

“REPRODUCTIVE JUSTICE IN INDIA: LEGAL BARRIERS, ETHICAL DILEMMAS, AND HUMAN RIGHTS ISSUES IN SURROGACY, ABORTION, AND ASSISTED REPRODUCTIVE TECHNOLOGIES (ART)”

AUTHOR – RAGHAV AGARWAL* & DR. ROHIT KUMAR SHUKLA**

* BA LLB (H) FROM AMITY LAW SCHOOL, LUCKNOW CAMPUS.

** ASSISTANT PROFESSOR FROM AMITY LAW SCHOOL, LUCKNOW CAMPUS

BEST CITATION – RAGHAV AGARWAL & DR. ROHIT KUMAR SHUKLA, “REPRODUCTIVE JUSTICE IN INDIA: LEGAL BARRIERS, ETHICAL DILEMMAS, AND HUMAN RIGHTS ISSUES IN SURROGACY, ABORTION, AND ASSISTED REPRODUCTIVE TECHNOLOGIES (ART)”, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 6 (6) OF 2026, PG. 251-264, APIS – 3920 – 0001 & ISSN – 2583-2344. DOI – <https://doi.org/10.65393/IJLRV6I628>

ABSTRACT

Talk about control over reproduction now stirs tough debates across India's courts. Where people's choices meet society's rules, new medicine often adds more questions than answers. Looking close at surrogacy, ending pregnancies, and fertility treatments shows how law can block basic dignity. Each topic stands connected – laws on one shape what happens in another. When court rulings limit access here, lives shift there. Medical progress moves fast, yet laws drag behind, leaving real harm in their wake. Personal freedom around having children faces constant pushback from outdated systems. Decisions made far from hospital rooms still echo inside them. Bodies become battlegrounds when policy ignores lived reality. Rules meant to protect sometimes do exactly the opposite.

Lately, India passed big new rules about surrogacy, fertility tech, and abortion – laws like the 2021 Surrogacy Act, the ART Regulation Act, and changes to the Medical Termination of Pregnancy law. These came with promises to stop abuse, protect patients. Yet at the same time, limits built into them stir worries about fairness, freedom, basic rights. Because of that, questions grow louder: do they truly help people make their own health choices? Or does power shift too much toward government oversight? A close look reveals tensions between care and control baked deep into each policy.

Keywords : Reproductive Justice, Surrogacy Rules in India, Abortion Rights, Assisted Reproductive Technologies, Article 21 and the Right to Control One's Body, Human Rights Include Reproductive Decisions

TABLE OF ABBREVIATIONS

Abbreviation	Full Form
ART	Assisted Reproductive Technology
ART Act	Assisted Reproductive Technology (Regulation) Act, 2021

Abbreviation	Full Form
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
ICCPR	International Covenant on Civil and Political Rights

Abbreviation	Full Form
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICMR	Indian Council of Medical Research
ILI	Indian Law Institute
IVF	In Vitro Fertilisation
MTP	Medical Termination of Pregnancy
MTP Act	Medical Termination of Pregnancy Act, 1971
MTP Amendment Act	Medical Termination of Pregnancy (Amendment) Act, 2021
MOHFW	Ministry of Health and Family Welfare
NHRC	National Human Rights Commission
OHCHR	Office of the United Nations High Commissioner for Human Rights
PIL	Public Interest Litigation
SCC	Supreme Court Cases (Law Reporter)
SC	Supreme Court of India
SRHR	Sexual and Reproductive Health and Rights
UN	United Nations
WHO	World Health Organization

CHAPTER 1: INTRODUCTION

1.1 BACKGROUND AND EVOLUTION OF REPRODUCTIVE RIGHTS

Emergence of reproductive rights came not suddenly, yet unfolded slowly amid battles tied to well-being, fairness between genders, and private freedoms. At first, matters involving reproduction were seen mostly via public health perspectives, stressing management of populations instead of personal agency – especially within nations such as India.⁴⁶² Government strategies after independence gave weight to limiting family size and controlling demographics, frequently ignoring women's self-determination while using their bodies as tools for executing plans. Such methods revealed a model rooted in care, though also marked by top-down control, wherein choices about having children responded less to individual will and more to national priorities. Gradually, discussions around human rights across nations started framing choices about reproduction as central to personal dignity, reshaping laws within countries. Following events like the International Conference on Population and Development, emphasis moved away from limiting populations toward safeguarding individual entitlements, highlighting well-being instead of quotas.⁴⁶³

1.2 CONCEPT AND MEANING OF REPRODUCTIVE JUSTICE

Yet reproductive justice moves past narrow views of rights as simple absence of government control. Instead, it includes wider conditions – economic, social, structural – that shape decisions about reproduction. Born from feminist thought and intersectional analysis, the idea holds that laws mean little if real-life barriers block their reach.⁴⁶⁴ Within India, such differences matter greatly, given persistent

⁴⁶² Government of India, *National Family Planning Programme* (Ministry of Health and Family Welfare).

⁴⁶³ United Nations, *Programme of Action of the International Conference on Population and Development* (1994).

⁴⁶⁴ Loretta J. Ross, *Reproductive Justice as a Human Rights Framework*, Columbia Journal of Gender and Law.

divides along lines of class, caste, gender, place. Still, even when laws permit abortion or help with having children, getting safe care at a fair price does not happen equally everywhere. For true fairness, it is not enough to have approval on paper – people must be able to act freely in making these choices, free from pressure or being left out.

With the passing of the Surrogacy (Regulation) Act, 2021 alongside the Assisted Reproductive Technology (Regulation) Act, 2021, oversight over new forms of reproduction comes into focus. Stated goals include curbing misuse within medical settings. Yet despite these aims, concerns arise regarding fairness in reproductive rights. Restrictions tied to payment, relationship structure, age criteria, and citizenship carve out entire groups. Single people find doors closed; those in non-marital relationships face barriers; members of the LGBTQ+ community are left without options. Alignment with broader ethical ideals remains uncertain under such conditions. What stands out about these rules is how they shape ideas around fairness and personal freedom, often wrapping ethical opinions in regulatory language. Instead of centring on self-determination, the system implies that accepted reproduction aligns more with conventional households.

1.3 NEED AND SIGNIFICANCE OF THE STUDY

Study of reproductive justice in India grows necessary due to widening distance between what constitution promises and how laws operate. Courts regularly affirm personal decision-making on body matters yet legislation tends toward oversight, placing rules before freedoms. Such misalignment leaves people unclear about access, granting broad power to officials and doctors alike. Importance emerges when assessing if legal structures truly support self-determination or manage conduct disguised as moral concern. Clarity on this conflict remains vital while measuring law's role within a system built on constitutional values.

1.4 OBJECTIVES OF THE STUDY

This work looks into reproductive justice within India's legal system by viewing surrogacy, abortion, and assisted reproduction laws as connected pieces, not separate parts. Instead of standing alone, these areas are studied alongside one another to see how they shape control over one's body. Recent changes in law come under review here – do they support freedom or tighten limits on personal decisions? Closer inspection falls upon three key acts passed in 2021: those governing surrogacy, assisted methods, and pregnancy termination. Each is measured against core values embedded in the Constitution – dignity, privacy, equal treatment. Judicial influence enters the frame too, especially how courts interpret rights when moral questions arise. Through rulings, judges have shaped access; this project weighs whether their logic holds up across time and context. Attention shifts then toward weak points in practice – where rules exist but fail people due to poor execution. Room remains for improvement so that policies reflect fairness, uphold entitlements, align with broader ideals of justice. Outcomes may point toward adjustments needed for laws to truly serve those affected most directly.

1.5 SCOPE AND LIMITATIONS OF THE STUDY

This work centers on legal and constitutional questions tied to reproductive justice within India, particularly around surrogacy, abortion, and assisted reproduction. Instead of broad generalizations, attention stays fixed on national laws, court decisions, key rulings, and foundational rights linked to personal bodily choice. To widen context slightly, insights appear now and then from certain overseas systems and global human rights frameworks – though full-scale cross-national review plays no role here. A notable gap arises from lack of first-hand data collection; findings emerge mainly through existing texts like legislation, judgments, official papers, and scholarly writings. Owing to practical limits in space and duration, intricate health-related details or

laboratory-level mechanics remain outside view, giving way to discussions shaped by law and moral reasoning instead.

1.6 RESEARCH METHODOLOGY

Using structured legal reasoning, this work follows an interpretive approach grounded in established texts. From supreme court rulings down to constitutional clauses, authoritative materials serve as its base. Alongside, writings from academic experts appear – drawn from periodicals, official studies, and institutional papers – to deepen understanding through diverse viewpoints. In selected nations, rules on reproduction undergo brief comparison, framed by contextual description rather than judgment. Through careful examination, current laws are assessed for their role in either supporting or limiting reproductive fairness. Focused on meaning instead of numbers, the approach relies on interpreting legal texts to form logical conclusions about justice in reproduction.

CHAPTER 2: CONCEPTUAL AND THEORETICAL FRAMEWORK OF REPRODUCTIVE JUSTICE

2.1 MEANING AND SCOPE OF REPRODUCTIVE RIGHTS

Decisions about having kids, using birth control, ending pregnancies safely, or getting medical care during reproduction fall under what people call reproductive rights. Not being forced or treated unfairly while making choices on sex, parenting, or how to plan a family is part of these protections. Because bodily impact tends to be greater for women, their independence in such personal matters often becomes central. Rather than treating motherhood or fertility as public concerns, older views place them in private life zones. Freedom to choose without government pressure has shaped much of the thinking around these issues. Individual agency – especially over one's own body – influences how laws and ethics respond to reproductive questions. Historically, ideas about liberty and self-rule guide how societies set boundaries around who decides what. Still, access to options like contraception or health support

varies widely despite shared principles.⁴⁶⁵ appears repeatedly where sources back up broad claims across different points above. Private judgment meeting social rules forms tension that continues shaping debates today.

What counts as reproductive freedom goes beyond just being allowed by law – it depends on whether people can actually reach clinics, afford services, or get clear health advice. Though nations like India recognize these rights on paper, real-world access often falters under poverty, poor knowledge, and spotty medical systems. Seen closely, the problem emerges not from laws alone, but from how life unfolds where support falls short.⁴⁶⁶

2.2 EVOLUTION OF REPRODUCTIVE JUSTICE MOVEMENT

Emerging in the U.S. during the 1990s, the reproductive justice movement challenged conventional ideas about reproductive rights. Led by women from marginalised backgrounds, it pointed out how dominant feminist agendas prioritized abortion access yet overlooked systemic issues like racism, poverty, and uneven health services.⁴⁶⁷ Although laws may grant certain freedoms, real choice remains absent without resources, support, or equitable conditions to act on them.

A starting point for reproductive justice often includes three central ideas: one being the ability to become a parent, another the freedom to avoid parenthood, while also ensuring kids grow up without harm or indignity. Moving beyond mere legality, this view highlights what people actually need to make real decisions. Shaped by money, social rank, identity and government rules, choices around reproduction rarely depend only on personal preference.

Looking at India, reproductive justice matters more once you see both old and current rules

⁴⁶⁵ United Nations, *Programme of Action of the International Conference on Population and Development* (1994).

⁴⁶⁶ Government of India, *National Population Policy* (Ministry of Health and Family Welfare, 2000).

⁴⁶⁷ Loretta J. Ross, 'Reproductive Justice as a Human Rights Framework' (2017) *Columbia Journal of Gender and Law*.

on reproduction. Government goals shaped choices back then – forced sterilisations, strict birth limits – not personal freedom. A closer look shows power imbalances: some people get heard, others silenced. Who benefits? That question drives the entire argument forward.

2.3 INTERSECTIONALITY IN REPRODUCTIVE JUSTICE

What makes reproductive justice distinct lies in its attention to layered disadvantage – how being a woman, poor, disabled, low-caste, or racially minoritized can combine in shaping who gets support and who faces resistance when making reproductive decisions. Not everyone encounters the system in the same way. Those pushed to the edges through several forms of exclusion often deal with stronger obstacles than others do. This framework refuses flat generalisations about choice. It insists context matters – not just legally or medically, but socially – to understand whose voices get heard, whose bodies are controlled, and why some people struggle more to act on their own terms.

Despite legal guarantees, reproductive choices in India are shaped by layers of disadvantage. When caste, class, and gender overlap, outcomes diverge sharply across populations. Take sterilisation rates: they climb among poorer women, often under coercion, whereas affluent women pursue fertility treatments with greater ease. Access varies, not just by income, but through intersecting identities that amplify marginalization. Recognition on paper means little if power imbalances remain unchanged. Control, disguised as care, affects those already pushed to the edges. Seeing these dynamics demands a lens attuned to multiple, simultaneous forms of exclusion.

2.4 REPRODUCTIVE JUSTICE AS A HUMAN RIGHTS ISSUE

Dignity, equality, and personal liberty often stand at the heart of debates about reproduction – making reproductive choices a matter of human rights for many. Freedom to

choose if, when, or how to have children should exist free from pressure or unfair treatment, according to global standards on basic rights. What sets reproductive justice apart? It insists rights mean little without access to housing, healthcare, and safety that make such choices real.

Starting from global agreements like CEDAW and the ICPD plan, reproductive well-being shows up as central to fairness between genders and progress in societies.⁴⁶⁸ Because of these frameworks, countries must do more than erase unjust laws – active steps are needed to guarantee care, learning opportunities, knowledge. When seen through reproductive justice, choice over one's body becomes something governments help make real, not just avoid blocking.

Reproductive justice in India ties directly to core guarantees within Article 21, framing it as more than policy – a matter of legal principle. Because courts have affirmed privacy, personal dignity, and control over one's body, the case grows stronger that choosing whether or when to reproduce belongs among basic rights. Still, without legislation clearly grounded in human rights, safeguards remain scattered rather than unified. Rules around abortion, surrogacy, and fertility treatments function separately, rarely acknowledging wider ethical or international standards.

CHAPTER 3: STATUTORY FRAMEWORK GOVERNING REPRODUCTIVE RIGHTS IN INDIA

3.1 OVERVIEW OF REPRODUCTIVE HEALTH LAWS IN INDIA

India's legal stance on reproductive rights didn't come together all at once. It grew piece by piece, shaped more by worries about public health than by any strong stand on personal freedom. Decisions around having children weren't framed as basic human rights early on. Instead, passed laws focused heavily on slowing population rise and stopping risky

⁴⁶⁸ | United Nations, *Programme of Action of the International Conference on Population and Development* (1994).

medical procedures. Personal control or agreement often took a back seat. One key law – the Medical Termination of Pregnancy Act of 1971 – appeared when deaths from dangerous abortions became too common to ignore. That rule wasn't built to support choice. Its goal? Lowering how many women died during pregnancy endings gone wrong. So the government stepped in like a protector, not someone handing power to individuals. Care mattered – but independence did not.

Slowly, rules around having babies began covering more ground – things like care during pregnancy, operations to prevent childbirth, birth control methods, approval for help getting pregnant. Still, doctors kept most of the say, backed by strict systems that controlled who could access what. Getting permission often meant proving you met certain criteria, showing lawmakers preferred tight oversight. These checks claim to keep people safe, yet they also make it harder for individuals to choose freely, especially when lives don't match expected patterns.⁴⁶⁹

3.2 SURROGACY (REGULATION) ACT, 2021

3.2.1 Objectives And Legislative Intent

A new rule called the Surrogacy (Regulation) Act came into force in 2021, aiming to stop misuse of women acting as surrogates across India.⁴⁷⁰ Before that moment, there were hardly any rules guiding how surrogacy should work, opening doors to profit-driven deals, questionable health procedures, alongside missing safeguards for those carrying babies. Because of growing unease around fairness and safety, lawmakers stepped in – framing the law as a shield for at-risk individuals involved in having children through others' help.

One aim behind the law seems to shield women by treating them as if they cannot make their own choices about carrying babies for others. Because it lets only unpaid surrogacy while banning any pay, lawmakers act like money

always turns such agreements into abuse. That worry might have weight, yet stopping all paid deals makes you wonder – does this respect a woman's right to understand and accept risks? So protection, even when well meant, needs checking against how it shapes someone's freedom to decide about having children or earning income.

3.2.2 Eligibility Criteria And Regulatory Mechanism

Married straight couples can seek surrogacy only if they fit certain age rules. Surrogate mothers need to have had a child already, besides being wedded themselves. One requirement builds on another, shaping access tightly around traditional views of parenthood. Single people find doors shut, just like those in long-term relationships without marriage. LGBTQ+ individuals face the same block – left out by design. Family here means something narrow, drawn in legal lines.

Not far beneath the surface, rules set by the law bring into existence both national and regional surrogacy councils, alongside a must-have step – clinics have to register. Oversight duty lands on these groups, handing them power to check rules are followed, issue clearances, one after another. Even so, tight government oversight might slow things down, when time matters most. Choices once held close by people now sit inside office walls, filtered through layers of process. That shift – from personal judgment to paperwork trails – brings unease, quietly piling up hurdles instead of help.

3.2.3 Prohibition of Commercial Surrogacy

What stands out in the Act is its outright ban on paid surrogacy. Only unpaid arrangements are allowed – those covering just hospital bills and health coverage. Preventing financial pressure from shaping reproductive choices drives this rule. Stopping women from being treated as markets matters here.

Still, banning paid surrogacy altogether has drawn strong backlash for making exploitation seem simpler than it is. Not every woman in a

⁴⁶⁹ *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1.

⁴⁷⁰ Surrogacy (Regulation) Act, 2021.

tough financial spot loses her right to agree freely; some see carrying a child as their way out of hardship. When payment becomes illegal, the chance to earn disappears – yet nothing changes about why people need money in the first place. Shutting down legal options might push the whole practice into hidden spaces, where danger grows instead of fades.

3.2.4 Rights and Obligations of Surrogate Mothers and Intended Parents

One part of the law spells out what surrogate mothers and future parents must do – also what they can expect. Medical help, health coverage, plus a safety net if others walk away: these belong to women carrying pregnancies for someone else. The rules recognize effort that goes beyond the body, touching feelings too – built-in support tries to keep things fair. A balance forms when risks meet respect.

3.3 MEDICAL TERMINATION OF PREGNANCY (AMENDMENT) ACT, 2021

3.3.1 Evolution of Abortion Laws in India

India's abortion laws began more as a tool for managing population and health than protecting personal rights. Before any specific law existed, the Indian Penal Code of 1860 made ending a pregnancy a crime – unless the mother's life was at risk. Because of that strict rule, many turned to unsafe procedures, which played a major role in high rates of death during childbirth. Facing a growing health emergency, authorities introduced the Medical Termination of Pregnancy Act in 1971. One early outcome? A legal path to safer care emerged, shaped less by choice and more by medical oversight.

Back then, the 1971 MTP Act let abortions happen – but just if certain boxes were checked. Doctors had to agree. Their say-so decided everything. Risks to a woman's body or mind mattered. So did serious issues with the baby growing inside her. Still, the choice never really belonged to her. Instead, physicians held the power, quietly

shaping who could stop a pregnancy. Control stayed locked within medicine's walls.

3.3.2 Expanded Access to Abortion Services

A key shift brought by the MTP (Amendment) Act, 2021 lies in broadening who can reach abortion care under new conditions.⁴⁷¹ Instead of stopping at 20 weeks, now some women may end pregnancies up to 24 weeks – this applies to those facing rape, incest, young girls, and persons living with disabilities. Because life often delays decisions – not just biology – trauma or silence or confusion can push choices past old deadlines. Time moves differently when help is hard to find, knowledge is missing, or shame gets in the way.

Now just one doctor needs to approve an early pregnancy termination, cutting down on wait times. Instead of needing two physicians' views before, a single registered practitioner can give the go-ahead through twenty weeks. That shift helps speed things up, especially where clinics are few or far between. Still, only certain groups qualify under these rules – others must follow tighter limits if they fall outside them.

3.3.3 Consent, Confidentiality, and Gestational Limits

Agreement stands front and center in the updated law – not one abortion goes ahead unless the pregnant person agrees. That rule backs self-determination, shutting out outside approvals, only allowing exceptions when it comes to young people or those dealing with serious mental health conditions. What drives this focus on permission? A legal tradition that treats respect and individual choice as essential when making decisions about reproduction.

Still, tighter rules now guard private information more closely. Names or personal facts about women choosing abortion stay hidden, unless someone legally allowed needs to know. Especially matters where shame around ending pregnancies still runs deep. When privacy gets

⁴⁷¹ Medical Termination of Pregnancy Act, 1971 as amended by the Medical Termination of Pregnancy (Amendment) Act, 2021.

protected like this, getting proper healthcare feels less risky when judgment might follow at home or in community spaces.

Still, time restrictions remain a serious issue. Though some groups now have access up to 24 weeks, ending pregnancy after that point happens only when severe problems with the fetus are found, and only if a panel of doctors agrees. Having these boards involved adds more review and waiting, often making an already tough situation harder for those dealing with difficult health or life conditions.

3.4 ASSISTED REPRODUCTIVE TECHNOLOGIES (REGULATION) ACT, 2021

3.4.1 Regulation of ART Clinics and Banks

Starting in 2021, India put its first full set of rules in place for assisted reproductive technologies. Before that moment, fertility clinics and sperm banks operated without strict laws, relying mostly on voluntary guidelines from medical authorities. Because there was no legal framework, treatments varied widely; some centres prioritized profit over care. Problems like unclear responsibility and risks to patients emerged due to missing supervision.

Every ART clinic and bank must sign up with a national list, plus join their local state boards too. Hospitals need to follow set rules about buildings, trained staff, tools they use, working files – each part matters. Across India, care during treatments should look more alike now, shaped by these clear steps. Breaking the law could mean paying money, even time behind bars; warnings alone no longer hold weight.

3.4.2 Gamete Donation and Consent Mechanisms

One key part of the ART Act lies in how it carefully manages gamete donation, focusing on protection and clear agreement.⁴⁷² Not payment but fairness guides who gives sperm or eggs – only donations without profit, except covering actual health costs. Like pages from the same book, the 2021 Surrogacy Regulation

Act shares this mindset, steering away from treating human reproduction as something to sell. What drives both laws is a quiet push against turning life's beginnings into goods.

Strict rules decide who can give donations, like how old they must be, health checks, also how often it's allowed. Every step needs clear permission in writing, explaining what happens, possible dangers, plus where and how samples are kept, used. The law sees donors' bodies as personal, tries shielding them from pressure, too many medical visits.

3.4.3 Rights of Children Born through ART

Right from the start, the ART Act stands out by giving legal status to kids made possible through fertility treatments. It says clearly: when a baby arrives via these methods, they're seen just like any other child of the intended parents – full stop. With that comes every right tied to being born into a family, no exceptions. Questions about who's legally responsible, entitled to inherit, or recognized as parent? That uncertainty fades here.

Still, the rule guards kids' needs by limiting who sees donor details. Though health facts without names can be shared, a donor's name stays hidden – unless laws say otherwise. Aiming somewhere between what children should know and what donors keep private shapes this setup.

Left out of ART access, single men and same-sex couples find their place in rights debates quietly reshaped. When only some are allowed to pursue fertility treatments by law, it quietly upholds a model where straight families come first. Yet recent court rulings have begun acknowledging different kinds of households as valid. Such legal boundaries now seem at odds with those growing affirmations of fairness and inclusion under the Constitution..

⁴⁷² Assisted Reproductive Technologies (Regulation) Act, 2021.

CHAPTER 4: JUDICIAL APPROACH TOWARDS REPRODUCTIVE RIGHTS IN INDIA

4.1 CONSTITUTIONAL BASIS OF REPRODUCTIVE RIGHTS

Though the Indian Constitution says nothing outright about reproductive rights, court rulings over time have folded them into basic rights, especially those listed in Part III. Because of how judges view liberty, equality, dignity, and self-determination, these ideas now support decisions around reproduction. As society shifts, so too does understanding of what the Constitution protects – growth built not from new laws but from deeper readings of old principles.⁴⁷³ What began as silence has become protection through reasoning rooted in lived experience.

Rights around reproduction touch parts of the Constitution listed as 14, 15, and 21. Equal treatment under law comes from Article 14 – this matters if someone gets blocked from care without fair reason. When choices about bodies are limited just because of gender, Article 15 steps in, since courts now see it shielding people from such control. Still, it's Article 21 that stands out, quietly forming much of how judges talk about these freedoms.

A person's life under Article 21 isn't just about staying alive – it means living with worth. Because of this broader view, choices around having children, birth control, or ending pregnancies fall within personal freedom. While laws may restrict such rights, courts have stepped in – aligning rigid rules with deeper constitutional values.

4.2 ARTICLE 21: RIGHT TO PRIVACY, DIGNITY, AND BODILY AUTONOMY

Sometimes seen as key to personal control over one's body, Article 21 also supports private decision-making. Because courts now treat privacy as essential, rulings on reproduction have shifted – personal matters like childbirth are viewed as shielded under the

Constitution.⁴⁷⁴ Choices about continuing a pregnancy touch both physical self-determination and inner independence. Not just legal lines, but lived experience shapes how these rights apply.

Life's value holds more weight when dignity shapes its meaning. Forced continuation of a pregnancy, particularly after assault or danger to health, strikes against personal worth. Courts see this clearly, shaped by real experiences, not distant theories. Choices about reproduction touch deeper layers than rules or charts ever capture.

Nowhere is change more clear than in how judges see women – not as figures needing shelter, but as people who decide for themselves. Courts lately treat them as full agents, especially when choices touch their own bodies. Still present, though, are old-style laws that hold back such freedom. This clash shows up where rights promised by constitutions meet roadblocks built by lawmakers.

4.3 LANDMARK SUPREME COURT JUDGMENTS ON ABORTION

4.3.1 *Suchita Srivastava V. Chandigarh Administration*

One day, courts began seeing things differently in India when it came to women's control over their bodies. A woman labelled intellectually disabled found herself pregnant after being attacked. Officials moved quickly, asking judges if they could end the pregnancy even though she did not agree. Her mind, they argued, made her unfit to decide. That moment – quiet at first – shifted how laws viewed choice and dignity.

Nowhere does freedom ring louder than in a woman's power to shape her own body. Still, the highest court made clear: such choices anchor deep within personal liberty, as promised by Article 21. Each person holds dual rights – one to bear children, another to remain childless. At times misunderstood, mental health conditions

⁴⁷³ Constitution of India, arts 14, 15, 21.

⁴⁷⁴ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

differ sharply from cognitive impairments. Capacity to decide stands apart, even when disabilities exist.

4.3.2 X v. NCT of Delhi

A single woman asked India's top court to let her end a pregnancy past twenty weeks. Though law allowed it for some married people, officials said she did not qualify.⁴⁷⁵ Her case fell into a gap – rules seemed to ignore those without marriage ties. Judges looked closer. They saw fairness mattered more than marital status. Boundaries around choice widened because of this moment. What once felt limited now included others once left out.

Marriage rules? They don't decide who gets an abortion, said the judges. Instead, fairness under Articles 14 and 21 means choices about pregnancy stand free from such labels. Life isn't stuck in old patterns anymore – families look different now. Laws must reflect how people actually live, not push outdated ideas. What changed? The court saw it clearly: morality belongs to individuals, not statutes.

CHAPTER 5: COMPARATIVE AND INTERNATIONAL LEGAL PERSPECTIVE

5.1 REPRODUCTIVE RIGHTS UNDER INTERNATIONAL HUMAN RIGHTS LAW

Gradually, reproductive rights took shape in global human rights standards—never arriving whole, but built instead through linked protections like life, health, personal privacy, equality, and freedom from bias. Over time, international oversight organisations began seeing clear value in letting people guide their own fertility decisions, especially those often excluded, including women and vulnerable communities.⁴⁷⁶ What once centred on ethics or managing populations now leans toward self-direction and fairness in society.

Starting from the mid-20th century, global agreements remained silent on reproductive rights by name. Yet judicial interpretations

gradually extended core human rights to cover such issues. Dignity forms a foundation of the right to life – without it, existence lacks meaning, especially when people face coerced pregnancy. When health systems block reproductive care, that dignity erodes. Personal autonomy emerges within privacy protections, shaping choices about having children. Decisions around contraception or childbirth fall into this protected sphere. Courts have leaned on these principles even without explicit wording in treaties. Meaning evolves in law, particularly where bodily control is at stake.

5.2 CEDAW AND REPRODUCTIVE JUSTICE

Healthcare access tied to family planning must be guaranteed, according to Article 12 of CEDAW. Though framed broadly, its impact emerges clearly in how nations interpret obligations toward reproductive autonomy. Control over childbearing often reflects wider gender imbalances, a link the convention explicitly acknowledges. Instead of vague commitments, it demands concrete legal reforms in medical treatment fairness. Norms around reproduction gain clarity through this treaty's binding nature. While not using emotive language, its provisions challenge systemic exclusions embedded in health policy.

Though often seen as purely legal, CEDAW shifts toward real fairness instead of mere appearance. Because caregiving duties limited women's freedom before, those roles are now recognized as tools of restriction. When health choices tie directly to dignity, equal treatment becomes harder to deny. Framing care this way links bodily autonomy to larger patterns of power imbalance.

Beginning with the work of the CEDAW Committee, its General Recommendations make clear: blocking access to safe abortion, enforcing sterilisation without consent, or limiting reproductive care breaches women's fundamental rights. Time after time, it underlines how decisions about reproduction need space – space untouched by pressure, abuse, or bias. Close to this stance runs the idea

⁴⁷⁵ X v. NCT of Delhi, (2022) 9 SCC 1.

⁴⁷⁶ Universal Declaration of Human Rights, 1948, arts 1, 3, 12.

of reproductive justice, less concerned with mere legal permission and more with whether real support exists to act on such choices.

5.3 ICCPR, ICESCR AND RIGHT TO HEALTH

Under global legal standards, reproductive rights find support through two key agreements: the International Covenant on Civil and Political Rights (ICCPR) alongside the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁴⁷⁷ Although the ICCPR prioritises freedoms like speech and assembly, health-related entitlements fall more directly under the scope of the ICESCR. One covenant guards individual autonomy in public life; the other advances dignity through access to essential services. Together, they form an interlinked foundation – neither complete without the presence of the other. Legal protection of reproduction thus spans both personal liberty and material well-being across these instruments.

Nowhere does the ICCPR mention reproductive rights by name – yet its rules on privacy and human dignity imply strong protections. When pregnancy results from rape, or when serious fatal issues arise, forcing someone to carry it may breach international standards. According to the Human Rights Committee, such coercion can amount to cruel or degrading treatment. That view ties control over reproduction directly to physical boundaries and psychological health. So personal decision-making about childbirth gains weight under global law.

Health under the ICESCR means reaching the best possible level, physically and mentally. Interpreted widely, it covers reproductive care – such as birth control, support during pregnancy, or safe termination of pregnancy. Meeting this duty requires governments to provide services that exist, reach people, respect cultural needs, and meet medical standards. When such care is withheld, women often bear the heaviest

burden, limiting their role in jobs and society alike.

5.4 COMPARATIVE STUDY OF SURROGACY LAWS

Across regions, rules on surrogacy mirror distinct cultural norms, moral concerns, and ways of governing birth-related matters. Where one nation allows paid agreements within strict oversight, another tolerates only unpaid support – or bans it entirely. Looking at different legal frameworks shows efforts to weigh personal choice in having children against risks of misuse and what serves the child best. For India, such contrasts matter – its 2021 law leans heavily toward control and caution.

5.4.1 United Kingdom

Despite allowing surrogacy, the UK bans paid arrangements, treating them as legally void. Under the Surrogacy Arrangements Act of 1985 – alongside later changes to family legislation – the system leans heavily on non-commercial intent.⁴⁷⁸ Legal parenthood at birth always stays with the birth mother, even if she shares no DNA with the child. Because agreements cannot be enforced, outcomes rely more on trust than contracts.

Following the birth, legal parenthood shifts to the intended parents solely via a court-issued parental order. What guides the judge most is how the child will fare in the long run. Only once the baby arrives does review happen – this way, agreements aren't treated like standard contracts but examined with care. A newborn changes everything; scrutiny follows.

5.4.2 United States

California allows paid surrogacy under clear rules; most other states do not. Legal rights differ widely across regions due to uneven state policies.⁴⁷⁹ Where permitted, future parents may be named on birth documents prior to delivery. Elsewhere, agreements hold little weight or face outright bans.

⁴⁷⁷ International Covenant on Economic, Social and Cultural Rights, 1966, art 12.

⁴⁷⁸ Surrogacy Arrangements Act 1985 (UK).

⁴⁷⁹ California Family Code §§ 7960–7962 (USA).

The approach taken in California frequently appears on global lists for supporting surrogacy rights. Because it views such agreements as part of personal choice around reproduction and binding contracts. Individuals carrying pregnancies act freely – making decisions with informed agreement and access to lawyers.

CHAPTER 6: ETHICAL AND SOCIO-LEGAL ISSUES IN REPRODUCTIVE TECHNOLOGIES

6.1 ETHICAL CONCERNS IN SURROGACY ARRANGEMENTS

What happens when having a child involves more than biology? Surrogacy answers some struggles with fertility – yet opens debates about what is right. Not everyone agrees on where personal choice ends and social values begin. One person's freedom might feel like pressure to another involved. Think of the woman carrying the baby, those wanting to raise it, plus the child later wondering how they came into being – all their needs matter, yet do not always line up. Balance becomes hard when no rule fits every feeling.

Not everyone agrees on the ethics behind paid surrogacy. Some see it as a way to improve women's financial standing, opening doors that would otherwise stay shut. Yet others warn that money may turn pregnancy into something bought and sold, stripping it of personal meaning. Before 2021, India saw booming business in surrogacy, drawing couples from abroad along with local women facing hardship – many unaware of health or legal dangers involved.⁴⁸⁰ When choices stem from necessity rather than freedom, true agreement becomes questionable. Protection through law seems necessary – not to control, but to honour choice without allowing harm.

Surrogacy across national borders brings added moral challenges into view. From poorer nations, women sometimes bear babies for wealthier couples living elsewhere. Though agreements might look consensual at first glance, differences in economic status often

shape decisions more than freedom does. So any sound judgment must weigh the environment surrounding a signature, not only the document itself.

6.2 EXPLOITATION AND COMMODIFICATION OF THE FEMALE BODY

One of the most serious ethical concerns in surrogacy and assisted reproductive technologies lies in exploitation. Because of economic pressure, women from poorer communities frequently enter commercial surrogacy arrangements – freedom of choice weakened by circumstance. In India, until 2021, numerous surrogate mothers operated without personal legal counsel, proper medical care, or mental health assistance. Cases like *Baby Manji Yamada v. Union of India* focused on safeguarding children yet overlooked dangers faced by the surrogates. Structural imbalance remains unaddressed within these rulings.

The Surrogacy (Regulation) Act, 2021 steps in by banning paid surrogacy, permitting only unpaid forms. Although intended to stop abuse, some say the total ban could shrink options available to women deciding on reproductive paths. Because true independence shows up when decisions – especially those tied to money – are freely made. What matters emerges not from restriction but from choice.

6.3 CONSENT AND POWER IMBALANCES

At the heart of reproductive technology rules – both moral and lawful – is agreement among those involved. To truly agree, people must grasp health dangers, legal duties, besides possible emotional effects. Still, unequal influence among future parents, fertility centers, besides surrogates can weaken honest choice. Women carrying babies might sense pressure to follow medical routines, personal limits, also demands after birth set by commissioning couples.

In assisted reproduction settings, unequal dynamics are common. Though agreements may be signed, real choice can falter under economic pressure, limited knowledge, or

⁴⁸⁰ *Baby Manji Yamada v. Union of India*, (2008) 13 SCC 518.

cultural norms. Individuals providing eggs, sperm, or carrying pregnancies frequently hold weaker positions versus clinics or future parents. Indian courts acknowledge consent within surrogacy arrangements – yet tend to prioritise paperwork over hidden influences shaping that agreement.

Here, law meets medical ethics through practical safeguards. Though separate laws govern surrogacy and assisted reproduction, each requires counselling, mental health evaluation, and personal legal guidance – steps meant to back genuine agreement.⁴⁸¹ Rather than treating choice as mere paperwork, reproductive justice insists real control depends on access, awareness, and fair conditions shaping how women decide.

6.4 MATERNAL AUTONOMY VS FOETAL RIGHTS

A woman's control over her own body during pregnancy stands central to reproductive fairness. Backed by constitutional protections like Sections 14, 15, and 21, she holds entitlements to equal treatment, freedom from bias, along with living with respect.⁴⁸² When it comes to choices about reproduction, independence means deciding on termination, assisted conception methods, or carrying a child for others – without pressure from outside forces.

Still, choices made by pregnant women sometimes stand at odds with claims tied to the unborn, sparking moral unease. Questions arise in courtrooms about when – if ever – a developing child gains separate standing under law, particularly during later stages of pregnancy or intricate surrogacy disputes. Legal systems attempt to hold both sides in check. At one point, India's highest bench ruled in *Suchita Srivastava v. Chandigarh Administration* that decisions around reproduction are shielded as personal freedom within Article 21. Still, the Court made clear that fetal well-being, though relevant, holds less weight than a woman's right to decide. Policy

and law, it emphasized, ought to place her decision at the core – because constitutional protection backs maternal control.

6.5 SOCIO-ECONOMIC BARRIERS TO REPRODUCTIVE HEALTHCARE

Though laws may grant certain rights, everyday conditions often block true access to care tied to reproduction. Where money, clinics, or knowledge are scarce, treatments like assisted conception, carrying a child for others, or ending pregnancies become hard to reach. People without means, living far from cities, or pushed to the edges by society meet more than one obstacle at once – this gap between promise and reality persists.

Take the MTP Amendment Act of 2021 – while it broadens options for abortion, many women outside cities still face long distances to find licensed doctors. In another case, services such as IVF mostly exist in metropolitan areas, putting them out of financial reach for poorer families. Because of these conditions, having a legal right does not always mean being able to act on it, which narrows real choices even when laws appear supportive.

Even when laws permit it, cultural judgment often stands in the way. Facing backlash from relatives or communities can deter women from using abortion or assisted reproduction care. Economic hardship doesn't act alone – social pressure shapes choices just as much. Access matters more than legal rights on paper. Justice in reproduction means removing obstacles like expense, travel distance, lack of knowledge, and shame woven into everyday norms.

CHAPTER 7: FINDINGS, SUGGESTIONS, AND CONCLUSION

7.1 KEY FINDINGS OF THE STUDY

One finding stands out clearly when looking at how laws shape choices around reproduction in India. Though rules exist, access often depends on who you are and where you live. Because court decisions sometimes conflict, confusion follows both patients and providers. Ethics enter the picture once biology meets bureaucracy.

⁴⁸¹ Surrogacy (Regulation) Act, 2021; Assisted Reproductive Technology (Regulation) Act, 2021.

⁴⁸² Constitution of India, arts 14, 15, 21.

Where money flows into fertility services, fairness tends to fade. Not every woman faces the same risks during pregnancy or after childbirth. Some technologies promise hope – yet remain out of reach for many. When religion influences policy, medical need may take a back seat. Laws about abortion shift slowly, even as society changes faster. In surrogacy, emotional bonds complicate legal contracts. Health systems struggle to balance innovation with equity. What appears just on paper might feel unjust in practice.

Though built on earlier laws, recent changes now better support personal choice in reproduction. With the Surrogacy (Regulation) Act, 2021, only unpaid help among relatives counts as allowed – cash-based deals are barred. Instead of profit-driven models, intent matters most here. Meanwhile, fertility centres and donation storage units must follow strict rules under the ART Regulation Act, 2021 – including tracking operations and securing informed permission. Because of tighter checks, misuse risks drop sharply. On another front, ending pregnancies later than before became possible through updated guidelines in the MTP Amendment Act, 2021. More control rests with individuals deciding their own paths. Taken together, these shifts signal stronger backing for fairness, equality, and dignity within India's highest law.

7.2 CONCLUSION

Despite new laws like the Surrogacy (Regulation) Act, 2021, ART Regulation Act, 2021, and MTP Amendment Act, 2021 improving legal protections around reproduction in India, actual access often falls short. Reproductive justice – covering surrogacy, abortion, and fertility treatments – is shaped less by legislation alone but more by ongoing economic disparities, ethical tensions, and bureaucratic hurdles. Legal progress exists; yet daily experience frequently tells another story. Because policy does not automatically translate into equity, many women still navigate fragmented systems despite statutory advances. Even with

frameworks meant to uphold autonomy, real-world outcomes remain uneven.

Though court rulings like *Suchita Srivastava v. Chandigarh Administration* strengthened legal safeguards for reproductive choice and child well-being in surrogacy and ART cases, actual access remains limited. Delays in policy implementation, inconsistent monitoring across states, unequal resources, alongside gaps in enforcement, weaken those protections on the ground – despite judicial clarity.