

Understanding a Reproductive Rights of Women as Human Rights

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Abstract

"Reproductive rights" are ultimately the rights of persons to decide whether to reproduce or not and have reproductive health. This shall include an individual's right to plan a family, use contraceptives, terminate a pregnancy, and get access to reproductive health services without unreasonable restrictions. The right to family planning & information and services is key to reproductive choice and autonomy, contributing to the true empowerment of women and break the stereotypes of patriarchal society. Reproductive autonomy in India is predominantly interpreted with respect to Article 21 of Indian constitution which speaks about right to life and personal liberty. Control and Right over a woman's own bodies and sexuality is a vital aspect of reproductive freedom. Access to high-quality, affordable reproductive health services, can play a vital role in building a healthier future for women and girls. Unsafe abortions are also a major cause for maternal mortalities and morbidities. Human rights bodies have characterized restrictive abortion laws as a form of discrimination against women. The notion that women has the right to make their own choices & reproductive health decisions should be reflected not only in individual wants but also incorporated in the legal system. India has made progress in the area of reproductive rights and legal abortion, which is backed up by constitutional provisions, legislative frameworks, and judicial wisdom

1. Introduction:

Reproductive rights are basically the rights of individuals to decide, whether to reproduce and have reproductive health. This includes an individual's right to family planning, pregnancy, abortion, use contraceptives, sex education, surrogacy, , child marriages and gain access to reproductive health services. Reproductive rights are understood to be the foundation for men and women's self- determination over their bodies and sexuality.¹ Historically these reproductive and sexual laws in most countries had "women – based" approach.

Indian courts have issued several decisions recognizing women's reproductive rights protected under the fundamental right to life. Over the past decade, courts have issued notable decisions recognizing women's reproductive rights as a part of the "inalienable survival rights"². It includes right to life, right to health, right to privacy, right to dignity, right of women, right to equality and non discrimination in its ambit. Reproductive rights includes spectrum of human rights,& essential for its realisation.

According to **World Health Organisation**: "Reproductive rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their

¹ Chowdhury, Amrita. (2021). REPRODUCTIVE RIGHTS OF THE INDIAN WOMEN: AN ANALYSIS.

² Reproductive rights in Indian courts, Center for Reproductive rights, <https://reproductiverights.org/sites/default/files/documents/Reproductive-Rights-In-Indian-Courts.pdf>, (accessed on 4 mar 2024)

children and to have information to do so, and right to attain the highest standard of sexual and reproductive health”.³

India is also a signatory to several international treaties and conventions, such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the Convention on the Rights of the Child (CRC); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the International Covenant on Civil and Political Rights (ICCPR); all of which recognize reproductive right.

2. Reproductive Autonomy and freedom:

Reproductive autonomy in India is predominantly interpreted with respect to Article 21 of Indian constitution which speaks about right to life and personal liberty. Dignity is a fundamental concept in Human rights; reproductive autonomy and freedom of a woman, upholds the dignity of hers. According to Black laws dictionary personal liberty means " the right of freedom of a person to behave as they would like.

In **K.S.Puttaswamyvs Union Of India** ⁴ ; the Supreme Court particularly recognized the constitutional rights of women to make reproductive their own choices, as a part of personal liberty under Article of 21 of the Constitution . Similarly, the SC held in **Suchita Srivastava v. Chandigarh Administration** ⁵ , that reproductive autonomy is a critical dimension of personal liberty as guaranteed in constitution under Article 21

Control and Right over a woman’s own bodies and sexuality is a vital aspect of reproductive freedom. Historically, almost all countries in world are a patriarchal society; The fact that women have little autonomy even in household decisions ,directly and indirectly affects their access to health services. Husband forcing the wife to have sexual intercourse, government forcing a women to undergo sterilization are all instances violative of Reproductive autonomy. Heinous crimes such as rape and forced sex are grave violations of human rights of a woman, and has an impact on women’s reproductive autonomy .

This also sheds light on problems such a child marriages, questioning the validity of consent of a person who is not 18 years old. Significant population of girls, especially in rural India, had borne a child between the age of 15 to 19 years old. This not only affects reproductive autonomy but also puts the health of the babies into risk. Lack of awareness and access to health services had also resulted in increased maternal and infant death in this age group.

"Reproductive rights" are ultimately the rights of persons to decide whether to reproduce or not and have reproductive health. This shall include an individual's right to plan a family, use contraceptives, terminate a pregnancy, and get access to reproductive health services without unreasonable restrictions. The right to family planning & information and services is key to reproductive choice and autonomy, contributing to the true empowerment of women and break the stereotypes of patriarchal society.

“The right to make reproductive choices without coercion, discrimination and violence”

2.1 Access to contraceptives

The Supreme court , in 2016, in the case of **Devika Biswas v. Union of India & Ors.** issued a judgment which moved beyond just the reproductive health framework , also to recognize women’s autonomy and gender equality as core elements of women’s constitutionally-protected reproductive rights⁶. Several

³ "[Gender and reproductive rights](#)". *WHO*, 26 July 2009 (accessed on 19 mar 2024).

⁴ AIR 2018 SC (SUPP) 1841

⁵ 2009(14) SCR 989

⁶ *Devika Biswas v. Union of India & Others*, W.P. (C) 81/2012.

claims of violations of reproductive rights arising from coercive sterilization and the lack of access to the range of contraceptive methods have been brought before the Courts

According to **United Nation Population Fund**, the right to contraceptive information and services of women and adolescents is grounded in basic human rights. Applying a human rights-based approach to the provision of contraceptive information and services can facilitate state fulfillment of these obligations and promote the full realization of women's and adolescents' fundamental rights⁷.

3. Reproductive & Maternal Health:

Sexual health is a facet of the right to Health. Sexual Health refers to not merely physical, but also, psychological, emotional and social well-being in that includes control over fertility, protection from sexually transmitted disease and other aspects that are also a part of reproductive health.

The social construction shaped by history, conventionally acknowledges the maternal function of women, often glorify motherhood in a manner that circumscribes women's right to autonomy in exercising life choices. Religious and Cultural attitudes may value women according to their ability to produce children. Consequently, their health may be jeopardized due to repeated pregnancies spaced too closely together⁸. Women who have not borne children are subjected to several domestic injustices. In a society like India, women may be denied access to health care and their needs may be considered secondary to those of their children or, in the case of pregnant women, next to the health of fetus.

Right of a woman, to health and health care in a context of gender equality with men encompass both common health care needs as well as sex-specific health needs⁹.

The **OHCHR of United Nations** identifies the following as forms of violations of women's sexual and reproductive health

- denial of access to services that only women require;
- poor quality services;
- forced sterilization, forced virginity examinations, and forced abortion, without women's prior consent;
- Early marriage.[Child marriage, which would lead to early and often unsafe pregnancies, is a violation of reproductive rights.
- subjecting women's access to services to third party authorization;
- female genital mutilation (FGM);¹⁰

The Delhi High Court in 2011 held a landmark decision in the cases of **Laxmi Mandal v. Deen Dayal Harinagar Hospital**¹¹, concerning denial of maternal health care services to two women living below the poverty line. The Court stated that "these petitions focus on two inalienable survival rights that form part of the right to life: the right to health (which would include the right to access and receive a minimum care and standard of treatment in public health facilities) and in particular the reproductive rights of the

⁷ The Rights to Contraceptive Information and Services for Women and Adolescents, www.unfpa.org, (accessed on 17 mar 2024)

⁸ Dr. Carmel Shalev, expert member, CEDAW, Rights to Sexual and Reproductive Health - the ICPD and the Convention on the Elimination of All Forms of Discrimination Against Women, March 18, 1998, <https://www.un.org/> (accessed on 17 mar 2024)

⁹ *ibid*

¹⁰ Sexual and reproductive health and rights, <https://www.ohchr.org/>, (accessed on 17 mar 2024)

¹¹ 2010 (172) DLT 9

mother.”¹² This decision led to establishment of the National Rural Health Mission, which includes basic infrastructure which rejected financial incapacity and constraint as a justification of violation of reproductive rights.

Dr Ian Askew, Director of the Department of Reproductive Health and Research at **WHO** said “Access to high-quality, affordable sexual and reproductive health services and information, including a full range of contraceptive methods, can play a vital role in building a healthier future for women and girls, as well as contributing to attainment of the Sustainable Development Goals,”¹³

Also, there are instances often where sexual relationship that leading to unwanted pregnancy which is related to the physical dangers, imparts women's right to enjoyment of health as per WHO. Globally **CEDAW** [Article 10- right to spacing birth of children] and **CESCR** both have emphasized the need of health services to women as a basic right of women. The **CESCR General Comment 14-** maternal services are extended as core services, which are not to be derogated at any circumstances. The committee also recommends to eliminate laws that obstruct or undermine access to sexual health facilities. The Convention on the Rights of the Child (**CRC**) underlines the importance of protecting the health and well-being of young women

In terms of maternal health, in India there has been an impressive strides. The current rate of maternal mortality is only 97 (per 100,000 live births) , reduced from 254 in 2004¹⁴.

4. Right to Abortion – reproductive choice:

Unsafe abortions are also a major cause for maternal mortalities and morbidities. The majority of countries in the world provide for certain instances when abortion is legal¹⁵. The safe abortion guidance by WHO describes gestational time limits, and mandatory wait periods. In most developed and developing countries, abortion is legal on demand. until the 12th - 14th week of pregnancy, and beyond this time frame abortion is legal when there is a threat to the mother’s life or health, , or when such pregnancy is a result of rape.

Special Rapporteur on the right to health has stated Human rights bodies have characterized restrictive abortion laws as a form of discrimination against women.¹⁶ Recent jurisprudence of abortion laws and court decision in India has shown progressive evolution. In 2011, the Punjab and Haryana High court held that, it is personal choice of a women to give birth to a child or not, Nobody shall interfere in the woman’s decision of carrying or aborting the pregnancy¹⁷. Further, in 2013 in case of **Hallo Bi v. State of Madhya Pradesh**, the court affirmed the necessity of providing rape victims access to abortion without requiring judicial authorization, stating “we cannot force a victim of violent rape to give birth to a child of a rapist, it will certainly cause a grave injury to her mental health.”¹⁸ . Since 2008 legislation, many cases has been filed seeking an interpretation of Section 5 of the MTP Act, which expressly allows abortion, in order to

¹² ¹² Dr. Seema Rani, Reproductive Rights of Women in India: An Overview, IJCRT (2022), <http://www.ijcrt.org/>

¹³ High rates of unintended pregnancies linked to gaps in family planning services: New WHO study, 25 October 2019, www.who.int , (accessed on 18 mar 2024)

¹⁴ Women’s reproductive autonomy as the new catchword, 11 July 2023, <https://india.unfpa.org/> . (accessed on 18 mar 2024)

¹⁵ United Nations Population Division and World Health Organization, Global World Abortion Policies Database

¹⁶ ABORTION- INFORMATION SERIES ON SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS, 2020, <https://www.ohchr.org/> , , (accessed on 18 mar 2024)

¹⁷ Dr. Mangla Dogra & Others v. Anil Kumar Malhotra & Others, C.R. 6337/2011

¹⁸ Human Rights Law Network (HRLN), The High Court of Madhya Pradesh allowed a pregnant female prisoner to exercise her reproductive rights under the Medical Termination of Pregnancy Act (2013).

save the life of a pregnant woman, & to also permit abortion past 20 weeks on health grounds in cases of rape.

The landmark case of **Suchitra srivatsava v. Chandigarh administration**¹⁹, decision upholds , a woman's right to dignity and bodily integrity

"There is no doubt that a woman's right to make reproductive choices is also a dimension of 'personal liberty' as understood under Article 21 of the Constitution of India. It is important to recognize that reproductive choices can be exercised to procreate as well as to abstain from procreating.

In USA, a pioneer judgment in case of **Roe v. Wade**²⁰, the Court decided :

- The US Constitution provides for a fundamental "right to privacy" that safeguards a person's right to choose whether to have an abortion.
- The right to abortion is not absolute. It must be balanced against the government's interests in protecting health and prenatal life.²¹

The rationale behind permitting abortion is, an unborn fetus is not an entity of human rights; it takes place within the body of a woman , who is a subject of human rights and the pregnancy affects her mental, physical well being. Therefore it must be her decision alone to whether or not carry a pregnancy.

The **CEDAW** observed that, "Criminal regulation of abortion serves no known deterrent value. When faced with restricted access women often engage in clandestine abortions including self-administering it risking their life and health.²² **CESCR** – states must not just address decriminalizing abortions ; but also address post abortion care be it legal or not. **The Human Rights Committee** clarified that imposing "a legal duty upon doctors to report cases of women who has undergone abortion" fails to respect right to privacy²³. **The Special Rapporteur on torture and other cruel, inhuman or degrading treatment** has stated that "for prosecution purposes, the practice of extracting, confessions from women seeking emergency medical care as a result of illegal abortion especially amounts to ill-treatment"²⁴

UN Committee against Torture has expressed concern on the severe physical and mental distress experienced by women and girls because of abortion restrictions, and concluded that criminalization of abortion can be incompatible with a State's duty to uphold the right to freedom from torture or degrading treatment.²⁵

5. Right to reproductive education and information:

Article 19 of **ICCPR** which includes that, the right shall include freedom to seek receive and impart information and idea of all kinds. Article 10(h) of **CEDAW** emphasizes on specific educational information to ensure the health and well being of families, including advice on family planning. The right to education with regard to reproductive rights is necessary because it will enable the person to take informed and sound decisions regarding their reproductive right. **UNESCO** emphasizes on removing

¹⁹ AIR 2010 SUPREME COURT 235

²⁰ 410 U.S. 113

²¹ [Laura Temme](#), Roe v. Wade Case Summary: What You Need to Know, <https://supreme.findlaw.com/> , (accessed on 19 mar 2024)

²² CEDAW/C/OP.8/GBR/1 (2018), paras. 59, 42

²³ ABORTION- INFORMATION SERIES ON SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS, 2020, <https://www.ohchr.org/> , (accessed on 19 mar 2024)

²⁴ A/HRC/31/57 (2016), para. 44.

²⁵ Access to Abortion is a Human Right, June 24, 2022, <https://www.hrw.org/> , (accessed on 19 mar 2024)

barriers to adolescents' access to reproductive health information and providing comprehensive sexual education in schools without prejudice and discrimination.²⁶

6. Right to marriage, family life, and privacy:

Article 16, UDHR and Article 23 of ICCPR guarantees the right of men and women to marry and find a family. Article 12 of UDHR, Article 17 of ICCPR, and Article 16 of UNCRC and Article 22 CRPD affirms that no one shall be subjected to unlawful interference in matters with his/ her privacy, family, home or correspondence or dishonor or reputation.

In addition, there has also been growing recognition by Indian courts of child marriage as a human rights and fundamental rights violation with reference to reproductive choices, and question of consent.

Need for gender equality, population control, social construct and biological differences revolving sex, informed consent, surrogacy, vulnerability of women, bodily integrity, legality of sex work and their rights, are some of the notable dimensions aligning with the reproductive rights. In the case of **X v. Principal Secretary, Health and Family Welfare Department**²⁷. The Supreme Court held that every woman has an inherent right to get legal and secure abortions; ruling out any sort of discrimination based on marital status.

7. Conclusion:

The above rights regarding reproduction, falls under the ambit of 3 major concepts of human rights - Liberty, Equality & Justice. Struggles of women's rights regarding sexual and reproductive health, has been vital in advancing, human rights of women in general. A woman's right to reproductive and sexual autonomy is often impaired due to her status in society.

The notion that women has the right to make their own choices & reproductive health decisions should be reflected not only in individual wants but also incorporated in the legal system. Reproductive rights are vital for the purposes of realization of a broad spectrum of human rights. Such reproductive rights are a evolving subject across nations, and emphasis is put that women should be able to make own decisions about their bodies, particularly when it comes to having a pregnancy. To enjoy personal liberty, to be free and equal, womn must be in control of their body and what happens to it and inside of it.

India has made progress in the area of reproductive rights and legal abortion, which is backed up by constitutional provisions, legislative frameworks, and judicial wisdom. The contemporary emphasis on reproductive autonomy and the elimination of hindrances in the availability of legal abortion are critical accomplishments. Long-term efforts can ensure universal access to sexual healthcare, address societal stereotypes & stigmas, and advocate for a comprehensive sex education that can be critical for the future progress of reproductive rights of women & their autonomy over their bodies.

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²⁶ An international human right: sexuality education for adolescents in schools, UNESCO Health and Education Resource Centre, 2008, healtheducationresources.unesco.org, (accessed on 19 mar 2024)

²⁷ SCC Citation: 2022 SCC OnLine SC 1321

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