



## REPRODUCTIVE RIGHTS AND NEW COMPLEXITIES: A LEGAL UPHILL BATTLE

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### Abstract

Right to Health is regarded as a fundamental and basic right that every individual is entitled to. The Indian Supreme Court through the various judgments has expanded the scope Art. 21 by widening the term 'Life' to incorporate Right to Health as a Fundamental Right under the Indian Constitution. The Right to Health also has a vast ambit under which the focus point of this paper shall be Right to Reproductive Health. Reproductive rights find its close proximity to the laws for gender justice and therefore the breach of these reproductive rights directly infringes the right to equality and gender rights for women. The authors shall bring forth a comprehensive analysis of the various policies introduced by the Government in promoting Reproductive Rights in India. The authors through this work aim to bring the different perspectives through the lens of the emerging issues of Reproductive Health addressing the existing debate on Surrogacy and Abortion ranging from the Right to Choose (for the women) Vs. Right to Life (of the Unborn Child) to women's right to health. The legal

dimensions through various decided case laws to these existing debates shall be discussed beyond their social impact. The paper shall highlight and bring a comprehensive case on the Medical Termination of Pregnancy (Amendment) Act, 2021 by analyzing the provisions to see how far they can go.

**Keywords:** Reproductive Health, Surrogacy, Abortion, MTP (Amendment) Act, 2021

## REPRODUCTIVE RIGHTS AND NEW COMPLEXITIES: A LEGAL UPHILL BATTLE

### 1.1. INTRODUCTION

The law of public health is a nexus between the health of the people in a country and the applicable provisions of law addressed to resolve the issues of public health with the aid of other legal tools. Just like the changes in almost every sector, public healthcare sector has also been witnessing major developments to cater to the needs of the people. This is one aspect that deserves no compromises. The roots of right to health can be traced back to the Universal Declaration of Human Rights, 1948. Right to health has been considered and qualified as a basic human right, which every individual shall be entitled to.<sup>1</sup> It became a civil right which meant that the states were bound to offer adequate conditions to the individuals where they can sustain their rights.<sup>2</sup>

Over the years there have been many treaties that have focused upon the issues of human rights. These are massively influenced by global awareness for women's rights and provide a foundation for legal recourse to end

<sup>1</sup> Dr Tedros Adhanom Ghebreyesus, *Health is a fundamental human right*, WORLD HEALTH ORGANISATION, 10 Dec 2017,

<https://www.who.int/mediacentre/news/statements/fundamental-human-right/en/>.

<sup>2</sup>*Ibid.*



the discrimination on the basis of gender as well as the violation of gender rights. These instances establish that men and women have equal rights and the state is bound to take actions against any practices that are discriminatory otherwise

The first international document that basically recognized these rights was with the annunciation of Tehran.<sup>3</sup> Amongst others, the International Conference on Population and Development and Fourth World Conference on Women have paved the way towards the emerging sexual and reproductive rights across the globe.<sup>4</sup>

Reproductive rights have been defined under the WHO as follows: “Reproductive rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have information to do so, and right to attain the highest standard of sexual and reproductive health. They also include the right of all to make decisions concerning reproduction free of discrimination, coercion and violence.”<sup>5</sup>

Reproductive rights include some or all of the following rights:<sup>6</sup>

1. Right to legal or safe abortion.
2. Right to control one’s reproductive functions.

3. Right to access in order to make reproductive choices free of coercion, discrimination and violence.
4. Right to access education about contraception and sexually transmitted diseases and freedom from coerced sterilization and contraception.
5. Right to protection from gender-based practices such as female genital cutting and male genital mutilation.

Similarly, in order to uphold the legality of laws in any country, the oft used equipment is its Constitution. The Constitution of any country ensures that all the organs in the country work in accordance to the fundamental rules by governing the relationship between the state and the citizens.<sup>7</sup> Being the fundamental law of the land, the Constitution of India aims to ensure social, economic and political justice. Amongst the set of basic fundamental rights, a prominent one is the Right to Health.

Right to Health is regarded as a fundamental and basic right that every individual is entitled to. A nation’s development is related directly to the healthy state of its individuals. A healthy body refers to a balanced physical and mental state of living which is free from any disease or pain. The other set of basic human rights can be functioned only if Right to Health is provided as an utmost and

<sup>3</sup> Knudsen L., *Reproductive rights in Global Context*, VANDERBILT UNIVERSITY PRESS, 2006.

<sup>4</sup> Cook, RJ, Mahmoud FF, *Advancing reproductive rights beyond Cairo and Beijing*, INTERNATIONAL FAMILY PLANNING PERSPECTIVES, Sep, 1996.

<sup>5</sup> Department of Reproductive Health and Research (RHR), *Sexual and reproductive health*, WORLD HEALTH ORGANISATION, (Aug 26, 2009) <http://who.int/reproductive-health/gender/index.html>.

<sup>6</sup> Anastasios Zavales, *Genital mutilation & the United Nations: male and female circumcision, human rights & the restoration of spiritual integrity & freedom*, UNIVERSITY OF LAUSANNE, SWITZERLAND, (Aug 11, 1996), <http://www.nocirc.org/symposia/fourth/Zavales4.html>.

<sup>7</sup> *Stop violence Against Women: Reproductive Rights*, SVAM AMNESTY INTERNATIONAL USA, (2007), <http://www.amnestyusa.org> Accessed on 29-082009.



accessible right to every human as their centric right.<sup>8</sup>

The Constitution of India has as well provided for guidelines for the better governance in the country through the Fundamental Rights and Directive Principles of State Policies (DPSPs). Although DPSPs cannot be legally enforced, they certainly act as the guiding light for the state to work towards the said social, economic and political objectives for the welfare of the people.

The Right to Health has been incorporated by the broadening of the scope of Article 21 of the Indian Constitution. It states that every individual shall have a right to life and personal liberty. The term 'life' has been expanded by inclusion of various other essential human rights that acts as a foundation for a decent living. Right to Health has been a product of Article 21 as a sub set of human rights. Right to Health has as well over the years expanded its scope and now also includes Right to Reproductive and Sexual rights. They are not merely limited to Right to Life but are also extend to Right to Equality of a woman through various judgments of the Supreme Court.<sup>9</sup>

## 1.2. ESTABLISHING REPRODUCTIVE RIGHTS THROUGH JUDICIAL JUDGMENTS IN INDIA.

Over the last couple of years, the Supreme Court through its vast analysis and interpretations has recognized the women's reproductive rights as one of the most provoking aspects of human rights. These have become fundamental through Article 21

of the Indian Constitution, Right to Life. The apex court has through its landmark decisions established the fact that these reproductive rights are the most crucial ones in today's time. The term 'Reproductive Rights' have gained its momentum through spanning cases of maternal health, abortion, child marriage and the like and adopted stout definition of 'Reproductive Rights'.

Reproductive Rights can be called a cluster of rights, taking aspects from right to health, right to equality, non-discrimination and free from torture or ill-treatment. They put an onus on the State to ensure that women and adolescent girls should have access to such reproductive health information and the State is obligated to arrange for the availability and accessibility of these reproductive health related amenities. Reproductive rights find its close proximity to the laws for gender justice and therefore the breach of these reproductive rights directly infringes the right to equality and gender rights for women. Being a signatory to various International Conventions, India has an obligation to establish various rights for the preventive and precautionary measures in order to uphold the protection of women in the country as well as ensure a dignified life to them.

Along with this, through Article 51(c) of the Indian Constitution, the judiciary has while interpreting the provisions has held that the government is bound to respect and follow the international treaties and law. In this process, India has been amongst one of the pioneers in developing laws to protect and enhance the reproductive rights for women in the country. The pertinent question is, do

<sup>8</sup>Sandip B. Satbhai, *Right to Health in India-A Study of Constitutional and Judicial Attitude*, ACADEMIA, (2014).

<sup>9</sup> CESC Ltd. v. Subhash Chandra Bos 1992 AIR 573.



women and girls in India actually ‘get’ to enjoy these rights in its spirit? Owing to poor health related services in various rural as well as semi-urban areas and a stringent denial of the rights of the women to take their decisions for reproductive choices, the essence of these reproductive rights has not been able to bear its fruits in its true spirit. The reasons for such a non-application of reproductive rights in India have been the difference in approach from formulating laws with the aim of protecting women-centric rights to demographic targets like population control. India has recorded child marriages and maternal deaths globally despite of adopting various schemes to guarantee the maternal healthcare of woman and a national law prohibiting child-marriages.<sup>10</sup>

The Supreme Court has over the years intervened at various occasions and made significant remarks on the violations of reproductive rights as grave deprivations of women’s fundamental and basic human rights. This began when the Human Rights Law Network in 2008 started filing various petitions concentrating on the issues related to the pregnancy deaths and maternal health in various high courts in India leading to the recognition of reproductive rights as fundamental in nature by the Apex court. The Court was of the opinion that “these petitions focus on two inalienable survival rights that form part of the right to life: the right to health (which would include the right to

access and receive a minimum standard of treatment and care in public health facilities) and in particular the reproductive rights of the mother.” Citing CEDAW and ICESCR, the decision held that “no woman, more so a pregnant woman should be denied the facility of treatment at any stage irrespective of her social and economic background...This is where the inalienable right to health which is so inherent in the right to life gets enforced”<sup>11</sup>

In the landmark judgment *Paschim Banga Khet Samity v. State of West Bengal*, in which the Supreme Court of India for the first time considered the right to emergency medical care as a fundamental right, directed that: “...the primary duty of the Government is to secure the welfare of the people....The Government discharges this obligation by running hospitals and health centers which provide medical care to the person seeking to avail those facilities. Article 21 imposes an obligation on the State to safeguard the right to life of every person... Failure on the part of a Government hospital to provide timely medical treatment to a person in need of such treatment results in violation of his right to life.”<sup>12,13</sup>

The Supreme Court in 2016 instructed the State in the case of *Devika Biswas v. Union of India & Ors.* to also recognize women’s autonomy and gender equality as core elements of women’s constitutionally-protected reproductive rights beyond the

<sup>10</sup> Subhash Chandra Singh, *Reproductive Rights: A part of human rights*, SUPREME COURT JOURNAL, (2002).

<sup>11</sup> *Consolidated Decision, Laxmi Mandal v. Deen Dayal Harinagar Hospital & Others*, (2008) W.P. (C) No. 8853/2008; *Jaitun v. Maternal Home MCD, Jangpura & Others*, (2009) W.P. (C) 8853 Delhi High Court.

<sup>12</sup> *Paschim Banga Khet. Samity v. State of West Bengal* A.I.R. (1996) S.C. 2426 .

<sup>13</sup> Jameen Kaur, *The role of litigation in ensuring women's reproductive rights: An analysis of the Shanti Devi judgement in India*, REPRODUCTIVE HEALTH MATTERS, (Jul 9, 2012) <https://www.tandfonline.com/doi/pdf/10.1016/S0968-8080%2812%2939604-3>.



reproductive health framework.<sup>14</sup> Claims of violations of reproductive rights arising from coercive and substandard sterilization and the lack of access to the full range of contraceptive methods have been brought before the Supreme Court of India and high courts for over a decade.<sup>15</sup> In *Devika Biswas*, the Supreme Court established that State policies and programs leading to sterilization abuse, violate women's fundamental and human rights.<sup>16</sup> This decision marks a significant step forward from previous Supreme Court cases which have justified violations of reproductive autonomy due to concerns about population growth.<sup>17</sup>

In the 2016 case of *High Court on its Own Motion v. State of Maharashtra*<sup>18</sup>, the Bombay High Court mandated to improve women prisoners' access to abortion and strongly affirmed women's right to abortion as an intrinsic aspect of the fundamental right to live with dignity under Article 21. The judgment recognizes that unwanted pregnancies disproportionately burden women. Forcing a woman to continue a pregnancy "represents a violation of the woman's bodily integrity and aggravates her mental trauma which would be deleterious to her mental health."<sup>19</sup>

<sup>14</sup>*Devika Biswas v. Union of India & Others*, W.P. (C) 81/2012 .

<sup>15</sup>*Ramakant Rai v. Union of India* (2003).P (C) 209; *Himmat Mahila Samooh v. Haryana*, (2014) W.P. (C) 12623.

<sup>16</sup>*Devika Biswas v. Union of India & Others* (2012)W.P. (C) 81.

<sup>17</sup>*Javed and Others v. State of Haryana* A.I.R. 2003 S.C. 3057; *State of Haryana and Others v. Smt. Santra* (2000) 5 S.C.C. 186.

## 1.2. GOVERNMENTAL AID IN PROMOTING REPRODUCTIVE RIGHTS

The various policies and laws highlighting health issues such as the **Reproductive, Maternal, Newborn, Child and Adolescent Health (RMNCH+A)** was initiated in 2013., This policy with a 'continuum of care' approach to the health needs of adolescents, mothers, and children intended to achieve the promotion of reproductive rights in India. This involves composed and incorporated conveyance of health services through different life-cycle stages, for example, childhood, adolescence, conceptive age, pre-pregnancy, labor, and postnatal.

Another initiative has been the **Janani Suraksha Yojana (JSY)** that has been launched in 2005 to promote institutional delivery by providing monetary incentives. The scheme offers cash assistance to pregnant women and to mothers for post-delivery care, and is applicable nationally. Accredited Social Health Activists (ASHAs) are the core functionaries of the scheme.<sup>20</sup>

**Janani Shishu Suraksha Karyakram (JSSK)** has been yet another initiative by the Ministry of Health and Family Welfare that launched JSSK in 2011. JSSK complements the goals and objectives of JSY. The scheme allows pregnant women to receive free and

<sup>18</sup>*State of Haryana and Others v. Smt. Santra* (2000) 5 S.C.C. 186 .

<sup>19</sup>*High Court on its own Motion v. The State of Maharashtra* (2016) W.P. (CRL) No. 1; *Court on Its Own Motion Lajja Devi v. State* (2008) W.P. (CRL) No. 338.

<sup>20</sup>SAMA Resource group for Women and Health, *Sexual health and reproductive health rights in India*, NATIONAL HUMAN RIGHTS COMMISSION, Apr, 2018



cashless deliveries in government institutions.

Recently in the year 2016 and 2017, **Pradhan Mantri Surakshit Matritva Abhiyan** (PMSMA) and **Pradhan Mantri Matritva Vandana Yojana** has been launched to supplement and enhance the maternal healthcare and reproductive rights of the women.<sup>2122</sup>

Apart from these, the National Population Policy, 2000, affirms the right to voluntary and informed choice in matters of family planning. There is health programmes – such as National Family Welfare Programme, National Family Health Survey, Integrated Child Development Services (1975), Reproductive and Child Health Programme (1996) etc. that has been launched for providing healthcare measures and awareness among women and girl child. But these programs fail to focus on the issues of reproductive health of women. There is a need to deal with the issues of reproductive health of women by reshaping the health programs and laws according to the reproductive health needs of women in India.

In spite of the increase in the number of institutional deliveries in recent years, quality of care remains a serious concern. Vulnerable women from marginalized caste groups and from geographically remote areas continue to be excluded from public health programmes. Maternal health needs to be addressed within the larger framework of the collapsing health systems in the country, and should be seen on

a continuum of other repressive policies that address the socio-political context of health.

These gaps were noted by the Delhi High Court in the case of *Laxmi Mandal v. Deen Dayal Harinagar Hospital and Ors.*<sup>23</sup> It directed that “if a person is declared below poverty line (BPL) in any state of the country and is availing of the public health services in any part of the country, such person should be assured of continued availability of such access to public health care services wherever such person moves.”<sup>24</sup>

### 1.3. NEW CHALLENGES AND PERSPECTIVES: SURROGACY AND ABORTION

#### 1.3.1. Surrogacy – a ray of hope or a false hope?

In any matrimonial relation, bearing a child brings along the strengthening of a relationship, both socially and emotionally. While with the change in philosophies over the years, some couples voluntarily choose not to procreate a child whereas some of them are unable to have a child of their own through sexual intercourse due to various reasons. Such a situation develops not only a feeling of despair amongst those expecting couples but also a social stigma that adds to their misery. “World Health Organization (WHO) estimates the overall prevalence of primary infertility in India between 3.9 and 16.8%.” Moreover, Artificial Reproductive Techniques (ART) have come as a boon for these couples that offer ways through which

<sup>21</sup>MoH FW, *Pradhan Mantri Surakshit Matritva Abhiyan*. NATIONAL HEALTH PORTAL

<sup>22</sup>Government of India, Ministry of Women and Child Development. *Maternity Benefits Under Pradhan Mantri Matru Vandana Yojana*, Dec 28, 2017.

<sup>23</sup>*Laxmi Mandal v. Deen Dayal Harinagar Hospital and Ors* (2008) W.P.(C) Nos. 8853 of 2008.

<sup>24</sup>*Id. at 23*



a couple can have a child of their own. These techniques are no longer a distant dream for the couples in India and have attracted desirable couples from many other parts of the world to India as an attractive destination for the procreation of children. It is safe to say that as much of a blessing these techniques have proven to be, they do come with their fair share of cons. Surrogacy is one of the most debatable techniques today. Surrogacy can be understood as lending of a womb by a surrogate mother for the procreation of a child. Recently, a legislation that has been in the pipeline for quite some time has now been passed by the lower house in the parliament in order to regulate 'Commercial' surrogacy in India.

With reasons ranging from empowerment of women to regulating the lack of qualified doctors who practice at ART clinics, this bill has been passed to ensure that no ill advantages are taken and hence has been limited to Altruistic Surrogacy, which means that only a close relative (which is also not defined under the bill) can be a surrogate mother and bans Commercial Surrogacy. The bill also puts a huge shield of 5 years after which the desiring couples can choose to opt for Surrogacy as an alternative. This is unfair at the end of those parents who have been already certified by the doctors incompetent to procreate a child prior to this waiting shield period. The bill also seeks to exclude unmarried persons and the recently recognized LGBTQ community despite the Apex court entitling legal status to them by decriminalizing Section 377 of Indian Penal Code in the *Navtej Singh Johar v. Union of India* case.<sup>25</sup>

<sup>25</sup> *Navtej Singh Johar & Ors v. Union of India* AIR 2018 SC 4321.

<sup>26</sup> 113 Marsha Garrison, *Law Making for Baby Making: An Interpretive Approach to the*

In a country that's moving towards development not merely technologically but also socially, the restrictions that have been imposed by the **Surrogacy (Regulation) Bill, 2019** requires a thorough analysis.

### 1.3.2. Abortion- How far is this legal right justified?

The active decision of women to not continue with the process of giving birth to a child leads to Abortion. It works both from eugenic contemplations – the apparent 'need' to keep a few segments of the populace from imitating themselves – and from perceived 'national' interests.<sup>26</sup> However, a proper distinction needs to be made amongst Abortion and Infanticide. Abortion causes emotional disturbance, particularly if caused by State coercion, for many women and their families. It cannot, however, be seen as anything less than an inalienable right of women. Women have a right to their bodies and their reproduction, which cannot be usurped by their families or the government. This is truer in this country where childbearing is regulated by social mores; and the right of women to determine when and if they want to bear children remains a theoretical rather than a realistic right. In fact, the regulation of abortion can be considered an anomaly, because the government should not have any control over the private life and choices of a woman. This is against the very ethos of the right to equality enshrined in Article 14 of our Constitution. The Puttaswamy judgment specifically recognized the constitutional right of women to make reproductive choices, as a part of

*Determination of Legal Parentage*, HARVARD LAW REVIEW (2000)



personal liberty under Article 21 of the Indian Constitution.<sup>27</sup> The bench also reiterated the position adopted by a three-judge bench in *Suchita Srivastava v. Chandigarh Administration* (2009), which held that reproductive rights include a woman's entitlement to carry a pregnancy to its full term, to give birth, and to subsequently raise children; and that these rights form part of a woman's right to privacy, dignity, and bodily integrity.<sup>28</sup> The new abortion legislation is ineffective and designed to serve the needs of the family planning system, rather than to allow women to regain control of the situation towards their bodies.<sup>29</sup>

In 1971, the Medical Termination of Pregnancy Act (**henceforth MTP Act**) was passed<sup>30</sup>. Women under this Act, do not enjoy an absolute right to abortion. The stated objectives of the Act are to help women who become pregnant as a result of abuse, married women who are pregnant as a result of contraceptive failure, or to minimize the 'risk' of the birth of severely disabled children. As with the family planning programme, the right to abortion is seen to extend only to married women, and marital sexuality alone is seen as valid. Under the MTP Act, regulations on record maintenance require the doctor performing the operation to maintain records on each abortion which

include the reasons for the abortion - legally, the woman cannot avoid giving an explanation. This register is a secret document, to be destroyed by the doctor at the end of five years since the date of the last entry. Up to 20 weeks under the supervision of a registered medical practitioner, abortion can take place. It has been stated under section 5 that cases beyond 20 weeks shall be mandatorily brought before the court.

In *Murugan Nayakkar v. Union of India & Ors.*<sup>31</sup>, the Apex Court allowed the termination of 32-week old pregnancy of a 13-year-old rape victim holding, "Considering the age of the petitioner, the trauma she has suffered because of the sexual abuse and the agony she is going through at present and above all the report of the Medical Board constituted by this Court, we think it appropriate that termination of pregnancy should be allowed."<sup>32</sup>

However, in *Savita Sachin Patil v. Union of India* a 27-week pregnancy was rejected by the Court. The Medical Board found that the mother did not have any physical risk but that the fetus had serious physical anomalies. The Court, on the basis of the Medical Board Report, therefore did not allow termination on the field.<sup>33,34</sup>

The lacuna that remains attached with this issue yet again is 'choice'. Though, the law

<sup>27</sup> *Justice K.S. Puttaswamy (Retd) v. Union Of India And Ors* (2017) 10 SCC 1.

<sup>28</sup> Arijit Ghosh, *A Womb of One's Own: Privacy and Reproductive Rights*, EPW Engage, (March 27, 2021), <https://www.epw.in/engage/article/womb-ones-own-privacy-and-reproductive-rights>.

<sup>29</sup> Gangoli, *Abortion: a fundamental right*, INDIAN JOURNAL OF MEDICAL ETHICS, (2000).

<sup>30</sup> Medical Termination of Pregnancy Act, Act No. 34 of 1971, Act of Parliament, 1971.

<sup>31</sup> *In Re: Speedy trial of under trial v. The State Of Rajasthan* (2017)W.P. (C) No. 749.

<sup>32</sup> Shradha Thapliyal, *Abortion jurisprudence in the Supreme Court of India: Is it the woman's choice at all?*, CENTRE FOR LAW AND POLICY RESEARCH (Feb 8, 2019), <https://clpr.org.in/blog/abortion-jurisprudence-in-the-supreme-court-of-india-is-it-the-womans-choice-at-all/>.

<sup>33</sup> Writ Petition (Civil) No. 121 of 2017

<sup>34</sup> *Id.* at 32



regards Abortion as legal under the said cases, the centric issue is that the Right to Abortion is still not a choice that rests with women and to what extent is this qualified right justified?

### 1.3.3. The Medical Termination of Pregnancy (Amendment) Bill, 2021: A ray of hope?

With amendments in the MTP Act, 1971 to widen the timeline to medically abort the child, **The Medical Termination of Pregnancy (Amendment) Bill, 2021** seems like a ray of hope for women centric rights to a huge extent. In times, when many developed countries are still debating regarding legality of abortion and its social and ethical dynamics, this legislation adds strong wings to women's liberties and choices in India. The Act is aimed at directing the States and Union Territories for setting up medical boards to decide pregnancy cases opting for absorption above 24 weeks long in cases of substantial fetal abnormalities.<sup>35</sup> Now, under the recently passed Bill, one doctor's advice is considered sufficient in cases of pregnancy within 20 weeks and two doctors' advice is essential for pregnancy cases ranging between 20-24 weeks long opting for abortion; inclusive of rape victims. A significant and lauded insertion in the recently passed Act of 2021 is the inclusion of 'unmarried women' instead of a 'married

women and her husband', establishing the status quo of live-in relationships.

Another step towards strengthening the guidelines laid in the famous *Puttaswamy* judgment is inserting a provision to penalize medical practitioners who infringe the women's privacy and confidentiality in the said process of medically terminating the fetus.

### CONCLUSION

Reproductive Rights are not a new generation right but rather a new generation demanded right. Reproduction plays a very crucial role in a married couple's life and thereby shall be protected to every possible legal capacity. In *Puttaswamy v. Union of India*,<sup>36</sup> 2017, a nine-judge bench of the Supreme Court of India explicitly asserted the centrality of decisional self-governance in any talk on privacy. The judgment perceived sexual and reproductive independence as basic decisions secured by the privilege to privacy. It was stated that "Privacy includes at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation... Privacy safeguards individual autonomy and recognizes the ability of the individual to control vital aspects of his or her life."<sup>37</sup> This case holds a remarkable theory related to reproductive rights as it is for the first time that women based rights' approach has been adopted by the Supreme Court empowering women through these reproductive rights as well. The

<sup>35</sup> Devika Nair, Shruti Singhi, *Why Amendments to Medical Termination of Pregnancy Bill Don't Go Far Enough*, *The Wire* (April 22, 2021) <https://thewire.in/health/medical-termination-of-pregnancy-amendment-bill-women-abortions>.

<sup>36</sup> *Justice K.S.Puttaswamy(Retd) V. Union Of India And Ors* (2017) 10 SCC 1.

<sup>37</sup> Shubhangi Agarwal, *Decisional Autonomy as Central to Privacy: Reproductive Rights in India*, *IACL-AIDC BLOG*, (2019), <https://blog-iacl-aidc.org/2019-posts/2019/6/14/decisional-autonomy-as-central-to-privacy-reproductive-rights-in-india>.



*Puttaswamy* judgment outlines and supports India's vast and changing ideals of dealing with the legitimate and practical frontiers where women are denied their reproduction rights.

Along with these reproductive rights there is a widespread need to spread the word of knowledge regarding the rights of women in reproductive arena at the grass root level. A legal framework that takes into consideration the aspects of these reproductive rights from a broader perspective including the LGBTQ community needs to be framed. There is an utmost requirement to regulate the ART clinics and ensure that no exploitation of women shall take place. The wellbeing of the surrogate mothers shall be looked into by providing them with nutritional diets and adequate compensation for lending their womb. These are basic human rights which need more emphasis as through the lens of the women in our country. After all, it will be a farce to call India a democratic country, if even the basic needs of a citizen are not met. So, a push towards a comprehensive legislative framework and its proper implementation is not only needed but also essential for the holistic development of a nation. Through various philosophies of Mahatma Gandhi, we have received the essence of how important it is to strengthen the status of women in the society for making a strong nation. A nation that not just talks of women as its most important asset but also ensures it by providing the rights and proper governance to uphold their status and respect through the basic and progressive rights and paves way for a democratic and more developed nation. The recently passed Medical Termination of Pregnancy Act, 2021 seems like a step ahead to assuring women's right regarding the reproduction process in

the society but still has a long way to long in addressing the emerging issues at hands.

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