeeping, the surrogacy law's status-based exclusions, the penal law's marital rape exception - still speak an older language, of exception, permission and control.

The task ahead is therefore legislative as much as judicial: to redesign the statutory architecture so that the pregnant person stands at its centre, with the physician as adviser rather than arbiter, the Board as safeguard rather than obstacle, and the State as guarantor of services rather than custodian of wombs. When that translation is complete, Indian law will have kept the promise Puttaswamy made - that the Constitution protects not only life, but the authorship of one's own.