



## JUDICIAL RECOGNITION OF REPRODUCTIVE RIGHTS AS FUNDAMENTAL AND HUMAN RIGHTS

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### ABSTRACT

This article explores the judicial recognition of reproductive rights as fundamental and human rights. Reproductive rights encompass a range of freedoms related to the decision-making processes and choices surrounding reproduction, including access to contraception, family planning, and safe abortion. The recognition of these rights as fundamental and human rights by the judiciary has significant implications for the protection of individual autonomy, bodily integrity, and gender equality. This article examines the evolution of judicial attitudes towards reproductive rights, emphasizing landmark cases and the legal reasoning behind their decisions. It also discusses the impact of such recognition on national and international legal frameworks, including the incorporation of reproductive rights in constitutional provisions and international human rights instruments. The analysis highlights the role of the judiciary in shaping and advancing reproductive rights, providing insights into the ongoing struggle for comprehensive reproductive healthcare and the promotion of individual rights.

**Keywords:** Reproductive Rights, Judicial Recognition, Fundamental Rights, Human Rights, Gender Equality etc.

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### JUDICIAL RECOGNITION OF REPRODUCTIVE RIGHTS

Significant judicial acknowledgment as well as lobbying work has been done in order to advance the cause of reproductive rights being acknowledged as foundational and human rights. In a number of nations, the legal systems have come to the realisation that the protection of reproductive rights is essential to the preservation of individual sovereignty and respect, and as a

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result, they have overturned policies and regulations that limit the availability of reproductive medical care. In conjunction to the judicial acknowledgment of reproductive freedom, advocate organisations and activists keep striving towards the goal of assuring that these rights are acknowledged and safeguarded as a fundamental human right. The Supreme Court of India and a number of state High Courts have recently taken significant steps towards acknowledging the rejection of reproductive freedom as an infringement of the foundational and basic rights of women as well as girls.

## **SOME LANDMARK CASE LAWS**

### **1. LAXMI MANDAL V. DEEN DAYAL HARINAGAR HOSPITAL<sup>1</sup> & ORS**

This lawsuit was filed on representative of Shanti Devi, a woman who was a member of a Scheduled Caste and lived in poverty. Shanti Devi passed away as a direct result of being denied appropriate maternal health care coverage regardless of the fact that she met the requirements for free services under the various state-sponsored programmes that were in place at the time.<sup>2</sup>

In 2008, Shanti Devi was compelled to keep a dead foetus in her womb for five days after getting rejected hospital attention across many hospitals. This was because of the fact that Shanti Devi's husband failed to present a valid ration card for healthcare facilities, despite the fact that the couple lived underneath the poverty threshold and were therefore eligible for such a card. The High Court of Delhi reached the conclusion that there was a mistake or error in the correct implementation of the pre and post birth facilities which ought to have been accessible to her. They specified that it had been improper to place the weight of proving their registration for health services on the impoverished, and that instead, the government ought to be enabling their availability to these necessary services.

In spite of its flourishing economy and growing commitment to improving health care in remote areas, India has one of the highest rates of maternal fatalities in the world. The high rate of maternal mortality in India is connected to the severe discrimination that women experience, and fixing the problem will require substantial progress towards achieving women's civil rights to health care, equality, and freedom from discrimination. The attorneys who worked on this case believe that the decision was a significant triumph and that it will have major consequences for the health policy in India, where a maternal mortality happens approximately once every five minutes.

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<sup>1</sup> "Laxmi Mandal v. Deen Dayal Harinagar Hospital, (2008) 7 SCC 309."

<sup>2</sup> "Reproductive Rights in India, Amnesty International India, <https://amnesty.org.in/news-update/reproductive-rights-in-india/>."

## 2. DEVIKA BISWAS V. UNION OF INDIA & ORS.<sup>3</sup>

The petitioner in this case alleged that a camp for sterilisation that was organised by a non-governmental organization was carrying out the process of sterilisation without adhering to any appropriate protocols. More than fifty women had their ovaries removed at the camp, despite the fact that none of them had received any kind of pre- or post-operative counselling or relevant data about the process. The sterilisation process was extremely unhygienic; the women were handled within a school, on a desk, even without sanitary gloves. The operation took place in a school. Following the procedure, the women experienced excruciating levels of physical pain. In light of the fact that the police complaints were thrown out, the petitioner asked for a comprehensive investigation into the sterilisation camp as well as for the sterilisation process guidelines that were released by the Government of India in response to the Ramakant Rai case to be strictly implemented.

The petition compiled information regarding the condition of contraception centres all over the country as well as the egregious infringement of fundamental rights of women.<sup>4</sup> The Court came to the conclusion that Article 21 of the Constitution had been disregarded in this case. It was stated there was an essential component of Article 21 devoted to the right to health, which included reproductive rights. In addition, the Constitution protects a person's right to make a decision regarding sterilisation without being subject to any form of compulsion when exercising that right. The court highlighted the significance of the recommendations that were released as a result of the Ramakant Rai case and specified that every woman should be given a comprehensive explanation of both the operation and the repercussions of the procedure before the process can be performed. The Court went on to instruct the Authorities that a target-based method should not be taken because it results in sterilisations that are performed without the patients' consent. The government was given the instruction to close down the sterilisation centres.

## 3. SUCHITA SRIVASTAVA VS. CHANDIGARH ADMINISTRATION<sup>5</sup>

An abandoned lady with the mental ability of a nine-year-old was residing in a government-run care facility in Chandigarh when she was assaulted and later became expectant. When she was nine weeks pregnant, the employees of the facility learned about it. The lady was diagnosed by the medical commission as having "moderate mental impairment" and a cerebral handicap. The woman's pregnancy ought to be ended, according to another expert commission appointed by the

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<sup>3</sup> "Devika Biswas v. Union of India & Ors, (2016) 10 SCC 726."

<sup>4</sup> Tanvi Agrawal & Akshat Shukla, *The Reality of Reproductive Rights of Women: A Compaarative Study of India and the U.S.A* (2023), <https://blogs.lse.ac.uk> .

<sup>5</sup> "Suchita Srivastava vs. Chandigarh Administration, (2009) 14 SCR 989."

Defendant. Following that, the Applicant petitioned the High Court of Punjab and Haryana to grant approval to end the pregnancy. The expert panel also discovered that the lady wished to carry the baby to term. The High Court nevertheless allowed the Applicant to end the pregnancy. The High Court's ruling was contested by the appellant in a case before the Supreme Court. Since the conception was in its 19th week, the Court rationalised that a coerced abortion would be highly risky and could cause the Petitioner great mental distress because she had not given her permission to the operation. The Petitioner only had a "mild to moderate" cognitive impairment, the court added, so with some help she might be able to care for her children outside of a hospital environment. The High Court's decision was consequently put on hold by the Court, essentially reversing the termination.<sup>6</sup>

#### 4. DR NIKHIL DATAR VS UNION OF INDIA AND OTHERS

“In its ruling, the Supreme Court of India concurred with Dr. Datar's contention and stated that a woman's sovereignty and sexual option are essential to her respect and personal liberty, as protected by the Constitution of India. In addition, the court acknowledged that it is an infringement of a woman's right to life and health to refuse her the opportunity to terminate the pregnancy of a child that is aberrant or that contains hereditary illnesses. As a result, the Supreme Court overturned the Medical Termination of Pregnancy Act of 1971 and permitted women to terminate pregnancies up to 24 weeks into the pregnancy in circumstances in which the pregnancy posed a threat to the woman's life or health or in which the foetus had serious abnormalities.”

This judgement marked a significant turning point in the advancement of reproductive rights in India because it expanded women's access to abortion services that were both safe and legal and acknowledged the significance of women's autonomy in determining matters pertaining to their own bodies and reproductive rights. In order to lodge an appeal against the decision, Dr. Datar, with the assistance of the legal department from HRLN, submitted a special leave petition to the Supreme Court of India under the name Nikhil Datar vs. Union of India. In 2016, one Miss X approached HRLN with a proposal that was very similar to this one. She had survived an attack despite being 24 weeks pregnant at the time. The infant had a serious case of congenital malformations.<sup>7</sup> Together with Miss X, HRLN went to the Supreme Court to ask for authorization to have the pregnancy terminated. HRLN was able to effectively represent both parties throughout the process. HRLN, with medical assistance from Dr. Datar, defended a number of women in the

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<sup>6</sup> “Divya Gandhi, The Battle for Abortion Rights in India, The Hindu, (2020) <https://www.thehindu.com/sci-tech/health/the-battle-for-abortion-rights-in-india/article30649279.ece> .”

<sup>7</sup> “Kaveri Karki, *Reproductive Rights in India: How Law Fails Women*, Health and Human Rights Journal, (2020), <https://www.hhrjournal.org/2020/10/reproductive-rights-in-india-how-law-fails-women/> .”

court of law, and as a result, the court was compelled to allow women to terminate pregnancies medically. Because of these instances, the government was eventually forced to pay attention to the obvious problem in 2020, and as a result, the MTP Amendment Bill was finally enacted. During the subsequent sitting of the Parliament, the Measure will be presented there for consideration. This seems to be an extremely significant move towards ensuring that women who need to discontinue pregnancies are treated with respect while also preserving their sovereignty, confidentiality, and access to justice.<sup>8</sup>

#### 5. SANDESH BANSAL V. UNION OF INDIA<sup>9</sup>

A public interest lawsuit seeking accountability for maternal deaths, the High Court of Madhya Pradesh concurred with the Delhi High Court's ruling in 2012, stating that "it is the primary duty of the government to ensure that every woman survives pregnancy and child birth" and that "the inability of women to survive pregnancy and child birth violates her fundamental right to life as guaranteed under Article 21 of the Constitution of India."

### CONCLUSION

In conclusion, the judicial recognition of reproductive rights as fundamental and human rights is a significant milestone in the pursuit of gender equality and individual autonomy. Through various legal decisions and interpretations, courts around the world have acknowledged the inherent dignity and agency of individuals in making decisions about their reproductive lives. By recognizing reproductive rights as fundamental and human rights, the judiciary has affirmed the right to access reproductive health services, including contraception, safe and legal abortion, and fertility treatments. This recognition also encompasses the right to make informed choices regarding reproduction, family planning, and the right to be free from coercion, discrimination, and violence in matters related to reproductive health.

The judicial recognition of reproductive rights has far-reaching implications for societies, as it promotes gender equality, empowers women, and ensures their full participation in social, economic, and political spheres. It reinforces the notion that reproductive decisions are personal and private, and should not be subject to undue interference by the state or any external entities.

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<sup>8</sup> "The Status of Sexual and Reproductive Health and Rights in India, International Planned Parenthood Federation, (201), [https://www.ippf.org/sites/default/files/2019-12/IPPF\\_India-SRHR-Status-Report-2019.pdf](https://www.ippf.org/sites/default/files/2019-12/IPPF_India-SRHR-Status-Report-2019.pdf)."

<sup>9</sup> "Sandesh Bansal v. Union of India W.P. (C) 9061/2008."