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**REPRODUCTIVE RIGHTS IN SOCIETY AND LAW: A COMPARATIVE  
SOCIO-LEGAL STUDY OF INDIA AND THE U.S.**

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**ABSTRACT**

Through a comparative socio-legal analysis of India and the US, this paper investigates reproductive rights as an essential component of human rights and gender equality. It examines how legislation pertaining to privacy, bodily autonomy, abortion, contraception, and access to reproductive healthcare have been shaped by constitutional courts and legislatures in both nations. IN India, reproductive rights have emerged primarily under Article 21 of the Constitution, with court recognition of dignity, liberty, and privacy supported by statutes like the Medical Termination of Pregnancy Act, 1971 and the PCPNDT Act, 1994.<sup>1</sup> Historically, reproductive rights in the US were protected by the Fourteenth Amendment's right to privacy, particularly through *Roe v. Wade* and *Planned Parenthood v. Casey*. However, this position has changed with *Dobbs v. Jackson Women's Health Organization*.

The article also assesses the societal realities influencing reproductive rights in both countries, such as poverty, gender discrimination, unequal healthcare access, and cultural shame. It emphasises that mere legislative recognition cannot ensure real reproductive freedom in the absence of efficient implementation and accessible healthcare systems. The study finds parallels, discrepancies, and lessons that each nation can learn from the other by contrasting constitutional frameworks, judicial systems, and real-world difficulties. It finds that in order to ensure reproductive justice and substantive equality in both countries, more robust legislative protections, social awareness, and equitable healthcare infrastructure are crucial.<sup>3</sup>

**Keywords:** Reproductive Rights; Constitutional Law; Socio-Legal Study; India; United States; Abortion Rights; Privacy; Bodily Autonomy; Gender Equality; Article 21.

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## INTRODUCTION

Access to reproductive health care, the capacity to make educated decisions about one's reproductive life, and the right to privacy in making such decisions are all included in the legal and human rights pertaining to reproduction and reproductive health<sup>2</sup>. Numerous international human rights instruments, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the International Covenant on Civil and Political Rights (ICCPR), have acknowledged reproductive rights worldwide, emphasising their crucial role in guaranteeing individual empowerment, health, and well-being<sup>3</sup>. The purpose of this study is to compare and contrast the constitutional jurisprudence in the US and India with regard to reproductive rights.<sup>4</sup>

## HISTORICAL CONTEXT

A number of judicial and legislative landmarks that promote women's autonomy and enhance reproductive health have shaped India's history of reproductive rights post- independence. The Medical Termination of Pregnancy Act, 1971 (MTP Act) was a landmark piece of legislation that gave women access to safe and legal abortion services by permitting the legal termination of pregnancies under specific circumstances.<sup>5</sup> The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (PCPNDT Act) is another important piece of legislation that was passed in order to stop the dropping sex ratio and avoid female foeticide. This Act emphasised the need to combat gender-based discrimination in reproductive health practices by outlawing sex selection and regulating prenatal diagnostic procedures.<sup>6</sup> Through important rulings, the Indian judiciary has contributed significantly to the interpretation and expansion of reproductive rights. From the recent **Dobbs v. Jackson**<sup>7</sup> Women's Health Organisation case, which reversed **Roe v. Wade**<sup>8</sup> and changed the legal landscape, to which created the constitutional right to an abortion.

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<sup>2</sup> World Health Organization, Sexual and Reproductive Health and Rights (2022)

<sup>3</sup> Convention on the Elimination of All Forms of Discrimination Against Women art. 16, Dec. 18, 1979, 1249 U.N.T.S. 13; International Covenant on Civil and Political Rights arts. 17, 23, Dec. 16, 1966, 999 U.N.T.S. 171.

<sup>4</sup> INDIA CONST. Art. 21; U.S. CONST. Amend. XIV.

<sup>5</sup> Medical Termination of Pregnancy Act, No. 34 of 1971, India Code (1971).

<sup>6</sup> Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, No. 57 of 1994, India Code (1994)

<sup>7</sup> Dobbs v. Jackson Women's Health Org., 597 U.S. (2022).

<sup>8</sup> Roe v. Wade, 410 U.S. 113 (1973).

The Supreme Court of India affirmed a woman's right to make reproductive decisions, including the right to bring a pregnancy to term, as part of her personal liberty under Article 21 of the Constitution in the 2009 case of **Suchita Srivastava v. Chandigarh Administration**.<sup>9</sup> Additionally, the right to privacy was acknowledged as a fundamental constitutional right in the landmark ruling in Justice **K.S. Puttaswamy (Retd.) and Anr. vs. Union of India**<sup>10</sup> This has important ramifications for reproductive rights, especially with regard to autonomy and confidentiality in reproductive health decisions. The 20th century saw a surge in the reproductive rights movement, and significant Supreme Court rulings shaped the present legal system. **Roe v. Wade**<sup>11</sup> one of the most famous rulings, acknowledged a woman's fundamental right to privacy, including the right to an abortion. By creating a trimester framework to strike a compromise between the interests of the state and women's reproductive autonomy, this case established a precedent. Through other significant cases, the U.S. judiciary has also played a significant role in defining and redefining reproductive rights. A state statute that prohibited contraception was overturned in **Griswold v. Connecticut**<sup>12</sup> creating the right to privacy in marital relationships and setting the stage for further cases pertaining to reproductive rights. The Supreme Court upheld the undue burden threshold and emphasised that laws that impose significant barriers to accessing abortion are unlawful when it invalidated Texas' abortion restrictions in **Dobbs v. Jackson Women's Health Organization**.<sup>13</sup>

### CONSTITUTIONAL FRAMEWORK

Article 21 of the Constitution, which protects the right to life and personal liberty, serves as the main foundation for India's constitutional framework for reproductive rights. As fundamental to reproductive rights, the Supreme Court of India has construed Article 21 to encompass the rights to privacy, personal autonomy, and physical integrity. The significance of individual liberty and the right to make reproductive decisions under Article 21 were reaffirmed in the seminal case of **Suchita Srivastava v. Chandigarh Administration**<sup>14</sup> The Supreme Court has addressed the problem of unsafe sterilisation procedures and underlined the state's obligation to provide safe and

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<sup>9</sup> Suchita Srivastava v. Chandigarh Admin., (2009) 9 S.C.C. 1 (India).

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

<sup>11</sup> Roe v. Wade, 410 U.S. 113 (1973).

<sup>12</sup> Griswold v. Connecticut, 381 U.S. 479 (1965).

<sup>13</sup> Dobbs v. Jackson Women's Health Org., 597 U.S. (2022).

<sup>14</sup> Suchita Srivastava, (2009) 9 S.C.C. 1.

knowledgeable reproductive health services in the 2016 case of **Devika Biswas v. Union of India**.<sup>15</sup> On the other side, the 14th Amendment's Due Process Clause is the main pillar of the US constitutional system. According to the Supreme Court's interpretation, this provision safeguards reproductive autonomy and other private rights. The Court upheld a woman's right to an abortion under her right to privacy in **Roe v. Wade**.<sup>16</sup> The undue hardship test was established in **Planned Parenthood v. Casey**.<sup>17</sup> permitting states to regulate abortion as long as it does not significantly impede a woman's ability to obtain one. But the recent ruling in **Dobbs v. Jackson**.<sup>18</sup> Women's Health Organisation (2022) overturned **Roe v. Wade**.<sup>19</sup>, giving states the power to restrict abortion once again, resulting in notable differences.

### **LEGISLATIVE FRAMEWORK**

Important laws like the Medical Termination of Pregnancy Act, 1971 (MTP Act) and the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (PCPNDT Act) are part of India's legislative framework. In order to guarantee safe and legal abortion services, the MTP Act specifies the circumstances under which abortion is allowed. Notwithstanding its progressive provisions, the Act is difficult to implement, especially in rural areas with limited access to medical services<sup>20</sup>. The PCPNDT Act regulates diagnostic procedures to avoid abuse and attempts to stop sex-selective abortions.<sup>21</sup> Despite being essential in the fight against gender-based discrimination, the Act has encountered difficulties in its enforcement, underscoring the necessity of efficient implementation and oversight procedures. The PCPNDT Act aims to prevent sex-selective abortions and regulate diagnostic techniques to prevent misuse. While the Act has been crucial in combating gender-based discrimination, it has faced enforcement challenges, highlighting the need for effective implementation and monitoring mechanisms. In the United States, key legislation affecting reproductive rights includes the Hyde Amendment and various state-level laws.<sup>22</sup>

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<sup>15</sup> Devika Biswas v. Union of India, (2016) 10 S.C.C. 726 (India).

<sup>16</sup> Roe v. Wade, 410 U.S. 113 (1973).

<sup>17</sup> Planned Parenthood of Se. Pa. V. Casey, 505 U.S. 833 (1992).

<sup>18</sup> Dobbs, 597 U.S.

<sup>19</sup> Roe, 410 U.S. 113; Casey, 505 U.S. 833.

<sup>20</sup> Medical Termination of Pregnancy (Amendment) Act, No. 8 of 2021, India Code (2021).

<sup>21</sup> PCPNDT Act, No. 57 of 1994.

<sup>22</sup> Ministry of Health & Family Welfare, Govt. of India, Annual Report (2023).

## SOCIETAL AND CULTURAL CONTEXT

Reproductive rights in India are greatly impacted by cultural, religious, and social traditions, which frequently result in stigma and access restrictions<sup>23</sup>. Gender bias and deeply ingrained patriarchal views still have an impact on women's reproductive liberty. Particularly in underprivileged areas, civil society organisations are essential in promoting reproductive rights and offering services. Cultural values influence how the public views and discusses reproductive rights, with continuous disputes centred on women's autonomy,<sup>24</sup> morality, and ethics. Religious convictions and political affiliations have an impact on the highly divisive opinions on reproductive rights in the United States. Both the pro-choice and pro-life movements are quite active, affecting legislation and public opinion. In the United States, deeply polarized views on reproductive rights are influenced by religious beliefs and political affiliations<sup>25</sup>. The cultural and societal context in both countries significantly impacts the implementation and acceptance of reproductive rights, highlighting the need for ongoing advocacy and public education.

## CONTEMPORARY ISSUES AND CHALLENGES

Current initiatives to increase access to reproductive health services, particularly in rural areas, and progressive court rulings extending reproductive rights are examples of recent developments in India. Significant obstacles still exist, nevertheless, such as stigma, lack of infrastructure, rural-urban inequality, and impediments to access. To guarantee that reproductive rights are actually realised, current laws must be effectively implemented and enforced. Improving public awareness, lowering stigma associated with reproductive rights, and fortifying reproductive health services and infrastructure are some future possibilities. Since **Roe v. Wade**<sup>26</sup> was overturned, there have been more state-level limitations in the US, and there are still legal disputes and advocacy campaigns to defend reproductive rights. Political polarisation, legal instability, and notable geographic variations in access to reproductive health treatments are among the difficulties. Future directions include working to reduce gaps and provide fair access to reproductive health services, as well as advocating for federal safeguards of reproductive rights.

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<sup>23</sup> United Nations Population Fund, State of World Population Report (2023)

<sup>24</sup> National Family Health Survey-5, India (2019–21)

<sup>25</sup> Centre for Reproductive Rights, India Advocacy Reports (2023).

<sup>26</sup> Roe v. Wade, 410 U.S. 113 (1973).

## **COMPARATIVE ANALYSIS**

- There are parallels and variations between the reproductive rights systems in the US and India. Both nations continue to struggle to guarantee equal access to reproductive health care, and they have witnessed strong judicial influence on reproductive rights.<sup>27</sup> But their constitutional frameworks are different; the U.S. has prioritised the right to privacy, while India has relied on the right to life and personal liberty. In both nations, societal and cultural circumstances have a big impact on how reproductive rights are implemented and accepted. The United States' example can teach India the value of strong legal safeguards for reproductive rights and the necessity of comprehensive laws covering a range of reproductive health issues. Conversely, the U.S. can learn from India's holistic approach to reproductive health, including issues like sex selection and access to safe abortion services, and the role of civil society in bridging gaps in service provision and advocacy. Both countries can benefit from each other's experiences and approaches in improving their legislative and judicial frameworks to better protect and realize reproductive rights<sup>28</sup>.

## **RECOMMENDATIONS**

Several suggestions to improve the defence and realisation of reproductive rights in India and the US can be offered in light of the comparative analysis. First and foremost, the legislative and judicial safeguards for reproductive rights must be strengthened. This entails passing thorough legislation that covers a range of reproductive health issues, making sure that these laws are successfully applied and upheld, and offering strong judicial scrutiny to safeguard people's rights. Second, it is essential to improve access to reproductive health services<sup>29</sup>. This can be accomplished by making reproductive health services easily accessible, reasonably priced, and of high quality, as well as by enhancing the infrastructure of healthcare, especially in underprivileged areas. Campaigns for public awareness are also crucial for lowering stigma and raising awareness of health services and reproductive rights. Thirdly, it is critical to address inequalities in access to reproductive health services. This involves resolving geographic and economic inequities by guaranteeing that reproductive health treatments are accessible in both urban and rural locations,

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<sup>27</sup> INDIA CONST. Art. 21; U.S. CONST. Amend. XIV.

<sup>28</sup> PCPNDT Act, No. 57 of 1994; Roe, 410 U.S. 113.

<sup>29</sup> World Health Organization, supra note 1.

as well as by ensuring that low-income individuals have access to these services. Thirdly, it is critical to address inequalities in access to reproductive health services. This involves resolving geographic and economic inequities by guaranteeing that reproductive health treatments are accessible in both urban and rural locations, as well as by ensuring that low-income individuals have access to these services. Lastly, it is important to support and enhance the role that civil society plays in promoting reproductive rights and offering services. Finally, the role of civil society in advocating for reproductive rights and providing services should be supported and strengthened.<sup>30</sup>

## **CONCLUSION**

To sum up, reproductive rights are an essential component of gender equality and human rights. Important insights into the defence and realisation of these rights can be gained from the constitutional and legislative frameworks of the US and India. Even if their strategies differ, both nations struggle to guarantee equal access to reproductive health care. Both India and the United States may improve their efforts to defend and uphold reproductive rights by exchanging best practices and learning from one another's experiences. The significance of a strong legal and judicial system, the necessity of efficient law implementation and enforcement, and the vital role that civil society plays in promoting and delivering reproductive health services are all highlighted by the comparative analysis of constitutional jurisprudence in India and the US. Both nations may learn a lot from one another's experiences as they continue to negotiate the complicated terrain of reproductive rights in order to better safeguard and uphold these essential rights for everyone.

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<sup>30</sup> Centre for Reproductive Rights, *supra* note 25.