



**ORIGINAL RESEARCH PAPER**

**Law**

**REPRODUCTIVE RIGHTS OF WOMEN IN INDIA: HER LIFE, HER CHOICE**

**KEY WORDS:** Reproductive, Health, Rights, Women, Contraception, Abortion.

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**ABSTRACT**

Reproductive Health of the women is in danger in today's world due to lack of awareness and the dogmas present in the society. Women need to become aware of their situation and stand up for their rights. Though, the situation is fast-changing; the whole world has now familiar about the reproductive rights of women as the right to healthcare. In India, due to judicial interference, reproductive rights of women have been made part of the fundamental rights under Article 21. They have made reproductive rights of women as a part of right to life, right to health, right to equality, right to freedom. Various acts have been passed in the parliament to protect the reproductive rights. The promotion of these rights should be the fundamental basis for government and community-sponsored policies and programs. India is also signatory to many international conventions. Various International conferences have taken place to recognize the rights of women. Over the last decade, Indian courts have issued several noteworthy decisions recognizing women's reproductive rights as part of the "Absolute Survival Rights" impliedly protected under the fundamental right to life. The courts have established reproductive rights as essential for women's equality and have called for respect for women's rights to liberty and decision-making concerning pregnancy. Regarding continuance maternal health, contraception, abortion, and child marriage, Indian courts have adopted robust definitions of "reproductive rights" that reverberates human rights standards. States' obligations to guarantee these rights require that women and girls not only have access to comprehensive reproductive health information and services but also that they experience optimistic reproductive health outcomes such as lower rates of unsafe abortion and maternal mortality. The apex court of India and various High Courts of the states have taken an important stand in recognizing the denial of reproductive rights as a violation of fundamental and human rights of woman. This research paper intends to enhance the awareness of Reproductive Rights of women in India.

**INTRODUCTION**

In today's world Reproductive Health of the women is in danger. It is because of an absence of mindfulness in the public arena. Reproductive rights were set up as a division of basic liberties. Guardians have essential common freedom to choose without limitation and maturely the number of their kids. Issues with respect to reproductive rights are unequivocally challenged. At the point when the relations among people in families and society are included, social change is consistently troublesome. In the period of globalization, and urbanization, social orders need their own answers. It ought to be grounded in a dream of equity and sex uniformity and consistent with their societies and conditions, to give a superior life to the two women and men. An arrangement of common freedoms deals and worldwide gathering arrangements fashioned more than a very long while by governments. Developing worldwide development for women's rights gives a legitimate establishment to finishing sex separation and sex-based rights infringement. It confirms that women and men have equivalent rights. It obliges states to make a move against prejudicial practices.

The Vienna Declaration and Programme of Action, the Programme of Action of the International Conference on Population and Development (ICPD) and the Platform for Action adopted at the Fourth World Conference on Women (FWCW) are international consensus agreements that strongly support gender equality and women's empowerment. In particular, the ICPD and FWCW documents, clearly express the concepts of sexual and reproductive rights. Thus, the reproductive rights were established as a subset of the human rights at the United Nations 1968 international conference on human rights. The World Health Organization defines reproductive rights as: "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 children and to have information to do so, and right to attain the highest standard of sexual and reproductive health. They also include the right of all to make decisions concerning reproduction free of discrimination, coercion and violence."

Hence, Reproductive rights incorporate the right to lawful or safe early termination, option to oversee one reproductive

capacity, option to access to settle on reproductive decisions liberated from impulse, separation, and brutality, option to get to training about contraception, and explicitly communicated illnesses and independence from forced disinfection and contraception and option to shield from sex-based practices like female genital cutting and male genital mutilation. The Courts have been at the bleeding edge of expanding, guarding, and advancing reproductive rights.

**Reproductive Rights Of Women In India**

Generally, reproductive wellbeing-related laws and strategies in India have neglected to adopt a women's rights based strategy. Its primary spotlight was on segment targets, for example, population control just as sabotaging women's reproductive autonomy through biased arrangements, for example, spousal assent necessities for admittance to reproductive wellbeing administrations. Disregarding a public law punishing relationships of young ladies underneath the age of eighteen years and approaches and plans ensuring women maternal medical services, practically speaking, India keeps on representing the most noteworthy number of youngster relationships and 20% of all maternal passings around the world.

The Constitution of India acknowledges many of these rights as fundamental rights. The government has an obligation to conform, including the right to equality and non-discrimination (Articles 14 and 15) and the right to life (Article 21) which is understood through jurisprudence to include the rights to health, dignity, freedom from torture and ill treatment and privacy. India is also signatory to many international conventions, such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention on the Rights of the Child (CRC), all of which recognize reproductive rights.

Article 51(c) of the Indian Constitution and the legal executive has set up that the public authority has a protected commitment to regard global law and arrangement commitments. The public authority of India additionally bears

a protected commitment to guarantee legitimate solutions for infringement of major rights and common liberties. Article 39(a) requires the public authority to elevate equivalent admittance to equity and free lawful guide as a way to guarantee "openings for equity are not denied to any resident by reason of financial or different handicaps".

Indian courts have issued various decisions recognizing women's reproductive rights. The courts have established reproductive rights as important for women's equality and have called for respect for women's rights to liberty and decision-making concerning pregnancy. Regarding continuance maternal health, contraception, abortion, and child marriage, Indian courts have adopted robust definitions of "reproductive rights" that reverberate human rights standards. The Apex court of India and the High Courts of the states have taken a significant substitute perceiving the forswearing of reproductive rights as an infringement of key and basic freedoms of Women. The Supreme Court has on numerous occasions passed different decisions that have set up lawful rights of women to reproductive wellbeing including maternal wellbeing, admittance to safe contraceptives, counteraction of kid marriage, right to fetus removal, and avoidance of constrained and hazardous early termination. Indian courts assume a significant part in getting reproductive rights of women.

India has a dynamic women's development and a solid presence of grass-root NGOs committed to carrying rights and decisions to ladies. Simultaneously, enormous extents of ladies keep on confronting social and homegrown pressing factors which imperatives their capacity to form and follow up on regenerative choices. However, regenerative right is a lot of explicit to the couples, yet Indian setting it is the joined choice of the family. Extrapolation of such rights to Indian social settings needs careful assessment.

**Abortion And Reproductive Independence**

The right to make free and informed decisions about health care and medical treatment, including decisions about one's own fertility and sexuality, is enshrined in Articles 12 and 16 of the Convention on the Elimination of all Forms of Discrimination against Women (1978). Contrary to this Supreme Court judgment when hearing an appeal in the **Ghosh vs. Ghosh ((2007) 2004 S.C. 151)** divorce case, the court ruled on March 26, 2007 that "If a husband submits himself for an operation of sterilization without medical reasons and without the consent or knowledge of his wife and correspondingly if the wife undergoes vasectomy (read tubectomy) or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty."

The court also ruled that a refusal to have sex with one's spouse and a unilateral decision to not have a child would also amount to mental cruelty. Taking into consideration the circumstances of the case, the court granted a divorce. The judgment has serious implications for reproductive health services in India. It mandates spousal consent for induced abortion and sterilization. The judgment conflicts with the existing guidelines for medical practice. It is probable to confuse those who are seeking as well as offering these services. It implies that when a woman seeks abortion or sterilization on her own and if her husband is not informed or does not consent, the very act of the woman could be cited by her husband as mental cruelty and grounds to seek a divorce.

The judgment, in this way, hits at the core of reproductive rights as taking a choice and looking for assistance unafraid of pressure or brutality. It is probably going to set an off-base point of reference and put numerous suppliers carefully, in light of the fact that they would not have any desire to be engaged with a legitimate knot. Numerous centers may begin utilizing this decision to force a necessity of spousal assent.

Indeed, even suppliers in the public area might be resolute on a companion's mark to dodge legitimate issues. The most elevated legal executive in the country needs to show a superior arrangement and obligation to basic liberties, particularly women's rights.

In India, abortion was legalized by the Medical Termination of Pregnancy Act, 1972. Indeed, even today, a majority of women don't approach safe fetus removal administrations. Lawful fetus removal administrations are not effectively reachable. Women keep on picking perilous practices and self-invited early terminations. It makes a joke of the authorization of fetus removal. Women who approach government offices for early terminations are compelled to 'acknowledge' contraception/sanitization after the fetus removal is performed. Dangerous early termination is a significant reason for death and unexpected issues for women of kid-bearing age. However, it is hard to get information on unlawful fetus removals.

Further, the law perceives just clinical dangers as a reason for an early termination. These clinical dangers are additionally stressed following 20 weeks. During that time-frame a woman is compelled to convey pregnancy to term with the exception of it represents a grave danger to her life. It is also possible if other grounds of physical and mental abnormalities in the fetus are satisfied as per Section 3 of the Medical Termination of Pregnancy Act, 1971. The law does not accommodate non-medical concerns over the economic costs of raising a child, effects on career decisions, or any other personal considerations. In addition, the act makes invisible the predicament of married women who are forced to conceive and carry a pregnancy to term against their will. Abortion remains one of the most controversial issues of women's rights. This is because the marital rape of women older than 15 years is not lawfully documented as rape.

**Challenges of New Technology Pre-Natal Sex-Determination**

New reproductive advancements have joined with man-centric perspectives to take woman enmity to new profundities. In India, methods like ultrasound, amniocentesis, and chorion villi biopsy created to identify irregularities in the hatchling have been generally (mis)used to distinguish the sex of a baby and cut short it in the event that it is female. Pre-natal sex-assurance tests have become amazingly cash making because of the fixation for children in our general public. The ramifications of sex-assurance and early termination of female hatchlings would already be able to be seen at the full-scale level.

**Surrogate Mother: Menace to Reproductive Health**

Another reproductive rights issue that has recently occupied the limelight is that of surrogacy. With the advent of assisted reproductive technology (ART), surrogacy has become more common, especially amongst couples who are unable to conceive. Surrogacy is a complex issue which poses multiple legal and ethical questions, including definitions of parenthood and custody of children. Fertility and childbirth are viewed as quite possibly the main parts of family and society. However, barrenness or failure to bring forth a kid is considered as probably the best issue in living souls. Because of the expanded progressions in science and innovation, researchers have thought of the idea of surrogacy, in any case, this treatment includes a ton of intricacies.

The idea of "business surrogacy or belly for lease" is an arising business in India because of the accessibility of modest administrations. Nonetheless, the act of surrogacy is a greater amount of misuse of substitute moms than a chance for fruitless ladies. Surrogacy contracts are dehumanizing as they don't investigate the point of view of a substitute mother, and her sentiments about her pregnancy. As far as she might be concerned, it is the method of bringing in cash and she

doesn't develop an extraordinary bond with the youngster. More often than not proxy moms are uninformed of their legitimate rights and because of the absence of monetary help, they can't benefit administrations of the legal advisor.

Service of Women and Child Development is pursuing presenting substitute parenthood enactment. The law commission of India in its 228th report submitted "Need for Legislation to Regulate Assisted Reproductive Technology Clinics just as Rights and Obligation of Parties to a surrogacy." The surrogacy bill was first presented in the parliament in 2014 "to accommodate the guideline of surrogacy and for the issue associated therewith or accidental thereto." However, notwithstanding different endeavors, no order has been made.

**Judicial Appreciation of Reproductive Rights of Women in India**

**The Puttaswamy judgment in 2012** specifically recognized the constitutional right of women to make reproductive choices, as a part of personal liberty under Article 21 of the Indian Constitution. Subsequent judicial decisions have moved toward greater constitutional protection of this right. The bench also reiterated the position adopted by a three-judge bench in **Suchita Srivastava & Anr v. Chandigarh Administration (2009) 11 S.C.C. 409** which recognized women's reproductive autonomy as a fundamental right, stating that "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.

The Supreme Court has been extremely progressive on women's reproductive rights. in **Navtej Singh Joha & Ors. v. Union of India, AIR 2018 SC 4321**, the court by decriminalizing adultery and homosexuality in landmark judgment has held that women have a right to sexual autonomy, which is an important facet of their right to personal liberty.

In 2011, the High Court of Punjab and Haryana in **Dr. Mangla Dogra & Others v. Anil Kumar Malhotra & Others, C.R. 6337/2011** reiterated women's rights to reproductive autonomy by dismissing a suit filed by a husband against a doctor who had performed an abortion without the husband's consent saying that "It is a personal right of a woman to give birth to a child. Nobody can interfere in the personal decision of the wife to carry on or abort her pregnancy because unwanted pregnancy would naturally affect the mental health of the pregnant women."

Further, in the 2013 in **Hallo Bi v. State of Madhya Pradesh and Others**, the High Court of Madhya Pradesh affirmed the importance of providing victims of rape access to abortion without requiring judicial authorization, stating "we cannot force a victim of violent rape/forced sex to give birth to a child of a rapist. The anguish and the humiliation which the petitioner is suffering daily will certainly cause a grave injury to her mental health."

In 2016 the Bombay High Court ruled to modify women prisoners' right to abortion and strongly affirmed women's rights to abortion as an aspect of the fundamental right to live with dignity under Article 21 in **Own Motion v. State of Maharashtra**. The judgment recognizes that unwanted pregnancies disproportionately burden women and states that forcing a woman to continue a pregnancy represents a violation of the woman's bodily integrity and aggravates her mental health problem which would be injurious to her mental health. The decision boldly recognizes that an unborn fetus is not an entity with human rights. The pregnancy takes place within the body of a woman and has profound effects on her health, mental well-being and life. Thus, how she wants to deal with this pregnancy must be a decision she and she alone can make. The right to control their own body and fertility and

motherhood choices should be left to the women alone. Let us not lose sight of the basic right of women: the right to autonomy and to decide what to do with their own bodies, including whether or not to get pregnant and stay pregnant.

**What needs to be done to empower women's rights to reproductive health?**

Inadequate reproductive health care for women results in high rates of unwanted pregnancy, unsafe abortion, and preventable death and injury as a result of pregnancy and childbirth. Violence against women, including harmful traditional practices like female genocide, takes a steep toll on women's health, well-being and social participation. Violence in various forms also reinforces inequality and prevents women from realizing their reproductive goals. Men also have reproductive health needs, and the involvement of men is an essential part of protecting women's reproductive health. Providing quality reproductive health services enables women to balance safe childbearing with other aspects of their lives. It also helps protect them from health risks, facilitates their social participation, including employment.

Reproductive health does not affect women alone; it is a family health and social issue as well. Gender-sensitive programmes can address the dynamics of knowledge, power and decision-making in sexual relationships, between service providers and clients, and between community leaders and citizens. A gender perspective implies also that institutions and communities adopt more equitable and inclusive practices. As the primary users of reproductive health services, women have to be involved at all levels of policy-making and programme implementation. Policy makers need to consider the impacts of their decisions on men and women and how gender roles aid or inhibit programmes and progress towards gender equality.

Reproductive medical care ought to incorporate segments, for example, Family arranging which includes solid government uphold, specialist co-ops who are all around prepared, delicate to social conditions, tune in to customers' requirements, and are agreeable and thoughtful, Services are reasonable and a decision of prophylactic techniques is accessible, Counseling guaranteeing educated assent in a preventative decision, guaranteeing protection and privacy, agreeable and clean offices and brief assistance. Safe motherhood programme should provide access to emergency obstetric care, including treatment of hemorrhage, infection, hypertension and obstructed labour.

Life-saving intercessions, such as alluding to clinical focuses, a local area based framework for guaranteeing quick vehicle to a prepared clinical office, Training Community wellbeing laborers to recognize and treat post-pregnancy issues, just as to direct on breastfeeding, baby care, cleanliness, vaccinations, family arranging, and keeping up great wellbeing. Abortion is a significant general medical problem. Family arranging administrations guarantee a decrease in undesirable pregnancies and forestall fetus removals. In conditions where fetus removal isn't illegal, quality wellbeing administrations ought to guarantee safe early termination rehearses and compelling post-early termination care would essentially decrease maternal death rates.

Because of culture just like science, women are more helpless against STDs than men. The joining of family arranging and STD/HIV/AIDS administrations inside reproductive wellbeing administrations can diminish levels of STDs, including HIV/AIDS, by giving data and advising on basic issues like sexuality, sex jobs, power awkward nature among women and men, sex-based savagery and its connect to HIV transmission, and mother-to-youngster transmission of HIV; circulating female and male condoms; diagnosing and treating STDs; creating techniques for contact following, and

alluding individuals contaminated with HIV for additional services. Greater association of men in reproductive wellbeing choices will give more capacity to women, not less. The normal point is the prosperity of all relatives. Men can propel sexual orientation uniformity and improve their family's government assistance by Protecting their accomplices' wellbeing and supporting their decisions.

**CONCLUSION**

Thus, the Reproductive Health has been characterized as "a state wherein individuals can duplicate and manage their ripeness; ladies can go through pregnancy and labor securely; the result of pregnancy is fruitful as far as maternal and baby endurance and prosperity; and couples can have sexual relations liberated from the dread of pregnancy and of contracting the sickness." But in reality, as we know it where a lady's privileges are so seriously reduced; where her sexuality isn't hers to have a say over; where she doesn't approach equivalent freedom or medical services; where the state is resolved to meddle in if, when and the number of kids she has; was privatization, social area cuts, contracting work openings and wages and lessening food security frameworks are hitting ladies hardest, plainly her conceptive rights can't be examined in detachment.

At the family and local area level, the best way to handle reproductive medical problems is to find them inside the more extensive range of necessities as seen by women. Likewise, at the strategy level, this discussion must be significant in the event that it perceives the relationship of reproductive wellbeing, general wellbeing, and financial conditions. In doing as such, they have been simply 'women-focused, and not, it should be accentuated, 'favorable to women'. They have neglected to get a handle on the full intricacy of the term 'reproductive wellbeing' and to place it in a general wellbeing viewpoint. All things being equal, they have over and overturned to techno-driven techniques of moving from one dangerous prophylactic to the next, one populace control program to the following, as opposed to settling on considered social and underlying options that have an improvement driven viewpoint. What's more, simultaneously, they have efficiently harmed women's wellbeing, and subsequently, the soundness of the whole population.

For the women's movement, which for decades has been articulating the links between women's reproductive rights and their cultural status and socio-economic rights, the term 'reproductive rights' has come to be an ideal to work towards. Saheli, is a self-governing women's gathering dynamic in the mission against risky contraceptives and coercive population control for over sixteen years. The gathering has additionally developed to scrutinize of deceptive clinical examination and has been requesting a re-direction in logical exploration.

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