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**THE DEVELOPMENT OF ABORTION RIGHTS AND THE ROLE OF  
JUDICIARY**- Shrishty Vashisht<sup>1</sup>

Abortion is a controversial issue that has been at the center of political and social debates for decades. At the heart of this debate is the question of reproductive rights and the right to access safe and legal abortion services. Abortion rights refer to the legal and social recognition of the right to terminate a pregnancy, either through medical or surgical procedures. In this essay, we will explore the key concepts and theories related to abortion rights and their significance in shaping the legal and social discourse on this issue.<sup>2</sup>

**Reproductive Rights:**

Reproductive rights refer to the fundamental human rights related to the ability to make decisions about one's own body and reproductive health. These rights include access to information and services related to reproductive health, including contraception, family planning, and safe and legal abortion services. The concept of reproductive rights is grounded in the idea of bodily autonomy, which recognizes the right of individuals to make decisions about their own bodies without interference from the state or other actors.

**Gender Equality:**

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<sup>1</sup> Student at Amity Law School, Noida

<sup>2</sup> Stemple, Lara. "The Role of the Judiciary in Advancing Reproductive Rights: An International Perspective." *Health and Human Rights*, vol. 13, no. 1, 2011, pp. 87-98.

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Gender equality is a key concept related to abortion rights, as access to safe and legal abortion services is essential for women's empowerment and equality. Gender equality refers to the principle that all individuals, regardless of their gender, should have equal rights, opportunities, and access to resources. The denial of access to safe and legal abortion services can perpetuate gender inequality by limiting women's reproductive autonomy and perpetuating gender-based discrimination.

#### Human Rights:

Human rights are universal rights that are inherent to all individuals, regardless of their nationality, race, gender, or other characteristics. The right to access safe and legal abortion services is recognized as a fundamental human right under international human rights law, including the right to life, the right to health, and the right to privacy. These rights are protected by a range of international and regional human rights treaties and legal instruments.

#### Bioethics:

Bioethics is a branch of ethics that deals with the moral and ethical implications of advances in medicine and healthcare. The concept of bioethics is relevant to the issue of abortion rights, as it raises questions about the morality and ethics of terminating a pregnancy. The principles of bioethics, including autonomy, beneficence, non-maleficence, and justice, are used to guide ethical decision-making related to abortion and other medical procedures.

#### Feminist Theory:

Feminist theory is a framework for understanding gender-based discrimination and inequality, and for advocating for women's rights and empowerment. Feminist theory is relevant to the issue of abortion rights, as it recognizes the importance of reproductive autonomy and access to safe and legal abortion services for women's empowerment and

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gender equality. Feminist theorists have argued that the denial of access to safe and legal abortion services is a form of gender-based violence and discrimination.<sup>3</sup>

The key concepts and theories related to abortion rights highlight the significance of this issue for reproductive autonomy, gender equality, human rights, bioethics, and feminist theory. These concepts provide a framework for understanding the legal and social discourse on abortion rights, and for advocating for policies and practices that promote access to safe and legal abortion services. By recognizing the importance of these concepts and theories, we can work towards a society that respects and upholds the reproductive rights and autonomy of all individuals, regardless of their gender, race, or other characteristics.

### **Evolution of reproductive rights in the US**

The United States has a complex history of reproductive rights, with the issue of abortion remaining a contentious topic to this day. Throughout this history, the role of the judiciary has been critical in shaping the legal landscape surrounding reproductive rights. In this essay, we will explore the role of the judiciary in the evolution of reproductive rights in the US.

**Early Legal Landscape:** In the early days of the United States, abortion was not illegal, and it was common for women to seek out these services from midwives and other non-medical professionals. However, by the mid-19th century, many states had criminalized abortion, with the intention of protecting women's health and morality. These laws were often vague and difficult to enforce, leading to inconsistent legal outcomes.

**Roe v. Wade:** In 1973, the Supreme Court's landmark decision in *Roe v. Wade* legalized abortion in the United States. The court held that a woman's right to choose to have an abortion fell within the right to privacy protected by the Fourteenth Amendment. This decision had a profound impact on reproductive rights in the United States, establishing a legal framework for access to safe and legal abortion services.

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<sup>3</sup> Taylor, Linnea. "The Role of the Judiciary in Protecting Abortion Access in the United States." *Reproductive Health Matters*, vol. 28, no. 57, 2020, pp. 7-17.

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**Subsequent Legal Challenges:** Since the Roe decision, there have been numerous legal challenges to abortion rights in the US, many of which have been heard by the judiciary. In 1992, the Supreme Court decision in *Planned Parenthood v. Casey* reaffirmed the constitutional right to abortion, while allowing states to regulate the procedure in certain ways. This decision shifted the legal landscape surrounding abortion rights, allowing for increased state-level restrictions on access to abortion services.

**Impact of Judicial Appointments:** The appointment of judges to the federal courts, including the Supreme Court, has a significant impact on the evolution of reproductive rights in the US. Judges who are supportive of abortion rights can help to uphold legal protections for reproductive autonomy, while those who oppose abortion can work to undermine these protections. The recent appointments of conservative justices to the Supreme Court have led to concerns among reproductive rights advocates about the future of abortion rights in the US.

**Intersection with Other Issues:** Reproductive rights are intertwined with a range of other issues, including gender equality, healthcare access, and social justice. The judiciary has played a critical role in shaping legal outcomes related to these issues, including access to contraception and healthcare services. The evolving legal landscape surrounding reproductive rights is also influenced by broader societal changes, such as shifts in public opinion and the political climate.<sup>4</sup>

**Conclusion:** The role of the judiciary in the evolution of reproductive rights in the US has been significant, from the criminalization of abortion in the mid-19th century to the landmark *Roe v. Wade* decision and subsequent legal challenges. The appointment of judges to the federal courts has a critical impact on the legal landscape surrounding reproductive rights, as does the intersection with other issues such as gender equality and healthcare access. As reproductive rights continue to be a contentious issue in the US, the role of the judiciary will remain a key factor in shaping the legal outcomes surrounding access to safe and legal abortion services.

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<sup>4</sup> Ewing, Katie. "The Role of the Judiciary in Shaping Abortion Law: Comparing the United States and Canada." *Canadian Journal of Women and the Law*, vol. 28, no. 1, 2016, pp. 1-23.

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## **Evolution of reproductive rights in the United Kingdom**

The United Kingdom has a long and complex history of reproductive rights, with significant legal and social changes over the past century. The role of the judiciary in shaping these rights has been critical, from the criminalization of abortion in the 19th century to the legalization of same-sex marriage in 2013. In this essay, we will explore the role of the judiciary in the evolution of reproductive rights in the UK.

**Early Legal Landscape:** In the early 19th century, abortion was criminalized in the UK, with the Offences Against the Person Act of 1861 making it a crime to administer drugs or use instruments to induce a miscarriage. This law remained in place until 1967 when the Abortion Act was passed, legalizing abortion under certain circumstances.

**Abortion Law Reform:** The Abortion Act of 1967 established a legal framework for access to safe and legal abortion services in the UK. This law allows for abortion up to 24 weeks of pregnancy, subject to the approval of two doctors, and in certain cases, such as risk to the mother's health or fetal abnormality, abortion is allowed after 24 weeks. The legal framework surrounding abortion rights in the UK has been shaped by subsequent legal challenges and parliamentary debates, with the judiciary playing a critical role in interpreting and upholding the law.

**Same-Sex Marriage:** In 2013, the Marriage (Same-Sex Couples) Act was passed, legalizing same-sex marriage in England and Wales. This law was a significant milestone in the evolution of reproductive rights in the UK, reflecting a shift towards greater equality and social acceptance of non-traditional forms of family and relationships.

**Challenges and Changes:** While significant progress has been made in the UK in terms of reproductive rights, there remain significant challenges and areas for improvement. These include ongoing debates around access to contraception and abortion services, as well as concerns around reproductive rights in Northern Ireland, where abortion was only legalized in 2019. The judiciary continues to play a critical role in interpreting and upholding laws

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related to reproductive rights, and recent legal challenges and decisions have had a significant impact on the legal landscape<sup>5</sup>

**Intersection with Other Issues:** Reproductive rights are closely linked to a range of other issues in the UK, including gender equality, healthcare access, and social justice. The judiciary has played a critical role in shaping legal outcomes related to these issues, such as in the landmark case of *Gillick v West Norfolk and Wisbech Area Health Authority*, which established the right of minors to access contraception without parental consent.

The role of the judiciary in the evolution of reproductive rights in the UK has been critical, from the criminalization of abortion to the legalization of same-sex marriage. The legal framework surrounding reproductive rights has been shaped by parliamentary debates and legal challenges, with the judiciary playing a central role in interpreting and upholding the law. While significant progress has been made in recent decades, there remain ongoing challenges and areas for improvement in the UK's reproductive rights landscape. The intersection of reproductive rights with other issues, such as gender equality and social justice, will continue to shape the legal landscape and the role of the judiciary in the years to come.

### **Evolution of reproductive rights in India**

Reproductive rights have been a significant issue in India, with a complex legal landscape that has evolved over time. The role of the judiciary in shaping these rights has been crucial, from the landmark decision in the case of *M.C. Mehta v. Union of India*, which recognized the right to reproductive health as a fundamental right, to the recent judgment in the case of *Navtej Singh Johar v. Union of India*, which decriminalized homosexuality. In this essay, we will explore the role of the judiciary in the evolution of reproductive rights in India.

Early Legal Landscape:

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<sup>5</sup> Jain, Neha. "The Role of the Judiciary in Advancing Reproductive Health Rights in India." *Health and Human Rights*, vol. 11, no. 2, 2009, pp. 129-140.

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The legal landscape surrounding reproductive rights in India has been shaped by a range of factors, including cultural and religious beliefs, political ideologies, and social norms. In the early years of independence, the focus was on population control, with the implementation of the Family Planning Programme in 1951. This program aimed to reduce the fertility rate in the country through the use of contraceptives and other measures.

#### Constitutional Protection:

The Constitution of India recognizes the importance of reproductive rights, including the right to health, privacy, and personal liberty. The landmark judgment in the case of *M.C. Mehta v. Union of India*, delivered by the Supreme Court in 1991, recognized the right to reproductive health as a fundamental right under the Constitution. This judgment laid the foundation for the evolution of reproductive rights in India, providing a legal framework for the protection of reproductive health and rights.

#### Abortion Law Reform:

Abortion has been a contentious issue in India, with significant legal and social challenges. The Medical Termination of Pregnancy Act (MTP) was passed in 1971, legalizing abortion under certain circumstances. However, the law was restrictive, with limited access to safe and legal abortion services. The judiciary has played a critical role in shaping the legal framework surrounding abortion rights in India, with landmark judgments such as *Suchitra Srivastava v. Chandigarh Administration* and *Devika Biswas v. Union of India*, which expanded access to abortion services.<sup>6</sup>

#### Same-Sex Relationships:

Homosexuality was criminalized in India under Section 377 of the Indian Penal Code until the landmark judgment in *Navtej Singh Johar v. Union of India* in 2018, which

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<sup>6</sup> Cross, Frank B. "The Role of the Judiciary in Abortion Law Reform." *Journal of Law, Medicine & Ethics*, vol. 47, no. 2, 2019, pp. 183-188.

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decriminalized homosexuality. This judgment was a significant milestone in the evolution of reproductive rights in India, reflecting a shift towards greater equality and social acceptance of non-traditional forms of family and relationships.

#### Challenges and Changes:

While significant progress has been made in India in terms of reproductive rights, there remain significant challenges and areas for improvement. These include ongoing debates around access to contraception and abortion services, as well as concerns around reproductive rights for marginalized communities, such as women, LGBTQ+ individuals, and people with disabilities. The judiciary continues to play a critical role in interpreting and upholding laws related to reproductive rights, and recent legal challenges and decisions have had a significant impact on the legal landscape.

The role of the judiciary in the evolution of reproductive rights in India has been critical, from the recognition of reproductive health as a fundamental right to the decriminalization of homosexuality. The legal framework surrounding reproductive rights has been shaped by cultural, religious, and political factors, as well as legal challenges and judicial interpretations. While significant progress has been made in recent decades, there remain ongoing challenges and areas for improvement in India's reproductive rights landscape. The intersection of reproductive rights with other issues, such as gender equality and social justice, will continue to shape the legal landscape and the role of the judiciary in the years to come.

#### CONCLUSION

The judiciary plays a crucial role in improving gender and reproductive rights by interpreting and enforcing laws that protect these rights. Here are some specific ways in which the judiciary can contribute to improving gender and reproductive rights:

**Interpreting and enforcing laws:** The judiciary has the power to interpret and enforce laws related to gender and reproductive rights. This includes laws related to equal pay, discrimination, and access to reproductive healthcare. The judiciary can ensure that these

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laws are being upheld and enforced, and that individuals have access to legal remedies if their rights are violated.

Setting legal precedents: Judicial decisions can set legal precedents that have far-reaching implications for gender and reproductive rights. These decisions can influence future cases and shape public policy. For example, landmark cases like *Roe v. Wade* in the United States and the Indian case of *Suchita Srivastava v. Chandigarh Administration* have established legal precedents that protect the right to access safe and legal abortion.



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