

# An Analytical Examination Of The Evolution And Challenges In Women's Reproductive Rights In India: Legal And Healthcare Perspectives

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**Citation:** Aakansha Verma, et.al (2024). An Analytical Examination Of The Evolution And Challenges In Women's Reproductive Rights In India: Legal And Healthcare Perspectives, Educational Administration: Theory and Practice, 30(11) 2956-2963

Doi: 10.53555/kuey.v30i11.11109

## ARTICLE INFO

## ABSTRACT

Contextually within legal and healthcare systems of India, this manuscript makes deep investigation regarding reproductive rights of an Indian woman's; the origin and development. This research initiative also observes various kinds of obstacles which Indian women's faces while exercising her basic right; freedom of choice and right to health which is integral for gender equality and societal advancement. While achieving its agenda this paper tracks down the progression of reproductive healthcare from the time where only traditional ayurvedic practices used to exist and there was no legal rights ensured to the women's safety to the present time where along with medical advancements legal advancements naming few like as the Medical Termination of Pregnancy Act, 2021, and judicial interventions has also been made which provides women's 360 degree protection.

Major observations reveals that problems in easy and affordable access to healthcare system, socio-cultural discriminations, economic incapacities of general public, lack of government's will for implementing public beneficial schemes are the prime reasons which hinders the women's in India from exercising their reproductive and healthcare rights.

By aligning with **Sustainable Development Goal 5 (Gender Equality)**, the authors urges for strong and more efficient healthcare systems, widespread legal awareness and, joint efforts among various stakeholders so as to make independent and informed about her choices and also to provide her easy and affordable access to healthcare facilities which is her inalienable rights.

Lastly, the research also advocates for interdisciplinary approach which integrates public policies, awareness, and healthcare services to bridge the gap between legislative intent and ground realities, creating a conducive environment where reproductive and healthcare rights are properly implemented.

**Keywords:** Reproductive Rights, Women's Healthcare Access, Legal Frameworks in Reproductive Health, Gender Equality (SDG 5), Sustainable Healthcare Policies.

## Introduction

Women are pivotal to societal development and national progress, yet their value is often narrowly confined to their reproductive roles. As nurturers, innovators, leaders, and equal participants in the workforce, women contribute significantly to both social advancement and economic growth. Despite this, many women around the world, including in India, continue to face systemic discrimination, where they are viewed primarily in terms of their ability to bear children. Historically, from the monarchy era, where women were tasked with producing heirs to secure dynasties, to the world wars where they were reduced to "childbearing machines," this mindset persists even in modern times. Such a limited perspective not only diminishes women's dignity and autonomy but also overlooks their vast potential as human capital. It is crucial to acknowledge that women's worth transcends their reproductive roles, and their reproductive rights and health must be treated as fundamental human rights, rather than tools for demographic objectives.

As we examine the status of reproductive rights and healthcare access for women in India, we must keep in mind that these issues are not just matters of health policy, but are central to her empowerment, gender equality, and the overall development of the nation.

The foundation of health rights dates to India's early civilizations. Historically, our country has a great heritage of healthcare facilities. It is quite fascinating to know how women's health used to be taken care in ancient India. Back in those days there used to be no medical facilities like today we have, yet women's health in those days used to be very good. They used to integrate health practices with their beliefs and traditions.

In ancient times, long before the introduction of modern medicines, Ayurveda used to be practiced for every purpose including reproductive purposes. Textbooks like; Charaka Samhita and Sushruta Samhita are being considered as pregnancy manuals. Instead of prenatal vitamins and ultrasounds, they focused on balancing the body's energies and used lots of herbs and special diets. Pregnant women had to watch what they ate carefully - kind of like today, but with different rules. They even had this cool ceremony called **seemantonnayana** to help keep mom-to-be calm and happy, thinking it would be good for the baby too. When it came time for delivery, it was usually a home birth with midwives in charge. Those women were like experts, armed with generational knowledge regarding prenatal and postnatal care and childbirth practices.

Healthcare rights got global recognition with the passing of UDHR<sup>1</sup>. Healthcare rights are now considered an intrinsic part of human rights, which every individual qualifies to<sup>2</sup>. To this date, several initiatives such as Beijing Conference, Nairobi Summit etc. have taken place that have established ground rules for every nation, ensuring women get basic reproductive healthcare facilities in their jurisdiction. India's commitment to women's reproductive rights is rooted in international agreements and domestic legal frameworks. However, the implementation of these rights remains a significant challenge, particularly in terms of healthcare access and public health infrastructure<sup>3</sup>.

Reproductive rights have been defined under World Health Organization as, "Reproductive rights rests on recognition of the basic rights 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 highest standard of sexual and reproductive health"<sup>4</sup>.

The Constitution of India being supreme law of the land of aims to ensure dignified life to women by securing her reproductive autonomy, constitutional provisions like Article 14 which ensures right to equality among every person, Article 15 which prohibits the state from making passing any legislation which discriminates among people on the basis of gender, and Article 21 which ensures every person to live a dignified life which is more than mere animal existence, these constitutional provisions becomes a legal foundation and guarantees women their reproductive autonomy.

Legislative frameworks such as the Medical Termination of Pregnancy (MTP) Act, 1971, and the Pre-Conception and Prenatal Diagnostic Techniques (PCPNDT) Act, 1994, also reflect legal commitments to ensuring reproductive autonomy. The court interventions have further strengthened this.

### Securing Reproductive Rights through Judicial Rulings in India

Over the last couple of years the Supreme Court, through its extensive analysis has recognized women reproductive autonomy as one of the most provoking aspects of fundamental rights with the acceptance of the fact that denial of such rights is denial of her existence. Since women's reproductive rights were not adequately protected by the law, judiciary at times has unavoidably taken on a crucial role in addressing and resolving reproductive law-related concerns<sup>5</sup>.

The Indian judicial system believes that there are two inviolable basic rights which is essential component of right to life and personal liberty, first is the right to affordable and easy access to basic healthcare services and second is the right of reproductive autonomy of women. The said beliefs of Indian judiciary stems from initiatives adopted from United Nation's Convention on Elimination of All Forms of Discrimination against

<sup>1</sup>Universal Declaration of Human Rights art. 25, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948).

<sup>2</sup> Health is a Fundamental Right, available at [http://www.who.int/mediacenter/news/statements/fundamentalhuman-right/en/\(last](http://www.who.int/mediacenter/news/statements/fundamentalhuman-right/en/(last) accessed September 2, 2024).

<sup>3</sup> Ministry of Women and Child Development, Government of India, *Women's Rights and Gender Equality in India: Progress and Challenges* <https://www.wcd.nic.in/womens-rights-report> accessed 22 September 2024.

<sup>4</sup>World Health Organization, *Sex and Reproductive Health* <http://who.int/reproductivehealth/gender/index.html> accessed September 2024.

<sup>5</sup>Center For Reproductive Rights, [www.reproductiverights.org](http://www.reproductiverights.org) (31<sup>st</sup> May, 2024).

Women and International Covenant on Economic, Social and Cultural Rights which emphasizes that no women especially pregnant women should be denied from availing healthcare services owing to her social or financial circumstances<sup>6</sup>.

The widely recognized case of *Suchita Srivastava v. Chandigarh Administration*<sup>7</sup>, the Supreme Court emphasized over the importance of reproductive autonomy and declared that the freedom to make reproductive decisions by her own falls within the meaning of life and personal liberty<sup>8</sup>. The court acknowledged that the woman's autonomy includes the right to abortion and the State cannot interfere with this right without substantial justification. The Court held that since consent of the pregnant woman is an essential requirement under the MTP Act 1971, its dilution could not be allowed as that would "amount to an arbitrary and unreasonable restriction on the reproductive rights of the victim. This judgment became a cornerstone in recognizing reproductive rights as part of the broader framework of personal liberty enshrined under Constitution of India<sup>9</sup>.

Yet in another glaring instance of *Puttaswamy v. Union of India*<sup>10</sup> Apex Court again upheld the women's reproductive autonomy by linking her bodily autonomy with her right to privacy and this time Apex Court left no stone unturned in ensuring women's reproductive autonomy. Although this petition primarily dealt with the right to privacy<sup>11</sup> but its ramifications for reproductive rights are profound.

*Devika Biswas v. Union of India*<sup>12</sup> exposed claims of the government's safe sterilisation initiatives and easy access to reproductive healthcare facilities. The petitioner through his petition alleged that in government camps women were operated under unsanitary conditions and without taking their consent.

The Apex Court of India had condemned the government for the facilities they were offering to women and reminded them about the accountability they owe towards the people, especially women. The court, in this case, ordered strict implementation of sterilisation procedures in a healthy environment.

The court made it very clear to the governments that such absence of accountability was unacceptable and that it violated women's right to life and personal liberty<sup>13</sup>.

Recently the Supreme Court of India in its historic decision<sup>14</sup> reiterated that reproductive rights are integral to one's personal liberty and bodily autonomy. The Indian Supreme Court upheld reproductive autonomy and equality by granting unmarried women the same legal access to abortions between 20 and 24 weeks of pregnancy as married women. This decision enlarged the rights to abortion under The Medical Termination of Pregnancy Act, 2021. The issue at hand of this case was a 25-year-old single woman who requested permission to end her 23-week pregnancy. The court made further observation that it would be grave injustice for unmarried women from denying safe and legal access to abortion just because of strict application of law technical. Supreme Court expanded the application of Medical Termination of Pregnancy Act, 2021 by giving wider interpretation to the words used in Rule 3B which resulted in safeguarding the reproductive rights of women's and thus women regardless of their marital status now have equal rights in terms with married/widowed women's in context of access to healthcare facilities for reproductive needs.

### Government Initiatives in Advancing Reproductive Rights

Being signatory member of International Conference on Population and Development, 1994, India has devoted itself towards promoting awareness for planned parenthood which included the access to healthcare services<sup>15</sup>. In 1952, India was first of its kind to launch an initiative under the label of National Programme for Family Planning which ensured easy and affordable access to reproductive healthcare services which resulted in decline in maternal, infant and child mortality and morbidity rates. The Government of India has undertaken noteworthy steps for improving rural, regional, and national level sexual and reproductive health facilities;

<sup>6</sup>*Laxmi Mandal v Deen Dayal Harinagar Hospital & Others W.P. (C) No 8853/2008 (India).*

<sup>7</sup>*Suchita Srivastava v Chandigarh Administration (2009) 9 SCC 1 (India).*

<sup>8</sup>*The Constitution of India art 21 (1950).*

<sup>9</sup> *Ibid.*

<sup>10</sup>*Justice KS Puttaswamy (Retd.) v Union of India (2017) 10 SCC 1 (India).*

<sup>11</sup>*The Constitution of India art. 21 (1950).*

<sup>12</sup>*Devika Biswas v Union of India (2016) 10 SCC 726 (India).*

<sup>13</sup>See supra note no.11

<sup>14</sup>*X v Principal Secretary, Health & Family Welfare Department, Government of NCT of Delhi (2022) (India).*

<sup>15</sup>United Nations International Conference on Population and Development (ICPD), Cairo, Egypt, Sept. 5-13, 1994, available at <http://www.iisd.ca/cairo.html> (last visited Sept. 5, 2024).

making substantial progress on maternal and newborn health indicators. The National Population Policy 2000 provides the couples the right to voluntary and informed choice in matters relating to access to contraception<sup>16</sup>. Mention below are some of initiatives adopted by India towards enhancing reproductive healthcare facilities:

### **1. The Medical Termination of Pregnancy (Amendment) Act, 2021**

This legislation empowers the women to decide her reproductive health and boosting access to abortion services. The amendment made in the year 2021 significantly strengthens women's autonomy extending the gestation period for terminating the pregnancy which is upto 20 weeks and in certain exceptional circumstances upto 24 weeks. This legislation aims to reduce maternal deaths happening because of unsafe abortions.

### **2. Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994**

The law was introduced to prevent diagnostic techniques from being misused. The diagnostics techniques were mostly being used for gender revelation, which became the reason for female infanticide leading imbalance sex ratio. It strictly bans sex selection and regulates diagnostic technologies to prevent discrimination and the elimination of female fetuses.

### **3. Surrogacy (Regulation) Act, 2021**

The statute regulates surrogacy in India; it prevents commercial surrogacy for the purpose to safeguard against abuse and only authorizes altruistic surrogacy under very specific guidelines. The legislation strives to preserve surrogate mothers' rights and well-being whilst ensuring that the procedure is carried out ethically. Additionally, it establishes requirements for intended parents and surrogates, fostering reproductive autonomy and shielding weaker women from financial pressure.

### **4. National Population Policy, 2000**

This government initiative addresses unmet needs for reproductive and child health care, supplies and infrastructure; basically, it focuses upon women's overall wellbeing. It also advocates for women's reproductive autonomy by promoting informed choices.

### **5. The Maternity Benefit Act, 1961**

Concerning law ensures that female employees receive supplementary benefits both during and after childbirth, in addition to paid maternity leave. It encourages working women's health and well-being by requiring paid maternity leave, childcare facilities, and job security.

### **6. Reproductive, Maternal, Newborn, Child, and Adolescent Health and Nutrition (RMNCAH+N)**

Based on the continuum of care principle, RMNCAH+N program is an efficiently planned approach. It adopts a comprehensive approach, attending to a broad spectrum of healthcare requirements pertaining to nutrition among new mothers and their newly born, health of adolescents. This initiative lays stress on improving health of new mothers and her newly born by extending health coverage schemes throughout his/her life tenure.

RMNCAH+N acts as a bridge connecting various schemes and initiatives across India which targets to improve morbidity and mortality rates in India<sup>17</sup>. The "plus" within the strategy focuses on:

- a. Identifying adolescence as a critical developmental phase which requires focused treatment.
- b. Connects maternal health and her newly born health with other issues like gender ratio imbalance, parental care practices, health of adolescents, preventive schemes relating to HIV.
- c. Integrates home / tradition-based care with modern healthcare services resulting in reliable, cohesive and accessible healthcare system. This approach aligns age old knowledge with modern science thus bridging gaps between generations.

<sup>16</sup>SrinivasKosgi, *Women reproductive rights in India: prospective future*, <https://ro.uow.edu.au/cgi/viewcontent.cgi?article=1134&context=medpapers> (last visited Sept. 5, 2024).

<sup>17</sup> National Health Mission, Reproductive, Maternal, Newborn, Child and Adolescent Health (RMNCH+A), <https://nhm.gov.in/index1.php?lang=1&level=3&lid=309&sublinkid=841> (last visited Oct. 6, 2024).



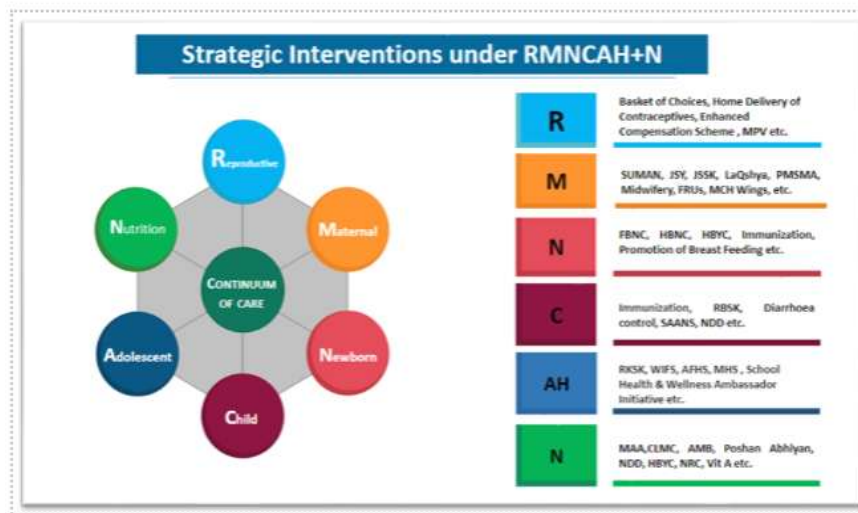


Image source: National Health Mission

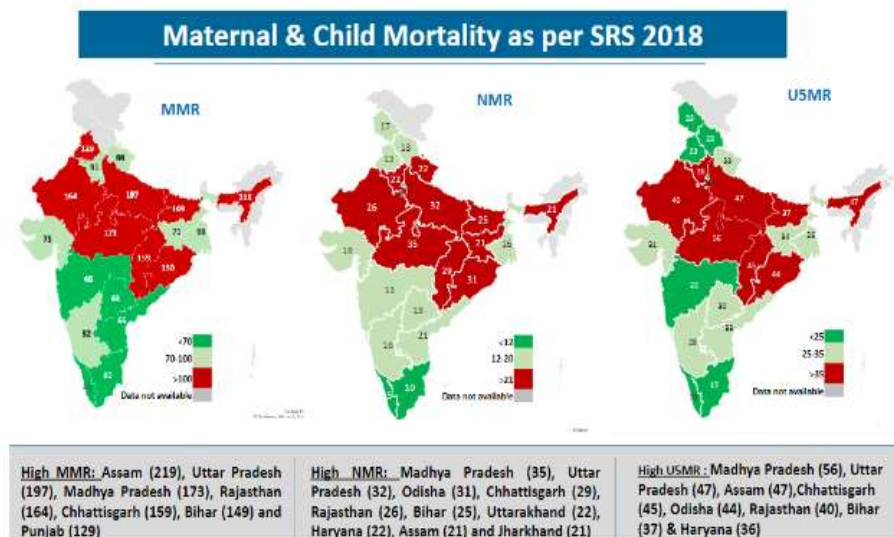
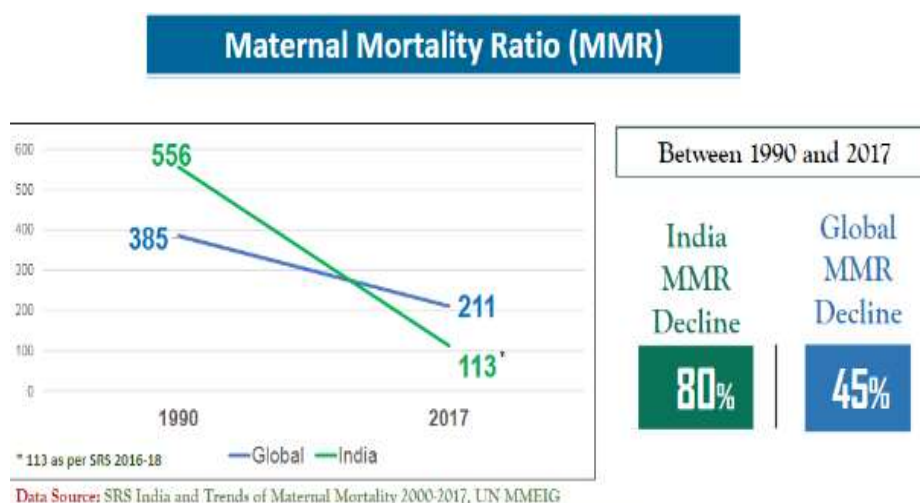


Image source: National Health Mission



SDG Target: 70 by 2030

Image source: National Health Mission

## 7. Janani Suraksha Yojana (JSY)

This is a government-sponsored initiative under the flagship of National Health Mission aimed at reducing maternal and neonatal mortality. This scheme was launched pan India in 2005 with the aim of promoting institutional delivery at public hospitals or government approved private hospitals by providing pregnant women financial assistance which depends upon rural & urban areas. The central theme of this programme is to assist financially challenged pregnant women and provide them nutritional food and supplements which will help in their pregnancy. Also, this scheme aims to increase the institutional delivery rates by improving the public healthcare facilities. States like Uttar Pradesh, Bihar, Jharkhand, Rajasthan have extremely low institutional delivery rates and for the same reason are being given the status of Low Performing States (LPS). The most promising part of this initiative is that they do keep track of the health records of mother and her newly born for future reference. The beneficiary under this scheme receives monetary benefits which are directly credited into their bank account. The benefit amount depends upon the state the beneficiary is hailing from; whether the concerned state is having high institutional delivery rate (HPS) or low institutional delivery rate (LPS).

Cash Assistance for Institutional Delivery (in Rs.)

Category	Rural Area		Urban Area	
	Mother's package	ASHA's package <sup>a</sup>	Mother's package	ASHA's package <sup>a</sup>
Low Performing States - LPS	1400 All women regardless of age and number of children for delivery in government / private accredited health facilities	600	1000	400
HPS	All BPL/Scheduled Caste/Scheduled Tribe (SC/ST) women delivering in a government/private accredited health facility 700	600	600	400

Image source: National Health Mission

## 8. Janani Shishu Suraksha Karyakram( JSSK)

This is another initiative from Government of India under the flagship of the Ministry of Health and Family Welfare and was launched in 2011. This initiative aims to provide immediate post-natal care as the next 48 hours post-delivery is crucial for both mother and child<sup>18</sup>.

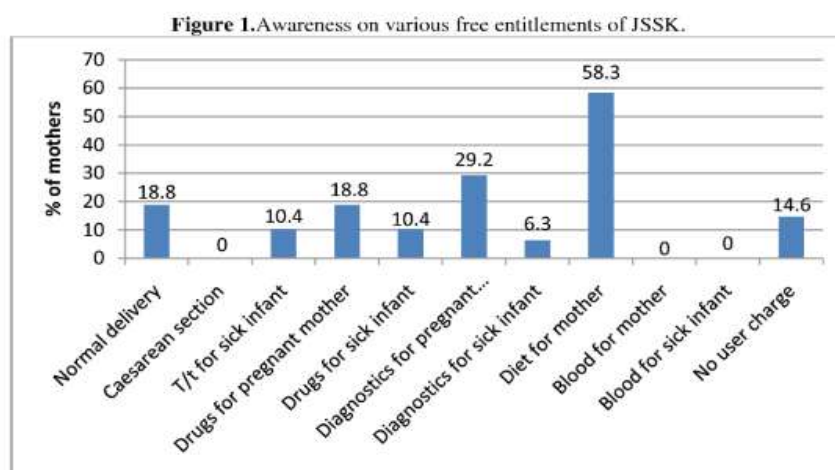


Image source: National Health Mission

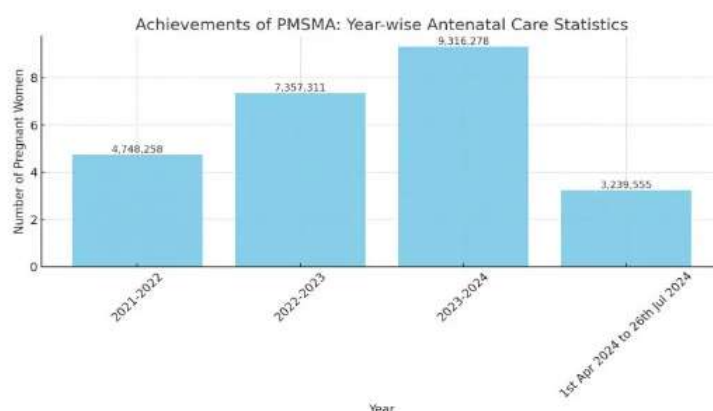
## 9. Pradhan Mantri Surakshit Matritva Abhiyan (PMSMA).

Honorable Prime Minister initiated this campaign back in 2016 by urging medical practitioners to dedicate their 12 days from their annual calendar for providing pre- natal medical assistance to pregnant women who

<sup>18</sup> Dr. Manoj Kumar, *Health Laws and Policies in India*, 119(1<sup>st</sup> ed.2021).

are in their 2nd/ 3rd trimesters of their pregnancy. As a part of the campaign, a national level portal and mobile application has been launched to keep track of the number of medical practitioners and their availability for rendering their services for this noble cause. The purpose of the campaign is to identify and to take the follow-up of complicated pregnancy<sup>19</sup>.

### PYQ:



## Challenges & opportunities

### 1. Limited Access to Healthcare

Women's often coming from marginalized areas faces difficulties in accessing reproductive healthcare facilities such as access to contraceptives, pre-natal & post-natal care, safe abortion services due to insufficient healthcare infrastructure and facilities. Although continuous efforts are being made from governmental and non-governmental institutions but result is quite slow to call those initiatives to be worth effective.

### 2. Social and Cultural Stigma

Deep-seated social prejudices and cultural prejudices about reproductive wellness, notably abortion, contraception, and sexual health, keep hampering women's abilities to make well-informed choices. This frequently inhibits women from accessing reproductive health services or openly communicating their worries with others.

### 3. Economic Barriers

Women from economically disadvantaged backgrounds face significant financial barriers when it comes to accessing reproductive healthcare. The cost of procedures, lack of insurance coverage, and unavailability of affordable healthcare often leave marginalized women without adequate care, increasing risks like maternal mortality and unsafe abortions.

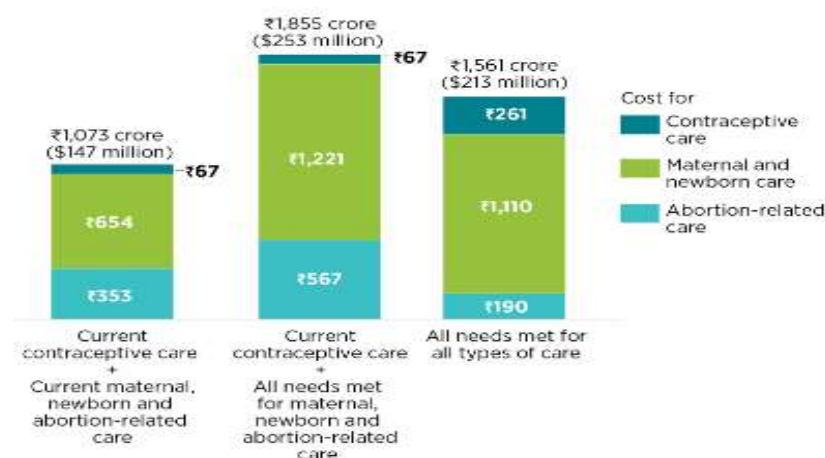


Image source: guttmacher organization

<sup>19</sup> Janani Shishu Suraksha Karyakram, Delhi Health & Family Welfare, <https://hfw.delhi.gov.in/fw/janani-shishu-suraksha-karyakram> (last visited Oct. 3, 2024).

#### 4. Legal Implementation and Awareness

Despite legislative frameworks are out there, the actual implementation of reproductive rights regulations remains constrained. Numerous medical professionals and women are misinformed of their legal entitlements, leading to prejudiced actions including forced sterilisation or denying of abortion services.

#### 5. Gender-based Discrimination

Gender inequality continues to shape the reproductive choices women make, with many being pressured by societal or family expectations. Traditional gender roles and norms often restrict her capability of deciding for her own, leading to discrimination and impairing her personal autonomy when it comes to making decisions about their reproductive health.

Despite number of challenges, India has made significant strides in ensuring adequate reproductive healthcare services, witnessing declines in mortality rates and improvements in life expectancy of both mother and her newly born since independence. National health policies aim to achieve health for both mothers and newly born by focusing on preventive care, primary healthcare, and disease control programs. Moving forward, India continues to enhance its healthcare system, emphasizing coordination between health services and related sectors to ensure comprehensive and effective healthcare delivery.

### Conclusion

This study emphasizes the intricacies of women's reproductive rights in India, showing both considerable legislative advancements and continued obstacles. Despite progressive legal rulings and government measures to promote reproductive autonomy, challenges such as restricted healthcare access, social stigma, and economic constraints continue to impede the full realisation of these rights. The need for effective policy implementation, extensive education, and a robust healthcare infrastructure is critical. Moving forward, a collaborative effort between the government, judiciary, and civil society is critical to ensuring that every woman in India may make educated and independent reproductive decisions.

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