



# The Indian Journal for Research in Law and Management

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Editor-in-Chief – Prof. (Dr.) Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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## WOMEN'S RIGHT TO HER BODILY AUTONOMY

The concept of women's right to bodily autonomy is core principle of human right and gender equality. It affirms that an inalienable right is enshrined to every individual to make decisions on their bodies, including reproductive choices without hindering from others including government or any family members.

Bodily autonomy includes various elements included contraceptive access, consent to or refuse medical treatment, abortion, maternal health care. Without this autonomy, women may be stripped of their power over their own reproductive health, face challenges to their physical and mental well-being, and experience violations of their basic human rights.

Efforts to advance and safeguard women's right to bodily autonomy include legislating for policy reforms, access to all aspects of healthcare services, sexual and reproductive rights, and harmful social norm factors and practices that sabotage over women's autonomy.

However, we see the progress in many places, women's right to bodily autonomy continues to face challenges and threats, which includes constraining laws and policies, stigma discrimination, and lack of access to essential healthcare services. Advocating for the right will be the most important aspect of fostering equality and rights for all genders.

### ABORTION LAW IN INDIA

In September 2021, a new law called the Medical Termination of Pregnancy (Amendment) Act of 2021(MTP) took effect. This law increased the maximum time limit for when a woman can have an abortion from 20 weeks to 24 weeks into her pregnancy. While this amendment did not declare abortion as an absolute right for pregnant individuals, it was seen as a positive move towards modernizing India's abortion laws. The change was prompted by the courts in India receiving requests from numerous women seeking safe medical assistance for terminating pregnancies that had exceeded the previous legal time limit.

The Supreme Court granted a woman permission to terminate her 22-week pregnancy in a landmark decision in the case *X v Principal Secretary*<sup>1</sup> emphasizing a woman's right to bodily autonomy and choice. However, recent setbacks in 2023 have highlighted anti-reproductive rights sentiments in India. In a subsequent case<sup>2</sup>, the Court prioritized concerns for foetal viability over the petitioner's reproductive autonomy, denying her request for an abortion despite mental health issues and fulfilling legal requirements. This decision raised questions about the criteria for determining a threat to a woman's life and seemed to backtrack on the earlier recognition of a woman's role as the ultimate decision-maker in reproductive choices.

Section 3(2) (b) Medical Termination of Pregnancy Act of 2021 allows the pregnant woman to abort the foetus if its within 24 weeks in cases if it threatens the woman's life or causing injury to mothers emotional and bodily wellbeing. However, 24-week pregnancies overlook in such rape adolescent due to reasons like lack of awareness, social stigma and immaturity.

Rajasthan High Court in a recent case <sup>3</sup>,reaffirmed in determining a 11year old's plea for a 31week rape related pregnancy. Referring to the progressive stage of the pregnancy and a fully developed entitlement of foetus' to life under Article 21 of the Indian Constitution, the court denied on scrutiny the factors that contribute to the delay. Despite addressing on the impact of rape victim, the court prioritised on the foetus right over the victim's right that protected under Article 21. In this case the bench did not took the initiative to discover the cause of delay instead the court strictly comply legal limit set by the MTP which resulting in the denial of abortion.

In *R & Anr v. State of Haryana* <sup>4</sup>, Punjab and Haryana High Court asserted that abortion should be granted beyond the legislative limit in situations such as rape. In *XYZ v. State of Gujarat*<sup>5</sup> highlighted that a woman to become a mother as a result of rape violates constitutional freedoms. Supreme Court has questioned the reliability of compelled rape related pregnancies passed by the Rajasthan High Court judgment which stands contrary wherein the Court held

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<sup>1</sup> SLP ( C ) No.12612 of 2022

<sup>2</sup> X v. Union of India WP(c)1137of 2023

<sup>3</sup> Indian Express website ,”Fully Developed Foetus had right to Life” Rajasthan High Court has turned down a 11 year old ‘rape victim’s abortion plea,[https://indianexpress.com/article/cities/jaipur/rajasthan-hc-turns-down-11-yr-old-rape-victims-abortion-plea-9119572/\(27.March 2024](https://indianexpress.com/article/cities/jaipur/rajasthan-hc-turns-down-11-yr-old-rape-victims-abortion-plea-9119572/(27.March 2024)

<sup>4</sup> CWP 6733 of 2016

<sup>5</sup> R /SCR.A /15913 of 2023

that “a woman’s right to choose her reproductive is a fundamental right and her right to terminate the pregnancy stands precedence over the foetus right to life”.

The recent judgements emphasize the need for expanding legal frameworks and compassionate judicial approach to ensure the abortion rights of minor victims are to be emphasised upon irrespective of delays in seeking judicial permission.<sup>6</sup>

## WOMEN’S CONVENTION

The International Conference on Population and Development (ICPD) held in Cairo in 1994 signified a pivotal shift in approaching human reproduction, health, empowerment of women, as well as in meeting the individual needs.

The ICPD adopted the approach towards women reproductive health and rights. The approach emphasized the women’s personal autonomy to their reproductive and sexual well-being rather than considering woman a matter of reproductive capacity for the object of population control. The ICPD thus deliberated on personal reproductive autonomy and gender quality as key objectives in the advancement of reproductive health and population programs.<sup>7</sup>

The ICPD includes the “right to determine reproduction devoid of discrimination, coercion and violence, as articulated in human rights documents”. They also adopted a new concept, the term “reproductive rights” which had already adopted in certain human rights agreements.

The most prominent agreement papers include Universal Declaration of Human Rights and the Declaration and Programme of Action of the World Conference on Human Rights, Vienna, June 1993. Article 12 of the International Covenant on Economic, Social and Cultural Rights (1964) (ICESCR) includes entitlement of all individuals to experience the highest achievable level of physical and mental wellbeing.

International Covenant on Civil and Political rights (1964) (ICCPR) also recognised that health-related human rights come within the realm of fundamental freedoms. Furthermore, Convention on the Elimination of All Forms of Discrimination Against Women (1978)

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<sup>6</sup> Aryan Kuman and Rean Shah, “Empathy and Justice :Abortion Rights for minor rape victims in India” ,Oxford Human Rights Hub ,(2024)

<sup>7</sup> Shalev Carmel , “The Right To Sexual and Reproductive Health -the ICPD and the Convention on the Elimination of all forms of Discrimination against Women” (March 18,1998).

(CEDAW) referred as the Women's convention particularly applicable to sexual and reproductive rights.

The struggle for women's rights is integral to the progression of human rights. Advocates underscore the importance of considering reproductive health comprehensively, and promoting women-centred approach and giving much priority to the women's autonomy. Acknowledging reproductive choice as an essential right is crucial, as it serves as a cornerstone for women to participate actively in civil society and access other fundamental human rights.