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Decisional Autonomy and Abortion Law In India: Evaluating The Medical Termination of Pregnancy(MTP) Act, 1971, and Its 2021 Amendment In The Light Of International Human Rights Standards

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Abstract

Although abortion is legally permitted in India under the Medical Termination of Pregnancy Act, 1971, access to safe and timely termination continues to be shaped by procedural and institutional constraints. These regulatory controls significantly affect women's ability to exercise decisional autonomy in matters of reproduction. This paper examines the extent to which the existing legal framework recognises and enables reproductive decision-making, situating the analysis within the constitutional guarantees of equality, privacy, dignity, and personal liberty under Articles 14 and 21 of the Constitution of India. Using a doctrinal analysis of the MTP Act and its 2021 amendment, along with an examination of key judicial decisions, the study argues that the current regime remains largely medicalised and paternalistic. While constitutional courts have expanded the scope of reproductive rights by recognising abortion as an aspect of bodily autonomy and privacy, access in practice continues to depend on medical authorisation, procedural requirements, and, in certain cases, judicial intervention. These structural barriers disproportionately affect socially and economically marginalised groups. The paper further engages with international human rights standards to demonstrate that restrictive abortion frameworks may amount to gender-based discrimination and undermine the right to health. Drawing on comparative constitutional developments, particularly the recent withdrawal of constitutional protection for abortion rights in the United States, the study highlights the risks associated with weakening rights-based protections. It concludes by arguing for a re-orientation of Indian abortion law towards a framework which centres decisional autonomy while also ensuring safe, accessible and equitable reproductive healthcare.

Keywords - Abortion Law; Reproductive Rights; Decisional Autonomy; Gender Equality; Medical Termination of Pregnancy Act.

I. INTRODUCTION

Abortion continues to be one of the most contested issues in contemporary legal and human rights discourse. The regulation of abortion raises complex questions relating to dignity, bodily autonomy, public health, morality and constitutional liberty. At its core, abortion concerns a pregnant person's decision to terminate a pregnancy, a decision that directly affects their physical

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integrity, mental well-being, dignity and autonomy.[416] While public debates are often framed in terms of "pro-life" and "pro-choice" positions, a legal inquiry must move beyond moral binaries and focus on whether the law adequately recognises women as rights-bearing individuals capable of making informed reproductive choices.

Access to safe and legal abortion is increasingly recognised as an essential component of women's human rights. Denial of, or excessive restrictions on abortion services disproportionately affects women and persons capable of becoming pregnant, often forcing them to seek unsafe procedures that endanger their right to life and health.[417] International public health authorities have consistently identified unsafe abortion as a significant contributor to maternal mortality, particularly in developing countries, with most such deaths being preventable through timely access to safe and legal abortion services.[418]

In India, abortion is primarily regulated by the Medical Termination of Pregnancy Act, 1971[419], as amended in 2021[420]. Although this framework marked a progressive shift away from absolute criminalisation under the Indian Penal Code, termination of pregnancy continues to be structured largely as a conditional medical exception rather than as a substantive constitutional entitlement. Over time, constitutional courts have expanded access by recognising reproductive choice as an aspect of personal liberty, privacy and dignity under Article 21 of the Constitution.[421]

This paper examines whether the existing legal framework governing abortion in India adequately protects women's decisional autonomy or whether it continues to impose medical and procedural controls that limit reproductive choice. It argues that despite progressive judicial developments, the law remains largely doctor-centric and conditional, falling short of a fully rights-based approach. Through an analysis of Indian jurisprudence, comparative developments in the United States, and relevant international human rights standards, the paper contends that abortion should be understood not merely as a medical or welfare issue, but as a matter of constitutional rights and human dignity.

II. ABORTION – CONCEPT AND HISTORICAL BACKGROUND

Abortion is a word derived from a Latin term *'abortus'* which means an object which has been detached from its proper site. It means that abortion is an act of giving premature birth, especially the expulsion of human foetus prematurely at any time before it is viable or competent for nourishing life. According to Black's law dictionary, abortion means, *'The artificial or spontaneous termination of pregnancy before the embryo or foetus can survive on its own outside a woman's uterus.'*[422] In medical terms, abortion is referred to as the termination of pregnancy prior to the foetus attaining the stage of viability.[423]

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[416] Justice K.S. Puttaswamy v. Union of India, 2017 INSC 842 (India).
[417] Committee on the Elimination of Discrimination Against Women, General Recommendation No. 24: Article 12 of the Convention (Women and Health), U.N. Doc. A/54/38/Rev.1 (1999).
[418] World Health Organisation, Unsafe Abortion: Global and Regional Estimates of the Incidence of Unsafe Abortion and Associated Mortality in 2017 (2017).
[419] Medical Termination of Pregnancy Act, No. 34 of 1971, INDIA CODE (1971).
[420] Medical Termination of Pregnancy (Amendment) Act, No. 8 of 2021, INDIA CODE (2021).
[421] Suchita Srivastava v. Chandigarh Administration, 2009 INSC 1086 (India); Justice K.S. Puttaswamy v. Union of India, 2017 INSC 842 (India).
[422] Black's Law Dictionary (11th ed. 2019).
[423] World Health Organization, Abortion Care Guideline (2022).

Historical attitudes towards abortion varied across cultures, religions and philosophical traditions. Abortion was accepted among the Jews because they thought that a mother's life came first over that of the unborn child. Some classical philosophers, such as the Stoics, accepted abortion because they considered the foetus less fully human in early stages of pregnancy and viewed the foetus as more of a plant than an animal, while Aristotle distinguished between abortion of a foetus capable of sensation and one that was not. Christianity forbids abortion because it views the foetus as a human person. These moral and philosophical perspectives influenced early legal approaches, shaping abortion as a social and ethical concern rather than a rights-based issue.[424]

The criminalisation of abortion in modern legal systems can be traced to early nineteenth-century England. The enactment of Lord Ellenborough's Act in 1803 marked one of the first statutory interventions, explicitly prohibiting abortion and introducing penal consequences. This development reflected the growing state interest in regulating reproduction, a model that later influenced colonial legal systems, including India.[425]

In the United States, anti-abortion laws also became widespread in the late nineteenth and early twentieth centuries, with medical authorities such as the American Medical Association supporting criminalisation.[426] In contrast, France began recognising abortion as a component of public health and family planning, illustrating the global variation in abortion regulation.

In India, abortion was historically criminalised under Section 312 of the Indian Penal Code, 1860, which permitted termination only to save the life of the pregnant woman. Growing concern over maternal mortality resulting from unsafe abortions led the government to appoint the '*Shantilal Shah Committee'* in 1964, which recommended legalising abortion under specific circumstances. These recommendations culminated in the enactment of the Medical Termination of Pregnancy Act, 1971, establishing a statutory framework allowing abortion in prescribed circumstances and marking a significant shift from criminalisation toward regulated reproductive healthcare.[427]

III. LAWS GOVERNING ABORTION IN INDIA

a. Medical Termination of Pregnancy (MTP) Act, 1971

In the 1960s, in response to a high incidence of induced abortions, the Union Government established the Shantilal Shah Committee to consider the legalisation of abortion in the country.[428] The Committee presented their recommendations in order to minimise maternal mortality due to unsafe abortions, and the Medical Termination of Pregnancy (MTP) Act was enacted in 1971.[429]

This legislation operates as a statutory exception to the criminal provisions contained in Sections 312 and 313 of the Indian Penal Code, 1860, and lays down the conditions under which

[424] John Keown, Abortion, Doctors and the Law: Some Aspects of the Legal Regulation of Abortion in England from 1803 to 1982 (1988).
[425] R. v. Ellenborough, 43 Geo. 3 c. 58 (1803); Keown, supra note 9, at 3-25.
[426] Keown, supra note 9, at 49-83; see also World Health Organization, Abortion Care Guideline (2022).
[427] Indian Penal Code, No. 45 of 1860, § 312; Government of India, Report of the Committee on the Legalisation of Abortion (1966); Medical Termination of Pregnancy Act, No. 34 of 1971, India Code.
[428] Government of India, Report of the Committee on the Legalisation of Abortion (1966).
[429] Medical Termination of Pregnancy Act, No. 34 of 1971, India Code.

a medical termination of pregnancy may be lawfully performed. Section 312 of the IPC criminalises the voluntary causing of miscarriage and prescribes punishment of imprisonment, fine or both, except where the act is done in good faith to save the life of the pregnant woman. Section 313 further criminalises the causing of miscarriage without the consent of the pregnant woman and prescribes enhanced punishment, including imprisonment for life or imprisonment which may extend up to ten years, along with fine. While the Indian Penal Code has historically governed the criminalisation of abortion, these provisions have now been replaced by the Bharatiya Nyaya Sanhita, 2023, which substantially retains the earlier framework relating to miscarriage.[430]

b. Amendment to the MTP Act- Evolution from 1971 to 2021

The Medical Termination of Pregnancy Act, 1971 underwent significant amendment in 2021 in response to evolving medical practices and changing social realities. Prior to this amendment, the Medical Termination of Pregnancy Rules, 2003 were introduced to facilitate the use of medical methods of abortion, including the administration of misoprostol, for early termination of pregnancy. The Amendment Bill was introduced in 2020, and the Medical Termination of Pregnancy (Amendment) Act, 2021 came into force in September 2021.[431]

Gestational age refers to the duration of pregnancy in weeks, which is generally calculated from the first day of the woman's last menstrual period. The 2021 Amendment significantly altered the gestational limits for permissible abortion. Under the original Act, termination was generally permitted only up to twenty weeks of gestation. The amended framework extends this limit to twenty-four weeks in specified circumstances, including where continuation of pregnancy poses a risk to the woman's life, causes grave injury to her physical or mental health, or involves substantial foetal abnormalities.[432]

The Amendment also revised the requirement of medical opinion for termination of pregnancy. While the 1971 Act required the opinion of one Registered Medical Practitioner (RMP) for pregnancies up to twelve weeks and two RMPs for pregnancies between twelve and twenty weeks, the amended Act now requires the opinion of one RMP for pregnancies up to twenty weeks. The opinion of two RMPs is required only for pregnancies between twenty and twenty-four weeks falling within specified categories. Termination beyond twenty-four weeks is permitted solely on the recommendation of a State-level Medical Board, set up under the Act and is limited to cases involving substantial foetal abnormalities.[433]

Under the MTP (Amendment) Act, 2021, termination of pregnancy up to twenty-four weeks is permissible, subject to the opinion of two registered medical practitioners, in specified categories of cases. These include pregnancies resulting from sexual assault, rape or incest; pregnancies involving minors; cases where a woman's marital status has changed during the course of pregnancy due to divorce or widowhood; situations involving substantial physical disabilities or mental illness; pregnancies affected by severe foetal abnormalities incompatible

[430] Indian Penal Code, No. 45 of 1860, §§ 312–313; Bharatiya Nyaya Sanhita, 2023 (India).
[431] Medical Termination of Pregnancy (Amendment) Act, No. 8 of 2021, India Code; Medical Termination of Pregnancy Rules, 2003 (India).
[432] Medical Termination of Pregnancy Act, No. 34 of 1971, § 3, as amended by Act No. 8 of 2021.
[433] Medical Termination of Pregnancy Act, No. 34 of 1971, § 3, as amended by Act No. 8 of 2021.

with life; and circumstances arising from humanitarian crises, disasters or emergencies, officially declared by the government.

A significant autonomy-enhancing reform introduced by the Amendment is the removal of the spousal consent requirement in cases of contraceptive failure. As a result, access to abortion is no longer restricted to married women, and unmarried women are equally entitled to terminate unintended pregnancies. However, the consent of a guardian continues to be required where the pregnant person is a minor.[434]

c. Indian Judiciary on Abortion

Although Indian abortion law does not permit unconditional termination of pregnancy, constitutional courts have progressively expanded the scope of reproductive rights through judicial interpretation, particularly under Article 21 of the Constitution, which guarantees the right to life and personal liberty. This expansion has prominently included recognition of privacy and bodily autonomy as fundamental constitutional values.[435]

In *Justice K.S. Puttaswamy v. Union of India*, the Supreme Court unequivocally held that decisional autonomy in matters of reproduction forms an intrinsic part of the right to privacy and personal liberty under Article 21 of the Constitution.[436] The Court observed that a woman's decision to carry a pregnancy to term or to terminate it lies at the core of her bodily integrity and dignity. This judgment constitutionalised reproductive choice by locating it within the broader framework of autonomy, privacy, and individual self-determination.

The Court's reasoning in *Puttaswamy* builds upon the earlier decision in *Suchita Srivastava v. Chandigarh Administration*,[437] where a three-judge bench held that reproductive rights include a woman's entitlement to carry a pregnancy to full term, give birth, or choose not to do so. The Court emphasised that these choices are integral to personal liberty, dignity, and bodily integrity, and that the State must respect women's capacity to make reproductive decisions.

A significant post-amendment development occurred in *X v. Principal Secretary, Health and Family Welfare Department*,[438] where the Supreme Court adopted a purposive and rights-based interpretation of the Medical Termination of Pregnancy Act. The Court extended access to abortion up to 24 weeks to unmarried women, holding that marital status cannot be a ground for denying reproductive choice. It rejected patriarchal assumptions underlying the distinction between married and unmarried women and affirmed that reproductive autonomy is available to all women, regardless of their marital status. The judgment marked an important step towards recognising abortion as an aspect of constitutional morality and gender equality.

Despite these progressive rulings, access to abortion in practice continues to depend heavily on judicial discretion. Reports indicate that High Courts across the country frequently hear petitions from women seeking permission to terminate pregnancies beyond statutory limits, highlighting the procedural and structural barriers embedded within the legal framework. For

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[434] Medical Termination of Pregnancy Act, No. 34 of 1971, § 3, as amended by Act No. 8 of 2021; Medical Termination of Pregnancy Rules, 2003, r. 3B (as amended in 2021).
[435] Constitution of India, arts. 14, 21.
[436] Justice K.S. Puttaswamy v. Union of India, 2017 INSC 842 (India).
[437] Suchita Srivastava v. Chandigarh Administration, 2009 INSC 1086 (India).
[438] X v. Principal Secretary, Health & Family Welfare Department, Government of NCT of Delhi & Anr., Civil Appeal No. 5802 of 2022 (arising out of SLP (C) No. 12612 of 2022), AIR 2022 SC 4917; 2022 SCC OnLine SC 1321 (India).

instance, in *Amir v. State of Kerala*, the Court permitted termination at an advanced stage of pregnancy due to severe foetal abnormalities, underscoring the case-by-case nature of judicial relief.[439]

While judicial interventions have undoubtedly expanded access to abortion, the continued reliance on court permissions and medical boards reflects an incomplete transition from a welfare-based approach to a rights-based framework. The judiciary has recognised reproductive autonomy in principle, yet its inconsistent operationalisation reveals the need for clearer legislative and administrative mechanisms that centre women's decisional authority rather than treating abortion as an exception requiring external validation.[440]

d. Limitations of the Existing Legal Framework

Despite progressive amendments and growing judicial recognition of reproductive autonomy, India's legal framework on abortion continues to face systemic and constitutional constraints. While the Medical Termination of Pregnancy Act seeks to balance women's reproductive rights with state interests, in practice it relies heavily on medical oversight, reflecting a paternalistic approach that often limits women's decisional autonomy.[441]

Medical Gatekeeping and the Doctor-Centric Model

A major criticism of India's abortion framework is its heavy dependence on doctors for approval. Under the MTP Act, a woman cannot access abortion services based on her consent alone. The procedure requires the approval of one or more Registered Medical Practitioners (RMPs). This reliance on medical opinion can inadvertently suggest that women are not fully capable of making independent reproductive decisions.[442]

While medical oversight is necessary to ensure safety, treating professional approval as a pre-requisite transforms abortion from an individual right into a conditional medical privilege. In effect, having consent without real decision-making authority reduces autonomy to a procedural formality rather than a substantive right.[443] This approach sits in tension with the Supreme Court's recognition of reproductive choice as an aspect of personal liberty, dignity, and privacy under Article 21 of the Constitution.[444]

Medical Boards and Procedural Barriers

As discussed earlier, under the MTP (Amendment) Act, 2021, termination of pregnancies beyond twenty-four weeks is permitted, only with the recommendation of a State-level Medical Board, primarily in cases involving substantial foetal abnormalities.[445] While these boards are

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[439] Amir v. State of Kerala, (Crl.A No. 2400 of 2006) (India).

[440] See, e.g., Suchita Srivastava v. Chandigarh Administration, 2009 INSC 1086 (India); Justice K.S. Puttaswamy v. Union of India, 2017 INSC 842 (India); X v. Principal Secretary, Health & Family Welfare Department, 2022 SCC OnLine SC 1321; Amir v. State of Kerala, (Crl.A No. 2400 of 2006) (India).

[441] Medical Termination of Pregnancy Act, No. 34 of 1971, India Code; Medical Termination of Pregnancy (Amendment) Act, 2021, India Code; Justice K.S. Puttaswamy v. Union of India, 2017 INSC 842 (India); Suchita Srivastava v. Chandigarh Administration, 2009 INSC 1086 (India).

[442] Medical Termination of Pregnancy Act, No. 34 of 1971, India Code; Medical Termination of Pregnancy (Amendment) Act, 2021, India Code.

[443] See generally Suchita Srivastava v. Chandigarh Administration, 2009 INSC 1086 (India).

[444] Justice K.S. Puttaswamy v. Union of India, 2017 INSC 842 (India).

[445] Medical Termination of Pregnancy (Amendment) Act, 2021, India Code, § 3B.

intended to ensure sound medical judgement and potential misapplication of the statute, in practice they can cause delays that undermine the time-sensitive nature of abortion procedures. Such delays may increase physical and psychological distress and, in some cases, make termination medically unfeasible.[446]

Access to these Medical Boards is also uneven across India, particularly in rural and under-resourced areas. This uneven availability disproportionately affects economically disadvantaged women, minors and survivors of sexual violence, thereby exacerbating social and economic disparities.[447] From a constitutional perspective, these procedural obstacles raise concerns about the equal protection of law under Article 14 and the effective exercise of personal liberty under Article 21.[448]

Judicial Dependence and Inconsistent Access

A notable concern in India's abortion framework is the growing reliance on judicial intervention to secure access, particularly for pregnancies beyond the statutory gestational limits.[449] Many women are compelled to approach High Courts or the Supreme Court for permission, even when their circumstances fall within categories recognised by the MTP (Amendment) Act, 2021.[450] While courts generally provide a compassionate, rights-oriented approach, access to abortion should not rely entirely on judicial approval or on a woman's ability to navigate complex legal procedures.[451]

This ad hoc system of judicial approvals generates uncertainty and inconsistency, undermining the notion of abortion as a guaranteed right.[452] It also imposes considerable emotional, financial, and procedural burdens, disproportionately affecting women from marginalised communities.[453] A truly rights-based legal framework should offer clear and accessible avenues for abortion, so that reproductive autonomy does not depend on exceptional judicial intervention.

Persistence of Unsafe Abortions

The limitations of the existing legal framework are further reflected in the continued prevalence of unsafe abortions. Empirical studies indicate that a substantial number of abortions in India occur outside authorised medical facilities, often due to lack of access, fear of legal

[446] See generally Amir v. State of Kerala, (2018) 6 KHC 345 (India).
[447] Ibid.
[448] Indra Sawhney v. Union of India, MANU/SC/0104/1993 (India); Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1 (India).
[449] X v. Principal Secretary, Health & Family Welfare Department, Government of NCT of Delhi & Anr., Civil Appeal No. 5802 of 2022 (arising out of SLP (C) No. 12612 of 2022), AIR 2022 SC 4917; 2022 SCC Online SC 1321 (India).
[450] Amir v. State of Kerala, (2018) 6 KHC 345 (India).
[451] See generally Medical Termination of Pregnancy (Amendment) Act, 2021, India Code, § 3B.
[452] Ibid.
[453] Indra Sawhney v. Union of India, MANU/SC/0104/1993 (India); Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1 (India).

consequences or social stigma.[454] These unsafe procedures contribute significantly to maternal morbidity and mortality, undermining the very objective for which the MTP Act was enacted.[455] The persistence of unsafe abortions highlights the gap between formal legality and practical accessibility.[456] Legal recognition alone is insufficient if women cannot safely exercise their reproductive rights. Access to trained providers, accurate information, and supportive health infrastructure is essential to protect the right to life and health, both of which are integral components of Article 21 of the Constitution.[457]

IV. ABORTION AS A HUMAN RIGHTS ISSUE: EQUALITY, HEALTH AND CONSTITUTIONAL CONSEQUENCES

a. Abortion Restrictions, Gender Discrimination and the Equality Principle

Restrictions on access to abortion raise serious concerns of gender-based discrimination, as they disproportionately affect women and other persons capable of becoming pregnant. Denial of reproductive healthcare services that are biologically specific to women reinforces structural inequalities and perpetuates gendered control over bodily autonomy. Such restrictions are incompatible with the principle of equality, which requires that laws and policies address substantive, rather than mere, formal equality.[458]

At the international level, Article 7 of the Universal Declaration of Human Rights affirms that all persons are equal before the law and entitled to equal protection without discrimination.[459] This commitment is reflected in the Indian constitutional framework through Articles 14 and 15, which guarantee equality before the law and prohibit discrimination on grounds including sex.[460] The Supreme Court has consistently held that equality is a foundational constitutional value, central to the rule of law. In *Faridabad CT Scan Centre v. D.G. Health Services*, the Court reaffirmed that every person is entitled to equal protection of laws within the territory of India.[461] Similarly, in *Yusuf v. State of Bombay*,[462] the Court clarified that discrimination based solely on sex, without reasonable classification, is constitutionally impermissible.

International human rights bodies have also recognised that restrictive abortion laws constitute discrimination against women. The Committee on the Elimination of Discrimination against Women (CEDAW) has repeatedly emphasised that denial of access to safe and legal abortion undermines women's equality and reinforces gender stereotypes. Such discrimination extends

[454] World Health Organization, Abortion Care Guideline (2022), https://www.who.int/publications/i/item/9789240039483 (last visited Feb. 28, 2026); Committee on the Elimination of Discrimination against Women (CEDAW), General Recommendation No. 24 (Women and Health), U.N. Doc. A/54/38/Rev.1 (1999).
[455] Paschim Banga Khet Mazdoor Samity v. State of West Bengal, 1996 INSC 621 (India).
[456] Parmanand Katara v. Union of India, 1989 INSC 256 (India).
[457] Justice K.S. Puttaswamy v. Union of India, 2017 INSC 842 (India).
[458] Committee on the Elimination of Discrimination against Women (CEDAW), General Recommendation No. 24: Women and Health, ¶¶ 11, 14, U.N. Doc. A/54/38/Rev.1 (1999).
[459] Universal Declaration of Human Rights art. 7, G.A. Res. 217 (III), U.N. Doc. A/810 (Dec. 10, 1948).
[460] INDIA CONST. arts. 14, 15.
[461] Faridabad CT Scan Centre v. D.G. Health Services, 1997 INSC 732 (India).
[462] Yusuf Abdul Aziz v. State of Bombay, 1954 INSC 18 (India).

beyond cisgender women to include all persons capable of pregnancy, particularly those facing intersecting forms of marginalisation.[463]

Beyond legal inequality, criminalisation and restrictive abortion policies contribute significantly to social stigma. Women seeking abortion are frequently subjected to moral judgment, coercion and mistreatment by families, medical professionals and institutions. This stigma not only deters access to lawful abortion services but also reinforces patriarchal assumptions regarding women's sexuality and reproductive roles, thereby perpetuating gender-based inequality.[464]

b. Criminalisation, Unsafe Abortions and the Right to Health

One of the most severe consequences of restrictive abortion laws is the persistence of unsafe abortions. Empirical evidence indicates that a substantial number of abortions worldwide continue to be performed outside authorised medical settings, particularly in low and middle-income countries. The World Health Organisation has consistently noted that unsafe abortions remain a leading cause of maternal mortality and morbidity, resulting in millions of preventable injuries each year.[465]

Unsafe abortions pose a direct threat to women's right to life and health, both of which are recognised as fundamental human rights. The right to health encompasses physical, mental and social well-being and imposes a positive obligation on the State to ensure access to essential healthcare services. In India, the Supreme Court has interpreted Article 21 of the Constitution to include the right to health and medical care. In *Paschim Banga Khet Mazdoor Samity v. State of West Bengal*, the Court held that the State bears a constitutional responsibility to provide adequate medical facilities to protect life.[466] Similarly, in *Parmanand Katara v. Union of India*, the Court recognised the professional obligation of medical practitioners to preserve life, irrespective of procedural or legal constraints.[467]

The criminalisation of abortion undermines these constitutional and human rights obligations by driving women toward unsafe and clandestine procedures. Fear of legal consequences, social stigma and institutional barriers often prevent women from seeking timely medical assistance, thereby increasing health risks. Compelling individuals to continue unwanted pregnancies or to resort to unsafe abortions constitutes a violation of their bodily autonomy, privacy, and dignity, all of which have been recognised by the Supreme Court as intrinsic to personal liberty under Article 21, particularly in *Justice K.S. Puttaswamy v. Union of India*.[468]

c. Comparative Insight: Withdrawal of Constitutional Protection and its Consequences

Comparative constitutional experience reveals the significant consequences that follow the withdrawal of constitutional protection for abortion rights, most notably in the United States. For several decades, access to abortion in the U.S. was grounded in constitutional notions of privacy and decisional autonomy. However, the reversal of *Roe v. Wade*[469] in 2022 marked a

[463] CEDAW, General Recommendation No. 35 on Gender-Based Violence against Women, ¶ 18, U.N. Doc. CEDAW/C/GC/35 (2017).
[464] World Health Organization, Abortion Care Guideline (2022).
[465] Ibid.
[466] Paschim Banga Khet Mazdoor Samity v. State of West Bengal, 1996 INSC 621 (India).
[467] Parmanand Katara v. Union of India, 1989 INSC 256 (India).
[468] Justice K.S. Puttaswamy v. Union of India, 2017 INSC 842 (India).
[469] Roe v. Wade, 410 U.S. 113 (1973).

decisive shift from constitutionally protected reproductive choice to legislative control.[470] This transition has resulted in fragmented and increasingly restrictive abortion regimes across multiple states.

The U.S. experience demonstrates that when reproductive autonomy is removed from the sphere of fundamental rights, access to abortion becomes dependent on shifting political majorities, rather than on the principles of individual dignity and liberty. Such de-constitutionalisation has had a disproportionate impact on marginalised communities and has intensified existing social and economic inequalities. This comparative perspective highlights the importance of securing abortion rights within constitutional guarantees of equality, personal liberty, and bodily autonomy, rather than treating them as matters of legislative discretion or moral contestation.

IV. CONCLUSION

The legal regulation of abortion in India reflects a careful, but often uneven attempt to balance reproductive autonomy with the state's interest in health and moral concerns. While the Medical Termination of Pregnancy Act and its amendments represent a progressive departure from blanket criminalisation, decision-making authority continues to rest primarily with medical professionals and institutional actors, rather than with women themselves. Judicial interventions have been crucial in expanding access to abortion by recognising reproductive choice as part of the broader rights to privacy, dignity and personal liberty under Article 21 of the Constitution. Yet, reliance on medical approvals, boards and court permissions continues to reflect a conditional and paternalistic approach which constrains women's decisional autonomy.

This study underscores that access to safe and legal abortion must be understood not just as a medical or welfare issue, but as a fundamental aspect of constitutional equality and human rights. Restrictive abortion laws disproportionately burden women and other persons capable of pregnancy, perpetuate gender-based discrimination and further contribute to unsafe procedures that jeopardise the right to life and health. International human rights norms increasingly affirm that denial of abortion services constitutes discrimination and violates bodily autonomy, privacy and dignity.

Comparative constitutional experiences, particularly in contexts where reproductive choice has been removed from the domain of fundamental rights, demonstrate the risks of leaving abortion access solely to legislative discretion. Political and moral majoritarianism can restrict reproductive autonomy, often to the detriment of marginalised communities. By contrast, the Indian constitutional framework, with its focus on dignity, autonomy and substantive equality, offers a strong foundation to uphold reproductive rights and resist such regressions.

In light of these considerations, there is a pressing need to re-orient abortion law in India toward a genuinely rights-based framework that centres women's decision-making authority. Addressing procedural hurdles, reducing excessive medical gatekeeping and aligning statutory provisions with constitutional guarantees would help realise reproductive justice not only in principle, but also in practice.

[470] Dobbs v. Jackson Women's Health Org., 597 U.S. (2022).