

## “REPRODUCTIVE AUTONOMY AND LEGAL ACCESS: A CRITICAL ANALYSIS OF ABORTION RIGHTS FOR UNMARRIED AND MINOR WOMEN IN INDIA.”

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**BEST CITATION** – RAMHAAREDDI S & SUJA J, “REPRODUCTIVE AUTONOMY AND LEGAL ACCESS: A CRITICAL ANALYSIS OF ABORTION RIGHTS FOR UNMARRIED AND MINOR WOMEN IN INDIA.”, INDIAN JOURNAL OF LEGAL REVIEW (IJLR), 5 (11) OF 2025, PG. 684-689, APIS – 3920 – 0001 & ISSN – 2583-2344

### Abstract

Reproductive autonomy forms the cornerstone of gender equality and human dignity, yet in India, the legal and social frameworks surrounding abortion continue to reflect deeply entrenched biases against unmarried and minor women. While the Medical Termination of Pregnancy (MTP) Act, 1971, and its subsequent amendments mark significant progress in expanding access to abortion, their implementation often remains mediated by stigma, medical gatekeeping, and restrictive legal interpretations. Historically, the law has privileged married women’s reproductive rights, framing abortion primarily within the context of marital legitimacy and maternal health, thereby rendering unmarried women legally invisible and socially marginalized. For minors, the situation is further complicated by the intersection of the MTP Act with the Protection of Children from Sexual Offences (POCSO) Act, which mandates reporting of all underage sexual activity. This creates a chilling effect, deterring minors from accessing safe abortions due to fear of criminal proceedings, parental disclosure, and loss of privacy. Through a critical analysis of jurisprudence, including this study highlights the judiciary’s evolving role in extending abortion rights beyond traditional marital boundaries and in recognizing autonomy, privacy, and equality under the Indian Constitution. However, despite progressive judicial interventions, practical barriers it ranging from lack of awareness to denial of services by healthcare providers all there continue to impede meaningful access for unmarried and minor women. This research argues for a rights-based and inclusive reproductive health framework in India that balances the state’s protective obligations with individual autonomy. It emphasizes the need to dismantle social stigma, harmonize conflicting legal provisions, and recognize abortion not as a moral or medical concession but as a fundamental human right integral to equality, dignity, and bodily integrity. By foregrounding the lived experiences of unmarried and minor women, the paper contributes to feminist legal scholarship and advocates for reforms that align domestic laws with international human rights standards, ensuring safe, stigma-free, and accessible reproductive healthcare for all women in India

### Introduction

Reproductive autonomy, encompassing the right to make informed decisions about one’s own body, fertility, and reproductive health, is a cornerstone of human dignity and gender equality. Across the globe, debates surrounding abortion rights reflect a complex intersection of law, morality, medicine,

and socio-cultural attitudes. While many jurisdictions have moved towards liberalizing abortion laws to recognize women’s autonomy and public health concerns, others continue to impose restrictive frameworks that undermine reproductive rights. In this context, which seeks to balance women’s rights with medical and social considerations. The broadened the legal

grounds for abortion, but its application continues to reflect entrenched social stigma and restrictive medical practices that disproportionately affect unmarried women and minors. Historically, the Indian legal framework tied abortion access to marital legitimacy, rendering unmarried women's reproductive choices invisible.<sup>1077</sup> Though hailed as progressive at the time of its enactment, the framework continues to raise critical questions, particularly regarding its paternalistic approach that requires medical approval rather than guaranteeing abortion as a matter of absolute choice. For unmarried women, societal stigma and legal ambiguities often compound the challenges of accessing safe and legal abortion services. Minor women, on the other hand, encounter additional barriers due to the requirement of parental or guardian consent under the Indian legal framework, alongside implications under the Protection of Children from Sexual Offences (POCSO) Act, which further complicates medical reporting and confidentiality.<sup>1078</sup>

The significance of reproductive autonomy within the Indian constitutional framework is underscored by Article 21, which guarantees the right to life and personal liberty. Judicial interpretations have expanded this to include the right to privacy, bodily integrity, and decisional autonomy. International human rights instruments, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), further reinforce the recognition of reproductive choice as a human right. Yet, in practice, access to safe abortion in India remains uneven, shaped by patriarchal attitudes, socio-economic inequalities, and institutional reluctance. Unmarried and minor women face unique challenges in this regard. For unmarried women, abortion is often entangled with moral judgments about sexuality and societal notions of family honor, leading to denial of services and unsafe practices. Minor women are particularly

vulnerable, as legal restrictions not only undermine their decisional autonomy but may also expose them to judicial scrutiny and breaches of confidentiality, jeopardizing both their health and rights.

### Concept of Reproductive Autonomy

#### A. Definition and Philosophical Foundations of Reproductive Autonomy

Reproductive autonomy refers to the capacity of an individual, particularly women, to make independent and informed decisions regarding their reproductive lives, including whether, when, and how to conceive, continue or terminate a pregnancy, and access reproductive healthcare services. Philosophically, it is grounded in the principles of autonomy and self-determination, which assert that every person has the moral and legal right to govern their own body and life choices free from coercion or interference. The concept evolved from broader human rights discourses that link individual liberty with bodily integrity, emphasizing that reproductive decision-making is not merely a matter of personal preference but a fundamental aspect of human dignity and equality. It articulated the idea that individual freedom is paramount so long as it does not cause harm to others. Applied to reproductive rights, this framework underscores the moral basis for recognizing a woman's authority over her reproductive choices, thereby preventing the state, family, or community from imposing restrictive or coercive controls on her bodily autonomy.<sup>1079</sup> This perspective highlights that reproductive autonomy is not only a private interest but also a public concern tied to gender justice and social equality.

#### B. Relationship between Autonomy, Dignity, Privacy, and Bodily Integrity

Reproductive autonomy cannot be understood in isolation; it is intricately linked with concepts of dignity, privacy, and bodily integrity. Dignity serves as the cornerstone of human rights, ensuring that individuals are

<sup>1077</sup> Medical Termination of Pregnancy (MTP) Act, 1971, as amended in 2021

<sup>1078</sup> Protection of Children from Sexual Offences (POCSO) Act, 2012.

<sup>1079</sup> Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979, Articles 12 & 16.

treated as ends in themselves rather than means to an external goal. In the reproductive context, dignity entails the recognition of women as full moral agents capable of making decisions about their bodies without paternalistic interference. Privacy, as interpreted under constitutional jurisprudence, extends to decisional autonomy in intimate matters such as family planning, contraception, and abortion. The affirmed privacy as a fundamental right, encompassing decisional autonomy and bodily integrity, thereby creating a constitutional framework for reproductive rights.<sup>1080</sup> Similarly, bodily integrity emphasizes the right to be free from unwanted physical intrusions, including forced pregnancies or restrictions on abortion. Collectively, these principles ensure that reproductive autonomy is seen not merely as a medical or policy issue but as a central element of human freedom and equality.

### C. Indian Constitutional Interpretation under Article 21

The Indian Constitution, particularly through Article 21, guarantees the right to life and personal liberty, which has been expansively interpreted by the Supreme Court to include the right to health, privacy, dignity, and reproductive freedom. It recognized reproductive choice as a dimension of “personal liberty” under Article 21, affirming that women have the right to carry a pregnancy to its full term or to terminate it.<sup>1081</sup> This case marked a significant jurisprudential shift by grounding reproductive autonomy within the constitutional framework of dignity and liberty.

The Medical Termination of Pregnancy Act, 1971 (MTP Act), though a progressive statute at the time of its enactment, imposes medical and procedural barriers that often curtail the autonomy of women, especially minors and unmarried women. However, recent judicial developments, particularly it have sought to interpret the MTP Act in a liberal manner,

extending abortion rights to unmarried women up to 24 weeks of gestation. The Court stressed that the law cannot discriminate on the basis of marital status and that reproductive autonomy is integral to women’s bodily integrity and decisional freedom.<sup>1082</sup> Thus, Article 21 has been the constitutional anchor for situating reproductive autonomy in India. It represents an evolving judicial philosophy that increasingly recognizes reproductive rights as an essential component of women’s human rights, bridging the gap between constitutional guarantees and international human rights standards.

### Abortion Rights of Unmarried Women

The issue of abortion rights for unmarried women in India is deeply embedded in the tension between social morality, legal recognition, and constitutional guarantees. Historically, the framework of reproductive rights under the **Medical Termination of Pregnancy Act, 1971 (MTP Act)** legalized abortion under various conditions, its application subtly favored married women, reinforcing a normative presumption where sexual activity and reproductive decisions outside marriage were deemed “illegitimate.”<sup>1083</sup> implicitly privileged married women by tethering permissible abortion largely to conditions such as contraceptive failure within marriage. This reinforced the patriarchal presumption that sexual activity and reproductive choices of women outside marriage were either illegitimate or invisible. Unmarried women, therefore, experienced a dual marginalization has first through social stigma that labels their reproductive choices as immoral, and second through legal invisibility that restricted their access to safe abortion facilities. The marked a decisive shift by affirming that the right to reproductive autonomy is not contingent on marital status and extends equally to unmarried women. This interpretation reflects a constitutional commitment to equality and non-discrimination under Articles 14 and 15, and

<sup>1080</sup> Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.

<sup>1081</sup> Suchita Srinastava v. Chandigarh Administration, (2009) 9 SCC 1

<sup>1082</sup> X v. Union of India judgment of 2022,

<sup>1083</sup> John Stuart Mill, On Liberty (London: Parker & Son, 1859), p. 13.

to personal liberty and bodily integrity under Article 21. Yet, despite such judicial progress, barriers persist in practice: medical practitioners often act as moral gatekeepers, refusing services to unmarried women due to fear of stigma or misinterpretation of law.<sup>1084</sup> Moreover, lack of awareness among women themselves exacerbates their vulnerability, leaving many exposed to unsafe and clandestine abortions. From a theoretical perspective, this scenario highlights the interplay of autonomy, dignity, and equality, where reproductive freedom is not merely a matter of health but an essential aspect of self-determination and citizenship. Ensuring that unmarried women can access abortion services without prejudice is therefore a constitutional imperative, requiring not only progressive jurisprudence but also systemic reforms in healthcare delivery, education, and awareness.

### Abortion Rights of Minor Women in India

The issue of abortion rights for minor women in India presents a complex interplay of reproductive autonomy, parental authority, statutory protections, and constitutional guarantees. Unlike adult women, minors are often perceived as lacking the maturity and decision-making capacity to exercise full autonomy over their reproductive choices. This perception is embedded in the legal framework, most notably the **Medical Termination of Pregnancy (MTP) Act, 1971 (as amended in 2021)**, which mandates the consent of a guardian for abortion in the case of minors. At the same time, the **Protection of Children from Sexual Offences (POCSO) Act, 2012** it designed to shield minors from sexual exploitation all the requires mandatory reporting of all instances of sexual activity involving those under 18 years of age. This dual legal structure creates serious practical barriers for minors who may seek safe abortion services, often forcing them to resort to unsafe and clandestine methods. The dilemma is further heightened by ethical concerns: while

the law seeks to protect young girls from exploitation and coercion, it simultaneously undermines their agency by denying them independent decision-making power. Courts in India have increasingly been called upon to balance these competing claims, with Article 21 of the Constitution it guaranteeing the right to life, dignity, privacy, and health in forming the bedrock of judicial reasoning.

### Consent and Guardianship under the MTP Act

The MTP Act explicitly requires parental or guardian consent when the pregnant person is below 18 years of age. While framed as a safeguard, this provision raises critical questions about autonomy and confidentiality. Many minors may be reluctant to disclose their pregnancy to parents or guardians due to fear of stigma, social ostracism, or even violence. In conservative or rural contexts, disclosure can have devastating consequences for young girls, including forced marriages, expulsion from school, and social exclusion.<sup>1085</sup> This statutory framework also presumes that parental consent inherently serves the best interest of the child. However, the assumption of parental benevolence may not always hold true, particularly in patriarchal or abusive family structures. Consequently, the law creates a tension between a minor's bodily autonomy and the paternalistic control exercised by adults in her life.

### POCSO Act and the Chilling Effect on Abortion Access

The enactment of the **POCSO Act, 2012** further complicates minors' access to abortion. By defining all sexual activity under the age of 18 as statutory rape, the law criminalizes even consensual sexual relationships between adolescents. Section 19 of the Act mandates reporting by any person, including doctors, of suspected sexual offences against minors. In practice, this means that healthcare providers are obligated to inform law enforcement authorities if a minor seeks abortion services,

<sup>1084</sup> Constitutional, Autonomy and equality under Articles 14, 15, and 21.

<sup>1085</sup> Pre-MTP Act position: Abortion as a crime under IPC (Sections 312–316).

regardless of whether coercion or abuse is involved. This has led to widespread reluctance among medical practitioners to provide abortions for minors, as they fear being entangled in criminal proceedings. As a result, minors often face denial of services or are driven to unsafe methods. Numerous studies and reports have highlighted that this over-criminalization leads to underreporting of pregnancies, delayed abortions, and increased risk to minors' health. Thus, the protective framework of POCSO paradoxically places minors at greater risk by limiting their ability to access safe medical care.

Indian courts have increasingly grappled with the rights of minor women in abortion cases, often in the context of rape or sexual abuse. The judiciary has generally adopted a compassionate stance, permitting termination of pregnancies even beyond the statutory gestational limits in cases involving minors. For instance, in **Suchita Srivastava v. Chandigarh Administration (2009) 9 SCC 1**, the Supreme Court emphasized that reproductive choices are an integral part of the right to personal liberty under Article 21. Although the case concerned a mentally challenged woman, its reasoning is often extended to minors, highlighting the centrality of reproductive autonomy.

In several High Court decisions, judges have authorized abortions for minor rape survivors, recognizing the severe mental trauma and social stigma associated with forced pregnancies. However, judicial pronouncements also reveal inconsistency, as courts often weigh the "best interests" of the minor through a paternalistic lens rather than affirming her independent autonomy. The recent Supreme Court judgment in **X v. Health and Family Welfare Department (2022)** broadened access to abortion for unmarried women under the MTP Act. Although not directly concerning minors, the decision emphasized that reproductive choices must be seen through the lens of dignity, equality, and bodily integrity. The Court also stressed that the marital status of the

woman cannot be a ground for denying abortion rights. The principles articulated in this case provide a strong constitutional foundation for extending similar reasoning to minors, albeit with necessary safeguards.

### Ethical Dilemmas: Autonomy vs. Protection

The core ethical dilemma lies in balancing minors' evolving capacities with the state's protective role. On the one hand, minors may lack the full psychological and emotional maturity to make life-altering decisions independently. On the other hand, denying them agency over reproductive choices risks violating their bodily autonomy and dignity.<sup>1086</sup> The concept of "**evolving capacities of the child**," recognized in the **United Nations Convention on the Rights of the Child (UNCRC)**, to which India is a signatory, suggests that minors should be granted increasing levels of autonomy in accordance with their maturity. Applying this framework to abortion rights means that a 17-year-old adolescent should arguably be treated differently from a much younger minor. However, Indian law currently does not differentiate, treating all individuals under 18 uniformly, thereby failing to account for this nuanced approach.

### Conclusion

The critical analysis of abortion rights for unmarried and minor women in India reveals deep-rooted legal, social, and ethical complexities surrounding reproductive autonomy. Despite the progressive amendments to the Medical Termination of Pregnancy (MTP) Act, 1971, most notably in 2021, the law continues to inadequately recognize and protect the autonomy of unmarried and minor women, who remain disproportionately affected by stigma, guardianship restrictions, and systemic barriers. It has attempted to expand reproductive rights to unmarried women, the practical enforcement of these rights is hindered by conservative medical practices, lack of awareness, and societal

<sup>1086</sup> Kalyanwala S. et al., *Experiences of unmarried young abortion-seekers in Bihar and Jharkhand*, *Cult Health Sex* 14(3):241–255 (2012).

pressures that continue to privilege marital status as the threshold for legitimate reproductive choice. For minor women, the intersection of the MTP Act with the Protection of Children from Sexual Offences (POCSO) Act has created a paradox. While the law intends to protect minors, the requirement of mandatory reporting and guardian consent often deters them from seeking safe and timely abortions.

Judicial pronouncements, though sympathetic in certain instances, oscillate between safeguarding the evolving capacities of minors and reinforcing parental authority, thereby diluting the essence of reproductive autonomy. This creates a chilling effect, forcing many minor women into unsafe or delayed abortions, undermining their rights to privacy, health, and dignity. The broader constitutional framework under Articles 14, 15, and 21 provides the normative foundation for reproductive autonomy, privacy, and equality. However, the gap between constitutional ideals and lived realities is striking. Autonomy cannot be conditional upon marital status, age, or societal morality. Instead, it must be recognized as an intrinsic human right grounded in dignity and bodily integrity. India's reproductive health laws, though reformed, still reflect a protectionist and paternalistic stance that undermines the agency of unmarried and minor women. Going forward, a balancing framework is necessary, one that respects the state's protective role while ensuring that it does not eclipse the individual's right to choose. A rights-based approach requires eliminating unnecessary barriers, fostering comprehensive sexual and reproductive health education, and sensitizing medical practitioners and legal authorities to women's autonomy beyond marital constructs. Importantly, stigma reduction through awareness campaigns, community engagement, and supportive policy frameworks is essential to normalize abortion as a healthcare right rather than a moral dilemma. This study contributes to the growing body of scholarship by reframing abortion not as a question of morality, medical gatekeeping, or

state paternalism, but as an essential human rights imperative. Recognizing reproductive autonomy for unmarried and minor women is not merely about abortion access; it is about affirming their status as equal citizens capable of making decisions about their own bodies and futures. For India to advance toward a truly inclusive and equitable reproductive health framework, it must ensure that the law, policy, and practice converge to guarantee dignity, autonomy, and justice for all women also regardless of their age or marital status.

### Citations

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