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SHIELDING THE FUTURE – EVALUATING LEGAL PROTECTION FOR WOMEN & EVOLVING PARADIGM OF PROGENITIVE LAWS IN INDIA

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ABSTRACT

This paper evaluates India's evolving reproductive and progenitive legal framework, examining the transition of reproductive rights from state-driven population control targets into non-negotiable fundamental human rights anchored under Article 21 of Constitution of India and International Human Right Conventions. It articulates a conceptual model of Progenitive Autonomy built upon four core pillars: bodily integrity, decisional privacy, healthcare equity, and technological self-determination through Assisted Reproductive Technologies (ART). Through a comparative analysis against global paradigms—including constitutional abortion guarantees in France, post-Dobbs retrenchment in the United States, and UN SDGs—the study highlights how domestic statutory protections interlock with customary international law. However, a critical gap remains between progressive judicial rulings on bodily autonomy and rigid statutory frameworks. Laws like the 2021 MTP, Surrogacy, and ART Acts perpetuate medical restrictions, third-party consent hurdles, and the exclusion of single individuals, live-in partners, and the LGBTQ+ community. Additionally, the mandatory "altruistic surrogacy" model risks subjecting women to unpaid, emotionally coercive labor without resolving severe rural healthcare deficits or unsafe abortions. Ultimately, the study advocates for a rights-based overhaul that replaces paternalistic regulation with absolute bodily self-determination for all marginalized populations.

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LIST OF ABBREVIATIONS

- i. *CEDAW: Convention on the Elimination of Discrimination Against Women*
- ii. *UDHR: Universal Declaration of Human Rights*
- iii. *ART: Assisted Reproductive Technology*
- iv. *IVF: In Vitro Fertilisation*
- v. *LGBTQ+: Lesbian, Gay, Bisexual, Transgender, Queer and others*
- vi. *MTP: Medical Termination of Pregnancy*
- vii. *PCPNDT: Pre-Conception and Pre-Natal Diagnostic Techniques*
- viii. *SDG: Sustainable development goal*
- ix. *ICCPR: International Covenant on Civil and Political Rights*
- x. *MMR: Maternal Mortality Ratio*
- xi. *NFHS: National Family Health survey*
- xii. *IPV: Intimate Partner Violence*
- xiii. *POSH: Prevention of Sexual Harassment*
- xiv. *RMPs: Registered Medical Practitioners*
- xv. *DV: Domestic Violence*
- xvi. *ICPD: International Conference on Population and Development*
- xvii. *DPA: Dowry Prohibition Act*
- xviii. *BNS: Bhartiya Nyaya Sanhita*
- xix. *IPC: Indian Penal code*
- xx. *E.g.: Example*

CHAPTER-1: INTRODUCTION

1.1: CONCEPTUAL FRAMEWORK TO UNDERSTANDING PROGENITIVE AND REPRODUCTIVE AUTONOMY

The concept of **Progenitive Rights**—commonly referred to as **Reproductive Rights**—centers on the foundational *Human Right* of individuals and couples to freely and responsibly determine the number, spacing, and timing of their children, as well as to possess the information and resources necessary to do so. **Reproductive Autonomy** is a transformative process and at its core facet, it encompasses bodily autonomy, freedom from reproductive coercion or forced sterilization, the right to access high-quality healthcare, and the right to make decisions regarding procreation or abstention without discrimination or free from violence or state overreach. When concept expanded into **Progenitive Autonomy**, it encompasses the broader right to procreate or abstain from procreation, incorporating modern advancements in artificial reproductive procedures. Together, these frameworks shift the socio-legal perspective of women's health from simple medical coverage to a fundamental pillar of human dignity and agency. Historically viewed through the lens of population control or state property, modern jurisprudence treats reproductive freedom as a non-negotiable extension of personal liberty, dignity, and privacy.

Reproduction is a foundational biological life cycle that ensures the continuance of a species through sexual or asexual processes. In human society, the legal protections surrounding this process translate into reproductive and progenitive rights—traditionally recognized as fundamental women's rights encompassing abortion, contraception, fertility treatments, and healthcare access. Globally, the statutory approach to these rights varies drastically: 26 countries completely ban abortion, 39 permit it only to save the woman's life under strict medical supervision, 66 allow it without restrictions within early gestational limits (typically two to three months), and only 14 countries, including India, Britain, Finland, and Japan, fully empower women to choose abortion based on their health perspectives.¹

¹ <https://pmc.ncbi.nlm.nih.gov/articles/PMC3673257/>

Modern legal paradigm treats reproduction as a Fundamental Human Right rather than a tool for population control. By securing Progenitive Autonomy, the law directly protects a woman's social, economic, and political equality. This rights-based framework serves as a vital counterweight to patriarchal traditions, ensuring legal systems shield individual liberty instead of enforcing outdated gender roles.

CORE ELEMENTS OF PROGENITIVE AUTONOMY:

- **Bodily Integrity:** The absolute right of an individual to exercise complete control over their own body, free from non-consensual medical intervention or state-mandated reproductive requirements.
- **Decisional-Privacy:** The personal liberty to make choices regarding pregnancy, contraception, and sterilization without societal surveillance, community pressure, or legal penalties.
- **Access and Equity:** The statutory right to access comprehensive healthcare, accurate reproductive education, and safe medical procedures regardless of socioeconomic status or geographical location.
- **Technological Self-Determination:** The liberty to utilize or withhold modern medical advancements—such as in vitro fertilization (IVF), pre-implantation genetic testing, and surrogacy—to build a family on one's own terms.²

Over the past decade, Indian courts have progressively championed these protections, establishing them as "Absolute Survival Rights" rooted in human dignity and fundamental freedoms. By securing this decision-making autonomy, the Indian legal system actively prevents the exploitation of women, granting them the ultimate agency to navigate their health, lifestyle, and futures single-handedly. Reproductive Autonomy functions under *Article 21 of the Indian Constitution*, ensuring a woman's right to control her fertility and bodily integrity free from state overreach or societal coercion, contemporary this concept has expanded into Progenitive Autonomy, encompassing both traditional family planning and

² <https://www.pib.gov.in/PressReleaseIframePage.aspx?PRID=1603649®=48&lang=2>

advanced access to *Assisted Reproductive Technologies (ART)*.³ Globally, this framework is anchored by international human rights instruments like CEDAW and the UDHR, which mandate that signatory nations eliminate gender-based discrimination in healthcare.

1.2: STATEMENT OF PROBLEM

The statutory shift toward strictly altruistic surrogacy has sparked intense constitutional debates regarding the *exclusion of single individuals, live-in couples, and the LGBTQ+ community*.⁴ Ultimately, achieving true reproductive justice in India requires bridging the gap between progressive judicial text and reality, ensuring that legal protections dismantle patriarchal barriers; narrows the urban-rural healthcare divide, and shield vulnerable women from bioethical exploitation.

Furthermore, by institutionalizing an "altruistic-only" prototype, the statutory framework inadvertently compromises the reproductive autonomy of vulnerable women by driving reproductive labor into unpaid, emotionally coercive domestic spheres, thereby failing to dismantle patriarchal barriers, bridge the urban-rural healthcare divide, or shield women from bioethical exploitation. Consequently, the core problem this research addresses is the systemic failure of the current statutory regime to recognize progenitive and reproductive autonomy as inherent, individualized fundamental rights, choosing instead to treat reproduction as a state-regulated institutional privilege that subverts constitutional guarantees of equality, liberty, and reproductive justice for marginalized populations.

1.3: OBJECTIVE OF RESEARCH

The core objective of this research is to evaluate India's ongoing reproductive legislative framework through the lens of a "Conceptual Framework to Understanding Progenitive and Reproductive Autonomy" to expose how contemporary statutes break-down to recognize reproduction as an inherent, individual fundamental right. Specifically, this study critiques how the Surrogacy (Regulation) Act, 2021 conceptually shrinks personal autonomy by legally excluding single individuals, live-in couples, and the LGBTQ+ community, thereby shifting the definition of family-making from an expression of personal liberty to a state-

³ <https://www.epw.in/engage/article/womb-ones-own-privacy-and-reproductive-rights>

⁴ <file:///C:/Users/91856/Downloads/05+Surrogacy+in+India+-+ABDC+-+JIER.pdf>

controlled institution reserved exclusively for cis-gender, hetero-sexual married couples. Beside this research evaluates the socioeconomic paradox of "altruistic surrogacy" which demonstrates that by banning commercial surrogacy under the guise of protection, the law undermines a woman's reproductive labor and autonomy—potentially forcing her into unpaid, emotionally coercive family dynamics—while systematically failing to address the underlying urban-rural healthcare gaps and socioeconomic vulnerabilities that drive bioethical exploitation. Ultimately, this study highlights a critical execution gap which demonstrates that while the judiciary has conceptualized a highly inclusive framework for reproductive justice, the statutory reality remains deeply patriarchal and exclusionary, failing to operationalize these constitutional guarantees for marginalized populations.

CHAPTER-2: NAVIGATING TRANS-BOUNDARY REGULATIONS THROUGH NATIONAL LAWS AND GLOBAL ALLIANCES

2.1: CROSS-BORDER COMPARISON AROUND THE GLOBAL LANDSCAPE OF REPRODUCTIVE FREEDOM

The global landscape of reproductive governance is increasingly defined by jurisdictional friction and stratified healthcare access, where an individual's fundamental autonomy is dictated by their geographic location, legal status, and socio-economic wealth. When restrictive national or state policies limit reproductive healthcare locally, it forces a reliance on trans-boundary mobility, effectively transforming a elementary human right into a commodity available only to those who can afford the financial and legal costs of cross-border travel. This creates a deeply unequal system where marginalized populations face forced pregnancies or legal liabilities, while affluent individuals successfully circumvent domestic restrictions. Ultimately, across nations like the United States, China, and the United Kingdom, reproductive governance acts as a tool for state-level priorities—whether driven by ideological polarization, demographic anxieties over aging workforces, or public health mandates—meaning individual bodily self-determination remains constantly vulnerable to the shifting economic, legal, and political agendas of the state.⁵

⁵ <https://www.cambridge.org/core/elements/incompatibility-of-rights/F0FF77229488EABE18EFC8DE9F39CA7C>

The previous landscape of reproductive rights in the *United States of America* highlights a critical tension between fundamental human rights and shifting legal frameworks. While current federal and state policies—such as the "Fetal Heartbeat Bill" in Texas—have severely restricted abortion access, advocacy continues to frame reproductive freedom as essential to gender equality, health equity, and socio-economic autonomy.⁶ The ongoing national debate balances the push for robust, non-discriminatory healthcare provisions against growing legislative barriers to safe medical access.

People's Republic of China current three-child policy reflects a strategic shift towards people-centric reproductive governance, balancing demographic sustainability with individual well-being.⁷ As a developing tech power, the nation increasingly aligns its reproductive health frameworks with the prevention of maternal mortality and the enhancement of women's healthcare.

The *United Kingdom* regulates reproductive rights through a proactive public health framework designed to mitigate unintended youth pregnancies and elevate standards of living. While abortion historically sat within criminal statutes, modern legal frameworks—including the Abortion Act and subsequent reforms—ensure the procedure is accessible as a regulated medical provision with healthcare practitioner approval. By blending clinical safeguarding with robust sexual education, the state seeks to protect individual well-being while fostering a productive, educated population. These evolving policies aim to harmonize national growth with the personal freedom to cultivate healthy, thriving families.

⁶ <https://www.jstor.org/stable/45285751>

⁷ <https://pmc.ncbi.nlm.nih.gov/articles/PMC12488160/>

2.2: THE ENFORCEMENT AND PROTECTION OF REPRODUCTIVE RIGHTS VARY DRASTICALLY ACROSS GLOBAL JURISDICTIONS

JURISDICTION	PRIMARY LEGAL STATUS & PROTECTION SYSTEMS
Progressive Frameworks (e.g., France, European Union)	France explicitly enshrined the right to abortion within its national constitution in 2024. Most Western European countries guarantee universal access to state-funded contraception and safe abortion care as baseline healthcare rights.
Restrictive / Regressive Paradigms (e.g., United States post-Dobbs)	Following the U.S. Supreme Court's 2022 decision in <i>Dobbs v. Jackson Women's Health Organization</i> , the constitutional right to abortion was overturned. Jurisdiction reverted to individual states, resulting in near-total abortion bans and criminal penalties for healthcare providers in numerous states.
Conditional Frameworks (e.g., Latin America)	A "Green Wave" has swept parts of Latin America (e.g., Argentina, Colombia, Mexico), decriminalizing abortion through landmark high court rulings, though socioeconomic barriers to actual healthcare access persist.

Reproductive rights directly shape a society's socio-economic trajectory and health equity. Whenever governments manipulate reproductive access for macroeconomic goals, it creates systemic volatility rather than growth. Restricting bodily autonomy to force population growth backfires by lowering female workforce participation and straining social safety nets. Furthermore, wealth-based barriers to access trap marginalized communities in poverty and drive up public healthcare costs.⁸ Ultimately, sustainable economic prosperity cannot be forced; it relies fundamentally on a healthy, autonomous, and equitably supported workforce.

⁸ <https://nationalhealthcouncil.org/blog/limited-access-poverty-and-barriers-to-accessible-health-care/>

2.3: GLOBAL STATUTORY FRAMEWORK IN SUPPORT WITH INTERNATIONAL CONVENTIONS SAFEGUARDING REPRODUCTIVE HEALTH

The contemporary global discourse on reproductive governance is trapped in a profound ideological friction between state demographic engineering, public health utility, and individual bodily autonomy. Far from being a private medical concern, reproductive choice functions as a key lever through which sovereign states attempt to manage socio-economic trajectories, labor market productivity, and demographic profiles. When states restrict access to reproductive healthcare, they do not eliminate demand; rather, they transform a fundamental human right into a stratified commodity. The domestic protection of reproductive rights does not exist in a statutory vacuum; it is anchored in a comprehensive matrix of multilateral treaties, covenants, and consensus documents that collectively place reproductive autonomy under the umbrella of *jus cogens* and customary international law.⁹ Reproductive rights are codified across several major international human rights treaties and declarations; which are following:

- **The International Conference on Population and Development (ICPD, 1994):** The normative framework shifted from population control to individual empowerment during the 1994, in Cairo,¹⁰ marked a paradigm shift by explicitly defining "reproductive health" as a state of complete physical, mental, and social well-being in all matters by moving the global focus away from state-driven population targets toward individual women's rights and reproductive self-determination.
- **The Beijing Declaration and Platform for Action (1995):** The ICPD shift was reinforced by the *Fourth World Conference on Women (Beijing, 1995)*, which affirmed that the human rights of women include their right to control and decide freely and responsibly on matters related to their sexuality, reproductive health, free of coercion, discrimination, and violence. This showcase as a global roadmap for gender equality that first institutionalized mandate for workplace protection laws (like the POSH Act).¹¹

⁹ <https://asef.org/wp-content/uploads/2020/10/ASEF-Outlook-Report-2016-2017-Volume-2.pdf>

¹⁰

https://www.un.org/development/desa/pd/sites/www.un.org.development.desa.pd/files/files/documents/2020/Jan/un_1995_programme_of_action_adopted_at_the_international_conference_on_population_and_development_cairo_5-13_sept._1994.pdf

¹¹ <https://invictus.in/promoting-gender-equality-in-the-workplace-through-posh-act/>

- **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 1979):** By the authority of *CEDAW General Recommendations No. 19 and 35*, structural barriers to women's health access, family planning education, and non-discrimination are recognized not merely as policy failures, but as direct violations of fundamental human rights.¹² Because these international milestones explicitly codify gender-based violence as a systemic form of discrimination, any state actions or legislative restrictions that deny safe reproductive healthcare or compromise bodily self-determination constitute a form of institutionalized gender-based violence under customary international law.

- **UDHR & ICCPR:** International human rights agreements protect your right to make choices about your own body, health, and family. The *UDHR (Article 12-Right to Privacy & Article 16-Right to Family)* and the *ICCPR (Article 6-Right to Life, Article 17- Right to Privacy and Autonomy & Article 23- Protection of Family¹³)* build a strong foundation that safeguards individual security, personal privacy, and health against forced medical interventions. When combined with global treaties specifically focused on reproductive health, these laws ensure that decisions about having children and accessing healthcare remain a personal liberty, free from unfair state control or discrimination.

- **Sustainable Development Goals (SDGs):** Global health and gender equality frameworks establish structural benchmarks that bind reproductive safety directly to human dignity, free from state coercion or structural exposure to violence and SDG Target 3.1 & 5.2 fits to promote the agenda of protection and promotion of development of human without gender bias.
 - *SDG Goal 3.1 (Maternal Health Equity):* The goal aims to reduce global MMR to less than 70 per 100,000 live births by 2030 which creates an international obligation to bridge urban-rural healthcare divides, improve medical infrastructure, and prevent the exploitation of marginalized women.

¹² <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-recommendation-no-35-2017-gender-based>

¹³ <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

- *SDG Goal 5.2 (Elimination of Gender-Based Violence)*: This targets the total elimination of all forms of violence against all women and girls in public and private spheres, also explicitly classifies the commodification or emotional coercion of women's reproductive labor as a violation of physical and psychological security.

Under these international frameworks, state actions or legislative omissions that deny safe reproductive healthcare, mandate compulsory procedures, or compromise bodily self-determination constitute forms of institutionalized, state-sanctioned gender-based violence under customary international law.

2.4: THE DOMESTIC LANDSCAPE OF REPRODUCTIVE RIGHTS AND PROTECTION'S IN INDIA

Article 51(c) of the Indian Constitution mandates that the state foster respect for international law and treaty obligations, serving as a bridge to integrate global human rights standards into domestic reproductive healthcare frameworks.¹⁴ By signatory to international treaties like CEDAW and the ICCPR, India committed to protecting bodily autonomy and reproductive health as fundamental rights of women. The Indian judicial system frequently leverages Article 51(c) alongside Article 21 (Right to Life and Personal Liberty) to expand domestic protections, ensuring that laws like the Medical Termination of Pregnancy (MTP) Act evolve to safeguard a woman's right to safe abortion, dignity, and bodily integrity in alignment with international standards. In India, the parliamentary context of the protection of reproductive rights operates through a blend of constitutional safeguards and explicit statutory enactments:

- *Constitutional Guarantees*: The Indian judiciary has firmly integrated reproductive rights into the framework of constitutional freedoms by interpreting the Right to Life and Personal Liberty under Article 21 as inherently protecting a woman's reproductive choices, bodily integrity, and maternal survival. This right is further fortified by Articles 14 and 15, which guarantee equality and prohibit gender-based discrimination in healthcare access. A defining milestone in this jurisprudencia is the

¹⁴ <https://indiankanoon.org/doc/854952/>

erosion of distinct between marital status and reproductive autonomy, exemplified by the Apex Court of India ruling that exclude unmarried women from extended legal abortion timelines is unconstitutional.¹⁵ By doing so, the judiciary affirmed that the liberty to choose is an intrinsic component of personal freedom that belongs equally to all women.

- *Pre-Conception and Pre-Natal Diagnostic Techniques (PC&PNDT) Act, 1994*: It presents a critical regulatory challenges within India's reproductive freedom landscape, as it attempts to balance the eradication of female feticide as demands of modern health benefits. While the statute strictly prohibits prenatal sex determination to combat gender-biased sex selection, its stringent compliance mechanisms and severe criminal liabilities increasingly clash within clinical imperatives of fetal medicine.¹⁶ This friction restricts medical practitioners from seamlessly deploying advanced ultrasound and genetic testing, which are vital for detecting severe fetal abnormalities, particularly during critical windows for late-term therapeutic terminations.
- *The Medical Termination of Pregnancy (MTP) Amendment Act, 2021*: India's statutory framework for reproductive rights combines healthcare access with socio-economic protections through three key pillars:
 - Abortion Access: The MTP Amendment Act, 2021 extended legal abortion to 20 weeks (1 doctor), 24 weeks for vulnerable categories (including unmarried women), and past 24 weeks for severe fetal anomalies via Medical Boards.¹⁷
 - Maternity Protection: The Maternity Benefit Amendment Act, 2017 extended paid maternity leave to 26 weeks to secure women's employment continuity.
 - Divisional Disparity: A major structural gap remains as these enhanced benefits primarily safeguard the formal sector, leaving the majority of informal sector workers unprotected.

¹⁵ <https://frontline.thehindu.com/news/all-women-entitled-to-safe-legal-abortion-supreme-court/article65949871.ece>

¹⁶ <https://www.iasgyan.in/daily-current-affairs/pcpndt-act-supreme-court-calls-for-strict-enforcement-against-sex-selection>

¹⁷ <https://pmc.ncbi.nlm.nih.gov/articles/PMC8575235/>

- *Surrogacy (Regulation) Act, 2021*: Establishes a highly protective yet restrictive legal regime in India by balancing the prevention of exploitation with individual rights under these provisions:
 - Altruistic Mandate: Sections 3(ii) and 2(1)(b) strictly criminalise commercial surrogacy, permitting only "altruistic" arrangements where compensation to the surrogate is legally restricted to essential medical expenses and a 36-month health insurance policy.¹⁸
 - Exclusionary Restrictions: Section 4(iii) limits surrogacy access exclusively to legally married, heterosexual Indian couples and select single women (widowed or divorced), deliberately excluding single men, live-in partners, and the LGBTQ+ community.¹⁹
 - Autonomy vs. Protection: Section 4(iii)(b) safeguards vulnerable women from economic exploitation by restricting surrogacy to married women aged 25–35 with a biological child of their own, though critics argue this denies them financial autonomy over their reproductive labor.

- *Assisted Reproductive Technology (ART) Regulation Act, 2021*: Its operating in tandem with the Surrogacy Act, establishes the statutory framework for bio-genetic law in India,²⁰ balancing institutional regulation with individual rights through three core mechanisms:
 - Institutional Governance: The ART Regulation Act, 2021 enforces strict duties and mandatory licensing for all fertility clinics and banks through a centralized National Registry to curb unregulated commercialization.
 - Donor Protections: The statute secures donor rights by mandating strict age criteria, verifiable informed consent, and absolute confidentiality regarding the donor's genetic identity.
 - Constitutional Barriers: By restricting access to married couples and select single women, the law faces Article 14 and 21 challenges for denying single individuals and the LGBTQ+ community equal access to modern bio-genetic advancements

¹⁸ <https://www.legalrepublic.in/everyday-law/surrogacy-act-2021/>

¹⁹ <https://samarthivf.com/ivf-and-indian-law-what-lgbtq-individuals-and-couples-should-know/>

²⁰ <https://www.icmr.gov.in/the-assisted-reproductive-technology-regulation-act-2021-and-the-surrogacy-regulation-act-2021>

The structural shift in India's legal architecture reflects an evolving framework for institutional, workplace, and domestic safety, driven by the historic transition from the Indian Penal Code (IPC) to the Bharatiya Nyaya Sanhita (BNS) codifies stricter penal reforms, renaming former IPC Section 498A (marital cruelty) to Section 85 of the BNS. Additionally, Section 69 of the BNS explicitly criminalizes sexual exploitation through deceitful means or a false promise of marriage, carrying a penalty of up to 10 years of imprisonment.²¹ The protection of women within the domestic sphere relies on the critical evaluation and enforcement of the Dowry Prohibition Act, 1961 alongside the civil remedies provided under the Protection of Women from Domestic Violence Act, 2005, which together aim to dismantle systemic domestic abuse and economic coercion. The statutory matrix for professional environments marks an evolution from judicial activism to formal legislation, transitioning from the historic *Vishakha Guidelines* to the robust, compliance-driven framework of the *POSH Act, 2013* to guarantee safe working spaces.²²

2.5: STRUCTURING COMPARATIVE GLOBAL VS. INDIAN LEGAL CONTINUUM

Legal Pillar	Global Statistic / Metric	Indian Context / Data Point	Academic Critique For Thesis
Intimate Partner Violence (IPV)	30% - 31.6% lifetime prevalence globally.	35% lifetime prevalence (UN Women / NFHS-5).	India's protective net (BNS Sec 85 / DV Act) is broad, but structural and societal compliance falls behind the global average. ²³
Marital Rape Immunity	Only 77 countries explicitly criminalise it.	Exception retained under the BNS (except for minor wives).	India is out of alignment with modern global human rights metrics by maintaining absolute spousal immunity.

²¹ <https://www.indrajitdongre.com/insights/498a-under-bns-what-changed>

²² <https://iarconsortium.org/sjahss/157/2854/a-legal-analysis-of-vishaka-guidelines-to-posh-act-and-beyond-addressing-sexual-harassment-at-work-and-advocating-legal-reforms--4669/>

²³ <https://pmc.ncbi.nlm.nih.gov/articles/PMC11193235/>

			India's <i>Maternity Benefit</i>
Maternal		India has	<i>Act</i> and institutional
Mortality	Global average is 197 per	successfully dropped	delivery push (88.6%) have
Ratio	100,000 live births.	to 97 per 100,000	yielded massive relative
(MMR)		live births.	success compared to global
			averages. ²⁴
	Heavily restricted globally;	Progressive MTP Act	India holds a highly
Abortion	75% of maternal deaths	allows abortion up to	progressive global stance
Access	linked to pregnancy/unsafe	24 weeks, expanding	on reproductive choice, but
	abortion complications.	to unmarried	faces high operational
		women. ²⁵	medical board hurdles.

CHAPTER- 3: THE SYSTEMATIC ROADBLOCKS LIKE ISSUES, APPREHENSIONS AND IMPERATIVES

India's reproductive legal landscape—governed by the MTP Amendment Act, 2021, the ART Regulation Act, 2021, and the Surrogacy (Regulation) Act, 2021—exhibits a critical execution gap between progressive statutory phrasing and ground realities. Amid global polarization between expanding human rights and severe legislative retrenchment, severe systemic hurdles persist domestically; rigid legal timelines, institutional stigma, and low awareness drive approximately 78% of abortions outside regulated facilities, making unsafe abortions the third leading cause of maternal mortality. Furthermore, vulnerable populations like surrogate mothers and egg donors remain exposed to deceitful exploitation under Section 69 of the BNS/IPC, while the absence of unified global reforms leaves transnational reproductive arrangements fraught with unresolved issues of statelessness and citizenship.²⁶

²⁴ <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2113800®=48&lang=2>

²⁵ <https://www.drishtiias.com/daily-updates/daily-news-analysis/abortion-rights-for-single-women>

²⁶ <https://www.lawjournal.info/archives/2026.v6.i5.B.334>

3.1: QUESTIONABLE ISSUES

1. The Constitutional Question: How has the Supreme Court of India utilized Article 21 to expand the definitions of "bodily integrity," "privacy," and "reproductive choices" from *Suchita Srivastava* to recent late-term abortion rulings, and how does this align with global trends?
2. The Progenitive & Techno - Legal Question: To what extent do the *Surrogacy Regulation Act* and the *ART Act* successfully protect vulnerable parties without inadvertently violating a woman's fundamental right to reproductive freedom and family planning?
3. The Deterrence Question: Does the structural shift from the IPC to the *Bharatiya Nyaya Sanhita (BNS)* effectively address the realities of modern gender-based violence or does it merely repackage existing laws without tackling low conviction rates?
4. The Comparative Question: Where does India stand in the global continuum of gender justice when evaluated against international frameworks like CEDAW and the UN Sustainable Development Goals (SDG 3.1 and 5.2)?

3.2: CONTINUOUS APPREHENSIONS

1. Third-Party Authorization Barriers: Despite progressive amendments, Indian law treats abortion as a conditional medical decision rather than an absolute right, leaving it contingent on practitioner approval. Consequently, healthcare providers frequently gate-keep reproductive choice by demanding informal spousal or parental consent, undermining a woman's lawful autonomy.
2. Lack of Contraceptive Autonomy: According to the NFHS only about 10% of women in India independently make decisions about their own health, and over 30 million married women face an unmet need for modern contraception.
3. Infrastructure Deficiencies: Rural healthcare facilities suffer from an acute shortage of Registered Medical Practitioners (RMPs) and functional Medical Boards, causing severe administrative delays that push women past legal abortion ceilings.

4. **Marginalization of Unmarried and Queer Individuals:** While the Supreme Court extended abortion rights to unmarried women, the ART and Surrogacy Acts continue to exclude live-in couples, single men, and the LGBTQIA+ community from accessing legal reproductive technologies.
5. **Exclusionary Surrogacy Criteria:** The Surrogacy Regulation Act strictly prohibits commercial surrogacy, permitting only "altruistic surrogacy." This shift has severely restricted options for intended parents due to the difficulty of finding a willing relative, pushing the practice underground and increasing the vulnerability of surrogate mothers.
6. **Cross-Border Reproductive Tourism Exploitation:** As developed nations tighten regulations on surrogacy and ART, intended parents frequently look to developing nations. This cross-border movement creates a regulatory vacuum, leaving foreign surrogates vulnerable to legal and financial exploitation without international standard protections.

3.3: IMPERATIVE RESOLUTIONS

1. **Rights-Based Statutory Realignment:** There is an urgent need to transition from a medical-centric, paternalistic model to a bodily autonomy-centric framework where the pregnant individual holds the final decision-making power.
2. **Socio-Legal Safeguards for Surrogates:** Restricting surrogacy to altruistic models often forces women into unpaid reproductive labor within patriarchal family structures, highlighting a need for regulated compensatory frameworks that secure fair remuneration and comprehensive healthcare
3. **Codification of Reproductive Rights as Human Rights:** International bodies, including the UNHR committee advocated for the universal recognition of reproductive autonomy as an extension of the right to life, privacy, family and non-discriminatory.
4. **Global Regulatory Consensus on ART:** The lack of a unified international treaty on surrogacy and cross-border fertility treatments creates legal limbo for children born

through these technologies. Establishing binding international frameworks is essential to protect the rights of children and surrogates globally.

3.4: WATERSHED - JUDICIAL RESOLUTIONS OUTSTRETCHED BY PRECEDENT

- ❖ *Suchita Srivastava v. Chandigarh Administration (2009)*, the Supreme Court of India explicitly ruled that a woman's right to make reproductive choices—including the decision to procreate or abstain—is a vital facet of "personal liberty" under **Article 21** of the Constitution.²⁷ Crucially, the judiciary established that this reproductive autonomy is an inherent right that cannot be compromised or restricted based on an individual's mental capacity or social status. This landmark precedent firmly anchors reproductive self-determination within the foundational constitutional guarantee of human dignity.
- ❖ *Laxmi Mandal v. Deen Dayal Harinagar Hospital (2010)*, the Delhi High Court delivered a historic global precedent by declaring that preventable maternal mortality constitutes a direct violation of the right to life under **Article 21**.²⁸ The ruling firmly established maternal survival and access to safe healthcare as inalienable, constitutionally protected human rights.
- ❖ *Justice K.S. Puttaswamy v. Union of India (2017)*, the Supreme Court explicitly recognized reproductive choices as an indispensable component of the right to privacy under **Article 21**.²⁹ This historic ruling firmly cemented bodily autonomy, personal dignity, and reproductive self-determination as core constitutional protections secure from arbitrary state interference.
- ❖ *X v. Principal Secretary, Health and Family Welfare Department (2022)*, the Supreme Court dismantled the artificial distinction between married and unmarried women under the Medical Termination of Pregnancy (MTP) Act, declaring it constitutionally unsustainable and granting all women equal abortion rights up to 24 weeks while recognizing marital rape within the MTP framework.³⁰

²⁷ <https://indiankanoon.org/doc/1500783/>

²⁸ https://www.icj.org/escr_litigation/laxmi-mandal-v-deen-dayal-harinagar-hospital-ors-w-p-c-no-8853-of-2008/

²⁹ <https://translaw.clpr.org.in/case-law/justice-k-s-puttaswamy-anr-vs-union-of-india-ors-privacy/>

³⁰ <https://indiankanoon.org/doc/123985596/>

- ❖ **The 2024 Amendment**, Following intense litigation, the government enacted the **Surrogacy (Regulation) Amendment Rules, 2024**,³¹ which reversed the ban. Married couples are now legally permitted to use *one* donor gamete if a District Medical Board certifies a severe medical complication.
- ❖ **A (Mother of X) v. State of Maharashtra (2026)**,³² The Supreme Court permitted a 30-week termination for a vulnerable individual, ruling that a woman's reproductive autonomy, bodily integrity, and mental trauma decisively supersede statutory gestational time limits and foetal viability. Together, these landmark precedents firmly establish reproductive self-determination as an absolute constitutional right under Article 21, independent of marital status or rigid statutory boundaries.

CHAPTER-4: CONCLUSION & REFERENCE(S)

EVALUATION LEADS TO THE FOLLOWING CONCLUSION

India's reproductive governance stands at a critical crossroads, caught between progressive judicial interpretations and restrictive, doctor-centric statutory frameworks. While constitutional jurisprudence under Article 21 has laid a robust foundation for individual freedom, privacy, and bodily integrity, the underlying legal mechanism remains constrained by medical gate-keeping, outmoded moral double standards, and demographic anxieties. To bridge this gap, international conventions like CEDAW provide an essential framework to hold states accountable to universal human rights standards, ensuring that the human body is never used as an economic or political tool. Transitioning these abstract legal concepts into accessible healthcare realities demands a commitment to a holistic jurisprudence—one that establishes absolute bodily self-determination, comprehensive family planning, and intersectional equity as non-negotiable pillars of a free society. Ultimately, realizing true progenitive justice and shielding the future requires a decisive shift toward systemic and structural transformation, summarized by the following three conclusive imperatives:

³¹ <https://visionias.in/current-affairs/monthly-magazine/2024-03-15/society/surrogacy-regulation-amendment-rules-2024>

³² <https://www.tandfonline.com/doi/full/10.1080/24730580.2026.2710948>

- **Dismantling Third-Party and Statutory Barriers:** India must shift from medical gate-keeping and decentralized medical boards to a rights-based model that eliminates third-party authorization barriers, prioritizing absolute individual autonomy and patient confidentiality.
- **Transitioning to Substantive Empowerment:** To bridge the gap between rigid legislative limits (like MTP caps) and progressive judicial activism (like abortion equality for unmarried women), India must implement technology-driven tracking, agency sensitization, and streamlined healthcare frameworks to achieve absolute gender parity.
- **Securing Vested Rights to Parenthood:** The 2025 *Vijaya Kumari* ruling solidified frozen embryos as protected "genetic property," establishing that the state cannot use retrospective statutory restrictions to strip away a couple's pre-existing options for parenthood under **Article 21**.
- **Eradicating Societal Stigma and Coercion:** Comprehensive sex education and robust family planning resources must be deployed globally and domestically to completely eradicate deep-rooted societal stigma and dismantle the weaponization of reproductive choices.
- **Redefining Progenitive Rights via Menstrual Literacy:** By elevating Menstrual Health and Hygiene to a fundamental right under **Articles 21 and 21A** in *Dr. Jaya Thakur v. UOI*,³³ the judiciary expanded reproductive laws beyond pregnancy to encompass institutional infrastructure and bodily dignity from puberty onward.
- **Expanding Infrastructure and Professional Training:** Legal frameworks must be translated into accessible healthcare realities by expanding rural clinical infrastructure and training providers to actively respect patient choice, dignity, and self-determination.

To achieve true reproductive justice, India must shift its legal architecture from state-regulated medical gate-keeping to an absolute, autonomy-centric framework that guarantees

³³ <https://www.scobserver.in/supreme-court-observer-law-reports-scolr/dr-jaya-thakur-v-government-of-india18873/>

bodily integrity, decisional privacy, and non-discriminatory healthcare under **Article 21 of the Constitution**. By aligning restrictive statutes—such as the Medical Termination of Pregnancy (MTP), Surrogacy, and Assisted Reproductive Technology (ART) Acts—with progressive judicial precedents and international human rights benchmarks, the legal system can dismantle structural barriers and permanently secure reproductive freedom for all.

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