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Gendered Harm Across Borders: Obstetric Violence and Private International Law

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"Every woman has the right to the highest attainable standard of health, including the right to dignified and respectful healthcare."

— World Health Organisation

Abstract

This paper explores the potential of private international law (PIL) in dealing with the problem of obstetric violence within the phenomenon of cross-border childbirth tourism. With the increasing movement of patients from one state to another to receive medical services related to reproductive care and maternity, cases ranging from non-consensual procedures to degrading treatment raise complex legal challenges. The paper argues that PIL frameworks remain structurally inadequate in responding to such harms. As PIL methods have traditionally treated these conflicts as neutral procedural problems between two parties, this framework does not adequately reflect the specific gendered dimension of obstetric violence, which includes violations of bodily autonomy, dignity, and reproductive rights.

From this perspective, the paper proceeds to analyse various international and regional human rights instruments, including those developed under the World Health Organisation and the CEDAW Committee, which acknowledge aspects of respectful maternity care but are fragmented, weakly binding, and poorly enforced. This paper shows how these frameworks, together with their limitations, influence the scope of PIL. This paper concludes by recommending a more integrated approach that aligns PIL with evolving human rights norms on gender justice, dignity, and reproductive autonomy.

Keywords: Obstetric violence, World Health Organisation, CEDAW Committee, Gender justice, Private international law.

Introduction

Background of the Study

Modern–day global healthcare has blurred the lines between nations; a large number of patients, or healthcare seekers, travel across the globe for adequate medical treatment and facilities. Medical tourism, a term used to describe the practice of travelling outside one's country seeking medical services, mainly due to technological advancement, higher levels of medical expertise, lower healthcare costs, and the noted quality of medical services, has increased in recent times.[1] As a part of this wider trend, reproductive healthcare has emerged as a significant area of transnational medical mobility. Cross-border childbirth tourism, also known as border birth or cross-border maternity care, is the practice of pregnant women travelling across national or regional borders seeking safe maternity care and childbirth-related services or benefits in a foreign jurisdiction.

Cross-border childbirth is preferred for several complex reasons, depending on the social, economic, and legal factors of the individuals involved. Unavailability or inadequacy of healthcare facilities stands out as the major contributing factor. Differences in maternal health care infrastructure, the availability of specialised obstetric services, and how people think about safer childbirth environments can encourage individuals to look for care abroad. Economic constraints also help steer those decisions, because the cost of healthcare tends to look very different from one country to another.[2] In a few situations, people may see foreign healthcare services as somehow more affordable, or maybe more effective in practice, than the options that are available locally.

Another key driving factor is the legal and citizenship consequences that come along with giving birth abroad. In some jurisdictions, there are citizenship rights or other legal advantages that are tied to being born on their territory. Because of this, people might pursue childbirth tourism not only for better healthcare access, but also for later opportunities linked to nationality, migration, and social security rights. So cross-border maternity care seems to sit right at the crossroads of healthcare, migration, and international legal relations.[3]

However, the internationalisation of childbirth also manifests new legal concerns. When care is given across borders, the relationship between the patient and the healthcare provider ends up being tangled in multiple legal systems. This later contributes to creating complexities with regard to accountability, applicable law, and access to remedies when harm occurs.

Understanding the Problem

In the midst of the harms that women run into during maternity care, obstetric violence has started to be more and more recognised as a grave breach of women's rights. In a broad sense, obstetric violence points to abusive, disrespectful, or coercive practices that women may endure while they're pregnant, giving birth, and in the postpartum period. This can show up as non-consensual medical procedures, extra interventions that weren't truly needed, verbal humiliation, physical mistreatment, refusal to provide information, and an overall disregard for what a woman decides about her own body during that period.[4]

The importance of obstetric violence is that childbirth is not just a clinical event; rather, it is a lived experience, tied to bodily autonomy, dignity, and personal decision-making. When a woman is constrained from taking part in decisions about her own reproductive

healthcare, the issue becomes bigger than ordinary medical negligence. For instance, doing a medical procedure such as "Husband Stitch" without informed consent might be seen as more than a simple lapse in professional duty; it could also count as a breach of the person's right to bodily integrity.

These concerns get further layered and complex in the cases of cross-border childbirth. An individual travelling to a foreign jurisdiction might experience language barriers, unfamiliar healthcare systems, differences in medical practices, and difficulties in seeking remedies after returning to her home country. There is a major possibility that the harm experienced may continue beyond the physical location where childbirth occurred.

Research Problem

Childbirth-related harm is traditionally a subject of private law frameworks; the dispute is categorised as medical negligence, contractual liability, and compensation–based remedies. This approach views the act from a mechanical perspective by testing whether the patient has suffered any legally recognised injury and whether the treatment provider has breached a professional duty.

There is no question regarding the insightful assistance of this approach; however, this approach undermines the true nature of obstetric violence. In cases of obstetric violence, we observe and recognise that the harm/injury caused is not confined to physical injury, as it also comprises several other violations, such as violations of equality, dignity, autonomy, and reproductive freedom. Obstetric violence finds its roots in gender-oriented violence, and in medical contexts, unequal power relations may lead to violations of women's reproductive choices and bodily experiences.[5]

Hence, when we categorise and reduce such cases to a mere private dispute between a patient and a medical professional, we overlook the broader human rights dimensions.

Obstetric Violence as Gendered Harm and Human Rights Violation

Meaning and Concept of Obstetric Violence

Childbirth is a layered phenomenon; it has medical and personal significance, often factoring in various dimensions such as economic, emotional, physical, and social. However, during this same phenomenon, women are subjected to violations of their dignity, autonomy, and bodily integrity. These violations spawn out of health care practices during pregnancy, pre-childbirth, childbirth/delivery, and postpartum. These violent practices are recognised under obstetric violence. Obstetric violence does not have a universally accepted definition; however, it is generally understood as referring to abusive, disrespectful, coercive, or dehumanising treatment experienced by women within maternity care systems.[6]

Obstetric violence as a concept has its roots in feminist and reproductive rights scholarship; initial developments were from Latin American legal and social movements. This term was used to describe institutional and interpersonal forms of mistreatment faced by women during childbirth.[7] This concept fundamentally challenges the assumption that medical interventions during childbirth are inherently in the best interests of the patient and assists in acknowledging the possibility of the violation of women's choices and rights.

These violations may occur during pregnancy, pre-childbirth, childbirth/delivery, and postpartum. They include practices such as: -

- performing medical procedures without informed consent,

- unnecessary interventions,
- denial of information,
- verbal humiliation,
- physical abuse,
- neglect, and the refusal to respect a woman's birth preferences.[8]

For example, a woman gives vaginal birth and incurs a tear or requires an episiotomy. After the delivery, the doctor repairs the tear with stitches. However, without informing the woman or obtaining her consent or explaining risks, alternatives, and consequences, the doctor adds an extra stitch to tighten the vaginal opening, which has no medical benefit but allegedly increases sexual pleasure for her husband after childbirth. In this situation, the problem is not the medical repair of the tear itself but the additional, unnecessary, and non-consensual alteration of her body; such interventions may constitute violations of bodily autonomy, dignity, informed consent, and reproductive rights.

The World Health Organisation does not formally acknowledge obstetric violence as a separate legal category; however, the WHO recognises disrespectful and abusive treatment during facility–based childbirth as a serious concern impacting women globally. Physical abuse, non-consensual clinical care, and privacy violations are recognised practices by the WHO, contradicting respectful maternity care.[9] In view of this, our perspective of obstetric violence must change "from merely a poor medical practice to a serious conduct that violates the rights of the individual."

Against the background of cross-border childbirth tourism, concerns of obstetric violence become more complex. In cases where women travel to other countries to deliver their babies, they are likely to experience different healthcare environments, language barriers, lack of information equality, and decision-making challenges. It follows that obstetric violence experienced in other countries creates legal challenges not just confined to one jurisdiction.

Obstetric Violence and Gender Justice

Obstetric violence is inherently linked with issues of gender justice since this phenomenon occurs in a health environment in which women's reproductive abilities become subjects for professional domination. Pregnancy and childbirth have a special character, as they affect women specifically in regard to their physical body and reproductive choices. Hence, any abuse associated with maternity cannot be perceived without an understanding of this link.

The issue of obstetric violence is highlighted through its gender-based impact, which targets women due to their reproductive roles. Any activity that disregards the wishes of a woman concerning childbirth or any medical procedure done without the consent of the woman is a clear violation of her reproductive autonomy. Reproductive autonomy is closely connected to equality because women cannot achieve meaningful equality if decisions regarding their bodies are controlled by others.[10]

One of the main causes of obstetric violence is the unequal dynamics between health care professionals and their patients. The former have the knowledge and power within their respective institutions, while the latter are susceptible owing to various factors such as pain, fear, a sense of urgency, or the absence of any medical knowledge. It could get even more complicated in the case of childbirth, where women lack the ability to countermand

any actions taken by health care professionals.

What poses a threat is the use of professional power in ways that might infringe on individual autonomy. When healthcare systems treat women as passive recipients rather than active decision-makers, childbirth becomes a process controlled by institutions rather than an experience guided by informed choice.

When examined through a gender-justice perspective, one can find reflections of social inequalities within the concept of obstetric violence. Unfortunately, in the past, women's reproductive matters were largely regulated by social, cultural, and medical institutions. By refreshing our perspectives on obstetric violence as gender-based harm, the focus shifts from individual wrongdoing to structural issues within healthcare systems.

Obstetric Violence and Bodily Autonomy

Bodily autonomy means the right of an individual to have control over decisions relating to their own body without force, coercion, or unjustified interference. For the reproductive healthcare context, this means that women have the right to decide what happens during pregnancy and childbirth.

Informed consent is a part of bodily autonomy. Informed consent mandates that the patient is equipped with the necessary information about a proposed medical procedure, that he/she must have an understanding of the risks and alternatives, and that he/she must have voluntarily agreed to the intervention.[11] This is not a mere procedural requirement; it helps in establishing personal dignity and self-determination.

The distinguishing factor between medical negligence and obstetric violence needs to be carefully examined. Failure to uphold professional standards of care, causing injury/harm to the patient, is medical negligence, whereas conduct that results in violation of dignity, autonomy, or informed consent falls under obstetric violence. A successful medical procedure can be an example of obstetric violence if performed without consent or through coercion. Thus, existing medical liability frameworks lack effectiveness as injury/harm endured includes loss of bodily control, humiliation, and interference with reproductive decisions.

Obstetric Violence as a Human Rights Issue

The recognition of obstetric violence as a human rights issue highlights the link between maternity services and human rights. International human rights law has come to recognise that health care must be consistent with dignity, equality, and respect for individual autonomy.

The right to dignity is a crucial element to this discussion. Disrespecting, humiliating, or coercing women during childbirth weakens their status as capable individuals. Likewise, privacy as a right protects personal information about reproductive life and bodily integrity.[12]

Equality is another crucial element to this discussion. Obstetric violence is about harm caused to women during reproductive care, and a lack of adequate protection against such violence would amount to gender-based discrimination. The Committee on the Elimination of Discrimination against Women (CEDAW) has mandated that States must resolve the barriers affecting women's health rights, and that there must be no discrimination for the women seeking healthcare.[13]

Moving on, the essence of reproductive freedom lies in women being able to make informed decisions and take the status of decision-maker instead of being passive

recipients of medical care. Thus, obstetric violence constitutes a multidimensional violation of dignity, privacy, equality, and reproductive autonomy. Understanding this through a human rights perspective highlights the limitations of private law concepts such as negligence or compensation. This evolving understanding takes the steering in cross-border contexts, as the responsibility of private international law should not be limited to resolving procedural conflict, but also serve as a means of protecting fundamental rights.

Cross-Border Childbirth Tourism: Creating Transnational Legal Challenges

Concept of Childbirth Tourism

Global mobility of healthcare has contributed to the development of the phenomenon of medical tourism, which entails patients travelling to other countries for healthcare services. One particular type of this kind of tourism includes cross-border childbirth tourism, which involves pregnant women travelling to another place for healthcare and giving birth there[14]. This type of tourism differs from other medical travel as it involves various other legal and social aspects, such as nationality, migration, family status, and reproductive rights.

Foreign healthcare systems are usually preferred due to their noted availability and quality of maternal services. Such countries have specialised professionals, medical facilities, and/or better healthcare infrastructure, making them preferred locations for childbirth.[15] Differences in healthcare costs in foreign countries compared to one's own country are another prime driving factor.

Some cases of childbirth tourism may be driven by benefits that come along with the legal aspects related to citizenship, education, or immigration based on being born in a certain country.[16] This means that childbirth tourism is not just about health, but it also involves strategic considerations relating to legal status and future opportunities.

Nevertheless, cases of injury/harm during cross-border maternity care give rise to complex legal questions. Since the parties involved, i.e., the patient and health care provider, will belong to different jurisdictions, complexities surface concerning accountability and availability of remedies.

Why Obstetric Violence Becomes a Private International Law Issue

The problem of obstetric violence becomes a matter of private international law (PIL) when any of the following is involved in more than one state: either the persons or the place where the injury occurred, or the place where the legal consequences apply. Questions of jurisdiction, applicable law, and recognition and enforcement of judgments are to be answered by the PIL.[17]

For example, an individual from "V" country faces non-consensual procedures or disrespectful treatment by health care providers during childbirth in "S" country. Upon returning to her home country, she seeks legal remedies against the hospital from the "S" country. In these circumstances, the immediate questions are "which court has the competent jurisdiction to hear this matter?" and "which country's law should be applied?".

Jurisdictional questions surface due to the fact that the healthcare provider is likely to be from the same country where the treatment was administered, while the patient continues experiencing effects after being back at home. Issues regarding Choice-of-law emerge because different jurisdictions have different legal

systems, which may have different standards of medical liability, informed consent, and patient rights.

Enforcement poses another level of complexity; if a judgment is obtained and is not appropriately enforced, then justice is simply not delivered. Cooperation between countries and their legal system plays an important role when it comes to the recognition of foreign judgments.[18] These complexities highlight that obstetric violence cannot be addressed solely through domestic healthcare laws.

Challenges in Cross-Border Claims

Claims relating to obstetric violence across borders encounter serious problems. Rules regarding jurisdiction tend to take into account the location of the defendant and the location of the injury, among other things.[19] Although these rules ensure certainty, they might be problematic for the patients as they have to litigate in foreign courts.

Choice of law poses even more complex issues because different jurisdictions might interpret the same act in their own way. In one jurisdiction, an act conducted without proper consent might be considered merely a case of medical negligence, whereas in another jurisdiction, it might be seen as a breach of dignity and bodily autonomy.

The enforcement of the judgment is another complex issue. Even if one has succeeded in winning a case, the judgment will be ineffective if it cannot be enforced against the foreign healthcare professional. Cross-border childbirth tourism illustrates the shortcomings of the PIL process, as it can solve the procedural issues while not being able to completely deal with obstetric violence as a gender issue, which violates autonomy, dignity, and reproductive rights.

Private International Law Framework and Its Limitations

Private International Law (PIL) governs cross-border disputes by regulating jurisdiction, governing laws, and the enforcement of decisions.[20] PIL aims to govern private disputes that have a cross-border element through the distribution of competence between the legal systems. However, in relation to cross-border childbirth tourism and obstetric violence, there are visible deficiencies with the PIL's framework.

PIL typically views disputes as conflicts between equal private parties.[21] This methodology comes under question in cases where the injury is associated with gender-based violence, autonomy of the body, and reproductive rights. Obstetric violence transcends the boundaries of medical malpractice in that it focuses on matters of dignity and autonomy of the body.

Nature and Function of Private International Law

The PIL mechanism functions through the following three pillars: Jurisdiction, Choice of Law, and Recognition and Enforcement of Judgments.[22]

Jurisdiction refers to the decision about whether a particular court has the competence to hear a particular dispute. The problem of jurisdiction becomes complicated in cross-border cases of medical law where treatment takes place in one country, but the injury is caused or pursued in another. The conventional connecting factors, like place of treatment or place of residence of the accused, might not necessarily lead to the provision of equal access to justice.

The choice of law identifies the appropriate

applicable legal framework. In medical cases, different jurisdictions have different priorities, while some uphold the professional negligence standards, others may uphold patient autonomy and informed consent.[23] Depending on the applicable legal framework, obstetrical injuries may be viewed narrowly as malpractice or broadly as rights-based injury.

Recognition and enforcement make judgments effective across borders, but enforcement will be obstructed when the assets and the hospitals of the defendants are admitted abroad, which limits the practical remedies.[24]

Treatment of Medical Harm Under PIL

Medical harm is generally addressed through tort and contract law.[25]

In tort law, liability is based on breach of the duty of care resulting in harm. Tort law is, however, an essentially compensatory law that has difficulties in addressing injuries that are not physical in nature, like coercion, humiliation, and deprivation of autonomy.

In contract law, the doctor-patient relationship takes the form of a service contract, making childbirth into a purely contractual undertaking that ignores its rights-based and bodily aspects.[26]

Why PIL Fails to Capture Obstetric Violence

A. False Neutrality

While PIL assumes equality among the parties, pregnancy care entails a significant power imbalance between the healthcare professionals and the patients.[27]

B. Mitigation of Gendered Harm

The PIL framework emphasises the procedural concerns, rather than the kind of harm. Obstetric violence encompasses psychological harm, coercion, humiliation, and denial of informed consent. These aspects may be invisible in the context of negligence- based reasoning.[28]

C. Territoriality Concerns

PIL is very much territorially oriented in terms of structure, using connecting factors such as the site of injury or treatment.[29] However, reproductive injury/harm can have continuous cross-border consequences.

Although private international law plays a critical role in providing the necessary mechanisms for conflict resolution in cross-border disputes, its structure does not cater to obstetric violence. The structural assumptions of neutrality, a procedural approach, and territoriality of private international law are incapable of accommodating the gender aspect and reproductive rights that characterise the harm in question. A more appropriate approach would be to incorporate PIL within human rights concepts of dignity, equality, and reproductive choice.

International Human Rights Framework on Materiality Care

The human rights approach adopted by obstetric violence highlights an important transition from the purely medical or negligent perspective of childbirth-related violence to one that recognises maternity care in terms of respect for dignity, bodily integrity, and equality. Even though there has been considerable progress in this normative direction, the international human rights regime continues to fall short as regards the provision of legal remedies to victims of reproductive harms in a transnational setting like that of reproductive tourism.

In this chapter, it will be argued that even though there have been considerable

developments in the form of normative standards set by international human rights instruments, there has not been enough structural capacity created by these instruments to provide for effective regulation in the case of cross-border reproductive violence.

World Health Organisation and the Limits of Normative Soft Law

WHO has been essential to the definition of disrespect and abuse in childbirth as a matter of global health concern that involves non-consensual procedures, physical abuse, and discrimination.[30] This is important normatively as it defines obstetric violence as a systemic issue rather than an individual act of negligence by a healthcare professional.

The Respectful Maternity Care model put forward by WHO places a lot of emphasis on elements like informed consent, dignity, and decision-making as necessary for childbirth care.[31] This creates a discourse that is rights-based and directly undermines the paternalism that exists in obstetric practice.

This normative power of the framework is weakened due to the nature of the framework. The WHO guidelines are non-binding in their nature and rely totally on incorporation in the domestic law. There is an essential mismatch here – while the framework provides guidance on what should be done, it is not the same as prescribing what must be done in a legally binding manner. It means that respect for maternal health care becomes more of an international ethical benchmark and not a legal standard.

However, with respect to childbirth tourism, the deficiency is amplified. A woman may be able to appeal to the standards outlined by WHO in order to illustrate a departure from internationally accepted practice, but her ability to do so will not equate to any legal rights. Thus, this framework helps in achieving discursive authority but not necessarily remedial power.

CEDAW and the Partial Juridification of Reproductive Harm

CEDAW can be viewed as a legal framework for regulating the rights of women in relation to their healthcare through treaties.[32] Through General Recommendation No. 24, CEDAW has linked women's health with equality, where the state needs to get rid of any form of discrimination within healthcare provision and also give informed access.[33]

This becomes important in understanding obstetric violence due to its nature of systematic forms of disempowerment and coercion during medical procedures. CEDAW is essential as it changes the perspective from a medical error perspective to gender inequality within the healthcare system.

Despite the above, the efficacy of CEDAW is limited by a weak enforcement mechanism. The interpretations offered by the Committee have no legal effect and are dependent on the wilful observance of the states concerned. This has resulted in a situation of "soft enforcement through hard law" whereby obligations exist only on paper without proper judicial interpretation.

Transnational motherhood scenarios raise even more concerns. In such situations, women may discover that while CEDAW is recognised rhetorically, it is never actually put into operation in conflict-of-laws settings or domestic litigation.

Regional Human Rights Law and the Problem of Institutional Fragmentation

The regional human rights frameworks provide a more judicialized interpretation of

reproductive rights, especially through the provisions concerning the right to privacy and bodily integrity. The European Court of Human Rights has held that medical decisions fall under the ambit of personal autonomy and privacy, thus bringing reproductive care services under the realm of human rights protection.[34]

This body of law is important because it brings the notion of bodily integrity within the purview of human rights law, implying an implicit rejection of the notion that childbirth is only a question of professional negligence.

Nevertheless, regional human rights law is institutionally fragmented and state-centred. It governs state liability as opposed to direct private liability of private health care service providers. Therefore, powerful human rights reasoning does not necessarily ensure solutions in private cross-border cases.

The above problem becomes particularly pertinent in the context of cross-border childbirth tourism because although harm is inflicted in the private context, any consequence depends on state enforcement measures. This has created a constant accountability deficit between human rights principles and the framework of private international law.

International human rights law has played a key role in reconceptualising obstetric violence as a breach of dignity, autonomy, and equality instead of simply being a professional error. WHO guidelines, CEDAW requirements, and regional jurisprudence create a strong normative framework regarding respectful maternal care.

Nevertheless, this strong normative foundation is undermined by institutional inefficiency. The systems lack coherence of enforcement, reliance on domestic application, and integration into private international law. In that way, the current position of human rights law is much closer to being a system of declared values than a transnational remedial system.

The issue lies in a contradiction between the two: whereas human rights law understands obstetric violence as a serious rights breach, private international law views it only through the prism of jurisdiction or choice-of-law issues. Overcoming this rift is possible only through procedural recognition of rights.

Indian Standpoint: Obstetric Violence, Maternal Rights and Private International Law

The laws in India regarding the provision of health services to mothers represent the gradual constitutional acknowledgement of the dignity and autonomy of women. While there is no specific definition for "obstetric violence" within Indian legislation, Indian law tends to cover such concerns through constitutional rights and judicial interpretations. However, these rights tend to be domestic in nature. In case of childbirth taking place across national borders, there is a gap because of the absence of any inclusion of the constitutional rights perspective in private international law.

This chapter contends that whereas Indian constitutional law offers strong guarantees for reproductive autonomy, the transference of these guarantees into international accountability systems has been incomplete.

Constitutional Protection

The Indian Constitution forms the core basis of rights to maternal health through provisions of equality, non-discrimination, and personal liberty.

Article 14: Equality and Non-Discrimination

Article 14 provides that all citizens will be equal before the law and the state shall provide them equal protection of the laws.[35] This provision implies that there should not be arbitrary or discriminatory treatment of individuals in any situation. In maternal care, discriminatory treatment and lack of consideration for women's choices can indicate structural discrimination against women. Thus, obstetric violence constitutes a violation of the principle of equality.

Article 15: Gender Equality

Article 15 prohibits discrimination in any form on the grounds of sex while permitting positive action for women.[36] In certain cases where formal equality would not be enough, Article 15 acknowledges the need for greater attention to be paid. Pregnancy and childbirth are unique situations in terms of biological and social risks. Thus, disregarding women's reproductive rights could end up promoting systemic gender discrimination rather than gender-neutral medical practice.

Article 21: Dignity, Autonomy, and Reproductive Rights

Article 21 guarantees the right to life and personal liberty and has been read to include dignity, privacy, and autonomy of the body.[37] In Suchita Srivastava v Chandigarh Administration, the Supreme Court held that a woman's right to exercise her reproductive rights is within the ambit of personal liberty guaranteed under Article 21.[38]

This has a bearing on the issue of obstetric violence. A failure to respect medical ethics by disregarding informed consent can be seen as not only a breach of professional codes but also as a violation of constitutionally protected rights to dignity and bodily autonomy. However, such constitutional protection applies essentially only to Indian soil.

Indian Approach Towards Maternal Healthcare

There have been certain policy frameworks formulated by India for improved results from maternal health care and ensuring dignified childbirth practices. There is the **LaQshya Program**, introduced by the Ministry of Health and Family Welfare, that seeks to ensure the quality-of-service delivery in the labour and maternity operation rooms. The programme focuses on:

- improving the quality of childbirth care
- reducing maternal and neonatal mortality
- strengthening clinical standards
- promoting respectful maternity care[39]

This represents a change from mere medical outcomes to an experiential form of care that includes respect, privacy, and patient-centred care.

This is consistent with international guidelines regarding respectful maternity care as advocated by the World Health Organisation. LaQshya, however, is a policy tool and not a legal right enforceable by law. It enhances the functioning of institutions but does not provide a remedy or compensation for violations.

Medical Negligence and Consumer Law Approach

In India, any issue pertaining to birth injury falls under the ambit of medical negligence law, along with consumer law. There is a relationship of duty of care between doctor and patient, and if that duty is breached and causes harm, there is liability. The Consumer Protection Act

2019 states that healthcare services fall under "services", and deficiencies in the services lead to compensation claims. This creates a readily available means of remedy and has brought about greater accountability within the private health sector.[40]

Nonetheless, this model cannot be used effectively in addressing obstetric violence since medical negligence is based on:

- Breach of duty
- Causation
- Compensable injury

This framework is, therefore, structurally incapable of dealing with non-physical violations like coercion, humiliation, absence of informed consent, and loss of autonomy in matters of reproduction.

As such, although the constitutional values emphasise the importance of dignity and autonomy, the consumer law framework only acknowledges birth-related injuries as compensable injuries and not a violation of rights. This results in a disconnect between constitutional jurisprudence and the private law remedy.

India and Cross-Border Obstetric Violence

It is more noticeable how India's framework has some limitations when applied to cross-border childbirth situations.

First is the problem of jurisdiction, where courts need to decide whether the disputes have to be heard in India or the country in which the treatment took place. This leads to complications and tends to put patients at a disadvantage.

Second is the problem of the choice of law, because various jurisdictions have various standards concerning informed consent, negligence, and patient rights. This determines whether obstetric violence is seen as malpractice or violations of rights.

Third is the problem of recognizing and enforcing judgments in foreign countries, where it relies on private international law instruments and is very complicated.

Therefore, the constitutional recognition of reproductive autonomy in India does not necessarily provide cross-border remedies. Rights protection remains separated from private international law.

It illustrates an important contradiction: although the constitutional law of India acknowledges pregnancy and childbirth as areas where dignity and autonomy prevail, cross-border claims still revolve around traditional concepts of private international law such as jurisdiction, negligence, and compensation. This gap shows the necessity to apply the principles of human rights within private international law.

Towards a Rights-Based Framework for Private International Law

The examination of obstetric violence in the context of cross-border childbirth tourism shows that the current PIL framework is inadequate to handle the entire gamut of harms that women face.[41] The Traditional PIL framework is centred on conflict resolution between legal regimes through jurisdictions, choice of law, and judgment recognition and enforcement. While these continue to be an important requirement, what they fail to address is the gendered and rights-based nature of the issue.[42]

Reorientation of the PIL approach thus becomes necessary. Rather than viewing it as a routine private matter relating to medical negligence, it should be viewed as a breach

of fundamental rights that include dignity, physical integrity, equality, and reproductive rights.

Recognition of Obstetric Violence as a Human Rights Harm

The initial change would be the recognition of obstetric violence as a human rights issue and not only a part of medical negligence.

The negligence model is concerned only with breach of professional standards and injury that can be compensated. Nonetheless, obstetric violence encompasses various types of injuries such as coercion, humiliation, lack of consent, and interference with reproductive autonomy.

These concepts are already included in international human rights conventions. First, WHO recognises respectful maternity care as a universal principle that requires freedom from abuse, non-consensual treatment, and respect during childbirth.[43] Second, CEDAW requires states to eliminate discrimination within healthcare and guarantee access to medical services equally for all people.[44]

In consequence, PIL should recognise obstetric violence as an infringement of rights and not as just another private claim.[45]

Human Rights-Based Choice of Law

One of the important reforms within PIL is the adoption of the human rights-based approach to choice of law.[46]

The traditional approach is based on the territorial connection, such as the place of treatment or the domicile of the defendant.[47] Even though the traditional approach guarantees predictability, it can result in the application of the laws that offer insufficient protection of fundamental rights.

In the case of obstetric violence, courts should assess whether the applicable law offers protections of:

- dignity
- bodily autonomy
- equality
- informed consent
- reproductive rights

This approach does not depart from PIL approaches but offers a new interpretation of PIL approaches through human rights standards. In case several legal systems are involved in the conflict, the law offering better protection of fundamental rights must be prioritised.[48]

Development of International Standards

While international standards for maternity care continue to develop, they mostly retain a non-binding nature.

The WHO has adopted guidelines on respectful maternity care, focusing on dignity, informed consent, and absence of abuse.[49] Nevertheless, such standards are not legally binding as they represent soft law.

However, despite this, such standards can function as interpretive tools in terms of judicial decisions and national health policy. In the long term, such standards will be helpful in the establishment of international standards concerning:

- informed consent
- respectful treatment
- protection against coercion
- transparency in medical decision-making
- accountability in maternity care

This kind of harmonisation is especially important when dealing with cross-border birth settings.[50]

Enhancing Cross-Border Remedies

Cross-border obstetric violence cases reveal structural barriers in access to justice, including:

- jurisdictional fragmentation
- evidentiary difficulties
- enforcement limitations
- financial and linguistic barriers

To address this, states need to enhance cooperation in the recognition and enforcement of judgments. The PIL should be supplemented with mechanisms for coordinating institutional efforts in order to prevent rights from being limited territorially.[51]

Nevertheless, procedural reforms alone are not enough without institutional innovations that would enable rights to be translated into remedies.[52]

Institutional Reform: Specialised Maternal Rights Tribunal

One of the important institutional reforms proposed here is the creation of a specialised tribunal for maternal rights that will rule upon obstetric violence and reproductive harm disputes.

The necessity for such a tribunal comes from the realisation that current dispute resolution institutions – civil courts, consumer commissions, and frameworks of medical malpractice – have structural limitations in handling the multi-faceted character of reproductive harm.[53]

The proposed institution could emerge within the existing legal structure, thus being institutionalisable without necessitating systemic changes. It could be modelled from consumer commissions and human rights quasi-judicial bodies, and be at once accessible and rights-oriented.

It could function as a quasi-judicial institution with cooperation between jurisdictions across borders, especially in cases of childbirth tourism and international healthcare. Notably, the tribunal must be linked to CEDAW responsibilities and WHO guidelines on respectful maternity care.[54]

In substance, the forum will utilise a human rights-centred adjudicatory approach that would not only consider negligence but also human rights violations like the lack of dignity, autonomy, equality, and informed consent.[55] Such a forum will not replace PIL but complement it by filling in the missing link between human rights norms and their implementation in international reproductive healthcare cases.[56]

The adoption of rights-based principles in private international law necessitates both changes to the doctrine and institutions. Although PIL will have to develop so that human rights can become a part of jurisdiction and choice of law analysis, the former alone is insufficient.

A specialised tribunal for maternal rights, which will be created on the basis of current courts, with the help of consumer commissions and human rights tribunals as examples, with respect to CEDAW and WHO guidelines, will serve as a realistic approach towards the solution. In the absence of such innovation, the potential legal visibility of obstetric violence may be undermined in its practical implementation in cross-border situations.[57]

Conclusion

Cross-border childbirth tourism has turned the practice of childbirth into a phenomenon that cuts across national boundaries, thereby posing new regulatory problems. Although seeking childbirth services in another country might be a way to benefit from improved healthcare facilities, reduced costs, and/or favourable laws, such travel exposes women to experiences of obstetric violence beyond their native jurisdictions.

Obstetric violence is an example of gender-based violence that involves violation of dignity, autonomy, consent, and freedom of choice.[58] Such a phenomenon can neither be explained by conventional approaches to negligence nor by the idea of contractual liability since the damage caused goes beyond physical harm.

Private International Law offers crucial solutions for solving cross-border conflicts through the use of jurisdiction, choice of law, and recognition and enforcement of decisions.[59] Nevertheless, the mentioned methods have been created to deal with private conflict resolution and treat the parties involved as equals. In regard to obstetric violence, such an approach neglects the unequal status of the two parties – doctors and patients.

The disadvantages of PIL appear especially evident because it focuses on the procedure but does not consider the substance of gender-related wrongs. Through its focus on the location of the case, liability, and compensation, PIL fails to take into account the aspects of dignity and autonomy.

The international instruments of human rights, including those of WHO and CEDAW, offer a broader perspective on maternity by including considerations of respect, equality, and reproductive rights.[60] Nonetheless, even these instruments have certain drawbacks because their application relies primarily on states and they cannot generate cross-border remedies by themselves.

The Indian approach is an example of progress, as well as existing challenges. Constitutional law of India, through Article 21 and the case of Suchita Srivastava v Chandigarh Administration, recognises reproductive autonomy and dignity as human rights.[61] Nevertheless, the recognition of these human rights on the domestic level has not yet been translated into a cross-border framework of protection against obstetric violence.[62]

Thus, the future of PIL lies in the necessity to move away from a procedural approach toward a rights-oriented approach. The courts hearing cross-border childbirth disputes should take human rights factors into account while deciding on the relevant legal regime and remedies.

In conclusion, the ultimate goal of law should not be confined to resolving disputes after violations. The new PIL regime is supposed to safeguard those values that make the essence of reproductive justice: dignity, equality, autonomy, and the right to give birth without fear of violence or coercion.

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