

## **REPRODUCTIVE RIGHTS OF WOMEN – AN INDIAN PERSPECTIVE**

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### **Abstract**

In the current global scenario, it has become quite casual to witness women gearing up amidst all her responsibilities to equally participate with her counter parts. Despite the challenges open to them, they play an active role be it a teacher, a lawyer, a doctor, a corporate head, or a business women. Wherever and whatever kind of work they do, they can't escape a phase called 'child-bearing'. Though it is a biological blessing of women, it has become a forced phase by the society. As a Right, a person can choose when to marry and marriage should be with free consent of both individuals. But, the reality is different as it is the family of the girl, her relatives, neighborhood and close environment decides about her marriage or forces her to accord for marriage. This does not stop here, and it intervenes with her reproductive right too. If a girl after one year of marriage does not give birth, the so called 'society' around her creates a pressure and develops a taboo. Isn't it the right of women to decide on her child-bearing!?

We are on high pitch when it comes to women rights and empowerment. But, right of women is incomplete without recognizing her reproductive rights. The reproductive health status of women requires urgent attention. It has now become necessary to focus on the reproductive right and health care of women, as its implications are unpleasant. Women's reproductive right can in fact turn into an important instrument to change the status of women in the society. Thus, this paper shall discuss the Rights and realities on reproductive rights and health care of women in India and shall bring out the remedies to secure them.

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**INTRODUCTION:**

The concept of Women equal right with her counterparts has been a great struggle from time immemorial. At every phase, be it Vedic period, medieval period or modern period; the fight and struggle of women has been different, severe and is still evolving. It is clear that at every changing period, she has fought for her rights and has gained an effective identity. The Multi-facet role played by women at different stages of her life like mother, sister, daughter, aunt, grandma, in-laws and the like has led to exploitation and she tries too hard to stand equal to that of men. Though the Vedic period was a period of feminine glory and women enjoyed complete freedom, the medieval period was a setback that witnessed harassment and exploitation through the social malaises. And with the advent of modernization and globalization despite the improvement in the status of women, she is still not in par with men.

In the present global and modernized scenario, it has become quite casual to witness women gearing up amidst all her responsibilities to equally participate with her counter parts. Despite the challenges open to them, they play an active role be it a teacher, a lawyer, a doctor, a corporate head, or a business women. Wherever and whatever kind of work they do, they cannot escape a phase called 'child-bearing'. Though it is a biological blessing of women, it has become a forced phase in her life by the society. As a Right, a person can choose when to marry and marriage should be with free consent of both individuals. But, the reality is different as it is the family of the girl, her relatives, neighborhood and close environment who decides about her marriage or forces her to accord for marriage. This does not stop here, and it intervenes with her reproductive right too. If a girl after one year of marriage does not give birth, the so called 'society' around her creates a pressure and develops a taboo. Isn't it the right of women to decide on her child-bearing!?

**REPRODUCTIVE RIGHTS:**

Reproductive rights are the legal rights and the freedoms relating to reproduction and reproductive health that may vary from country to country. The World Health Organization defines reproductive rights as follows: "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 the information and means to do so, and the 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.”<sup>1</sup>It is thus essential to have a discussion on what actually are reproductive rights and what all are included with the ambit of reproductive rights.

Reproductive rights mean a state of complete physical, mental and social well being. These rights of women also mean and include the right to attain the highest standard of sexual and reproductive health without compromising her full participation in the social and economic life. Further to detail, it includes various rights of women such as – right to abortion, right to make her own decision regarding her body and her reproductive life, right to safe sex, right to procreation and to have family etc. Reproductive right implies that it is their right to take decisions on their sex life. Reproductive rights are also a tool to assure equality of relationship between men and women, respect for the integrity of the person, consent and responsibility for the sexual behavior and its consequences. Thus, reproductive right is the capacity of women to control her body and to benefit from other rights together with equality of men and women, right to choice in matters of reproduction and sexuality and health care.

We are on high pitch when it comes to women rights and empowerment. But, right of women is incomplete without recognizing her reproductive rights. The reproductive health status of women requires urgent attention. It has now become necessary to focus on the reproductive right and health care of women, as its implications are unpleasant. Women’s reproductive right can in fact turn into an important instrument to change the status of women in the society.

### **EVOLUTION OF REPRODUCTIVE RIGHTS:**

It is worth mentioning here that the concept of reproductive rights arose from International effort. Though the United Nations Charter in 1945 made a mention about the obligation to promote and provide universal respect irrespective of any kind of discrimination, the terms were not clearly defined. Later, UN adopted the Universal Declaration of Human Rights, the first legal document to delineate human rights. Even here, reproductive rights were not mentioned or defined. Under the **Proclamation of Teheran in 1968**, reproductive rights

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<sup>1</sup> [https://en.wikipedia.org/wiki/Reproductive\\_rights](https://en.wikipedia.org/wiki/Reproductive_rights)

were mentioned as a subset of human rights. This right was again reaffirmed in 1969 in the Declaration of Social Progress and Development. And yet again, the UN International Women's Day Conference once again echoed the Proclamation of Teheran.

For the first time, the reproductive right was clearly mentioned in the **Convention on the Elimination of Discrimination against Women (1979)**. At Alma Ata Conference in USSR in 1978, primary health care was exclusively discussed and access to family planning, maternal and child health care was accepted as basic human rights. The **Cairo Program of Action** adopted in 1994 further expanded the concept of reproductive rights as a state of complete physical, mental and social well-being. This non-binding Programme of Action asserted that governments have a responsibility to meet individuals' reproductive needs, rather than demographic targets and recommended to provide the family planning services.

The initial conceptualization of reproductive rights matured and developed with the **Beijing Platform** where it was held that “the reproductive health to women's rights means to have control over matters relating to their sexuality free of coercion, discrimination and violence.”<sup>2</sup> Moreover, the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) provides “the obligation to ensure the full development and advancement of women for the purpose of guaranteeing them the exercise and enjoyment of human rights where men and women have equal rights”. India is also a signatory country to the **International Conference on Population and Development, 1994**, and has determined to establish standards in family planning services including the right to reproductive autonomy and collective gender equality.

The 1995 **Fourth World Conference on Women in Beijing**, in its non-binding Declaration and Platform for Action, supported the Cairo Programme's definition of reproductive health, but established a broader context of reproductive rights. This Platform demarcated twelve interrelated critical areas of the human rights of women that require advocacy. The Platform also

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2 Bunch, Charlotte; Fried, Susana (1996). "Beijing '95: Moving Women's Human Rights from Margin to Center". Signs: Journal of Women in Culture and Society

framed women's reproductive rights as "indivisible, universal and inalienable human rights"<sup>3</sup>. The **World Summit 2005** also recognized and committed a new aspect which insisted on the universal access to reproductive health by 2015. Now, it is apparent that all the international declarations and statements are underpinned by binding human rights instruments on Human rights.

## **REPRODUCTIVE RIGHTS: HUMAN RIGHT**

The ability of women to control their own fertility is an essential criterion to enjoy all other rights and lays down the foundation for the equality between men and women.

“Reproductive rights embrace certain human rights that are already recognized in national laws, international laws and international human rights documents and other consensus documents. These rights rest on the recognition of the basic rights of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes the right to make decisions concerning reproduction free of discrimination, coercion and violence, as expressed in human rights documents.”<sup>4</sup>

Reproductive rights include various human rights that have been recognized under different international instruments. These are as follows-

1. Right to health, Reproductive health and family planning.
2. Right to decide the number and spacing of children.
3. Right to marry and found a family.
4. Right to be free from gender discrimination.
5. Right to be free from sexual assault and exploitation
6. Right not to be subjected to torture or other cruel, inhuman or degrading treatment.
7. Right to life, liberty and security.
8. Right to privacy
9. Right to modify customs that discriminate against women.
10. Right to enjoy scientific progress and to consent to experimentation.

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<sup>3</sup> Bunch, Charlotte; Fried, Susana (1996). "Beijing '95: Moving Women's Human Rights from Margin to Center". *Signs: Journal of Women in Culture and Society*. 22

<sup>4</sup> International Conference on Population and Development, Programme of Action, Para 7.3

These rights have clear implications on all aspects of women's reproductive rights which results into freedom of choice in matters of sexuality and reproduction. There is no doubt that the reproductive right is the basic foundation of all other rights of woman and is inalienable and inseparable from basic human rights. The reproductive rights are directly or indirectly derived from basic human rights and are the part of human rights.

## **REPRODUCTIVE RIGHTS: INDIAN LEGAL FRAMEWORK**

Indian Constitution has specifically mentioned about these rights which shall come under the purview fundamental rights enshrined in the Indian Constitution. **Article 14** ensures right to equality which means and includes 'equality before laws and equal protection of laws'. This clearly demonstrates that every person in the country has the right to access the law and the protections equally as that of every other person. **Article 15** empowers the right to live without any kind of discrimination. This article prohibits any kind of discrimination based on 'religion, race, caste, sex, place of birth or any of them'. So, this article also clearly demonstrates that irrespective of any sex the rights need to be shared and enjoyed equally. **Article 21** enshrines right to life which states that, 'no person shall be deprived of right to life and personal liberty except according to the procedures established by law'. The Supreme Court of India issued that Article 21 includes:

- Right to health (violation- maternal death)
- Right to shelter (violation- homeless pregnant and lactating women)
- Right to be free from torture and inhuman treatment ( violation- forced abortion)
- Right to privacy
- Right to dignity (violation- coercive female sterilization)

The **Shantilal Shah Committee** tabled the report in 1967 on the basis of which the

**Medical Termination of Pregnancy (MTP) Act, 1971** was passed. This act was enacted with the prime objective to improve the maternal health scenario by preventing large number of unsafe abortions and consequent high incidence of maternal mortality and morbidity. It also legalizes abortion, promotes access to safe abortion services and also offers protection to medical officers. This act lays down when and where pregnancies can be terminated, grants the Central govt., the powers to make rules and the state governments the power to frame regulations. The

rules enumerate who can terminate, the training requirement and the process of approval in deciding the place. The regulations lay down the forms for opinion, maintenance of records, custody of forms and reporting of cases. This act states that abortions are legal only if it fulfills the following:

- Termination done by medical practitioner approved by the Act,
- Termination done at the approved place under the Act,
- Termination done for conditions and within the prescribed gestation under the Act,
- And if all related rules and regulations are fulfilled.

Women shall terminate her pregnancy by application of this Act under the following conditions:

- When continuation of pregnancy constitute a risk to the life or grave injury to the physical or mental health of women,
- When there is a substantial risk of physical or mental abnormalities in the fetus which might seriously handicap the fetus,
- When a girl is a minor and unmarried, however consent of a guardian is needed,
- When a pregnant women is lunatic,
- Pregnancy caused by rape; presuming to be a grave injury to mental health,
- Contraceptive failure to the married couple; presuming injury to mental health.

This Act was amended in the year 2002 with the intention to simplify the process to register the sites and to increase the number of sites in order to enable the women to access safe abortion services and indeed to bring all the abortion cases within the legal framework.

## **REPRODUCTIVE LAWS: JUDICIAL INTERVENTION**

**CHARM v. State of Bihar and Others** is a public interest litigation petition filed in March 2011 by the Center's partner in India, Human Rights Law Network. It was a case relating to denial of maternal health care in Bihar. It had sought for legal accountability from the state government of Bihar for its failure to provide essential maternal health care, including safe abortion services, in public health facilities, leading to shockingly high rates of maternal mortality. In this case it was held that the Bihar government has the obligation to ensure access to maternal health services under the Constitutional law and the Human rights law. On March 20, 2012 the High Court issued an interim order requiring the Bihar Health Secretary to provide an expense report that accounts for every rupee spent under the National Rural Health Mission.

Further this order affirms that it is the obligation of the government to respect, protect and fulfill the right to access maternal health care.<sup>5</sup>

**Dunabai v. State of Madhya Pradesh and Others** was also a public interest litigation which was a fact-finding in tribal area where an adivasi woman was forced to deliver outside the hospital after repeated denial of medical treatment. The High Court had ordered to take immediate action to improve the standards.

**Ramakant Rai v. UOI W.P (C) No 209 of 2003** wherein gross violations were associated relating to sterilization throughout India. This petition requesting the Indian Supreme Court to direct the Union of India and all Indian state governments to implement the Ministry of Health and Welfare's Guidelines on Standards of Female Sterilization, enacted in October 1999. The petition further sought compensation for victims of medical negligence in sterilization procedures, as well as accountability for violations of the guidelines. The significance of the case was that the Court issued directives not only for the States highlighted in the petition but to the entire country. The Court also highlighted the need for uniform guidelines in performance of sterilization procedures for women and men, including requirement of informed consent, punitive action for violations, and compensation for victims.<sup>6</sup>

**Priya Kale v. NCT Delhi and Ors W.P.(C) 641/2013** when the Times of India published an article about Priya Kale, a homeless woman who lost her baby to exposure after she delivered on the balcony of the homeless shelter, a fact-finding was conducted at the shelter. The Hon'ble Mr. Justice Rajiv Shakhder issued interim orders to the Respondents in the case on 1<sup>st</sup> February 2013 dictating certain immediate improvements at Motia Khan to prevent any future tragedies like Priya Kale's. The Hon'ble High Court requested the Department for Women and Child Welfare (DWCW) to submit a report on the conditions at three shelters in Delhi.<sup>7</sup>

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<sup>5</sup> <https://www.reproductiverights.org/case/centre-for-health-and-resource-management-v-state-of-bihar-and-others-2011>

<sup>6</sup> <https://www.escri-net.org/caselaw/2013/ramakant-rai-v-union-india-wp-c-no-209-2003>

<sup>7</sup> <http://www.hrln.org/hrln/reproductive-rights/reports/1632-fact-finding-report-priya-kale-vs-gnct-of-delhi-and-ors-w-p-c-6412013.html>

**CONCLUSION:**

The Indian perspective on reproductive rights additionally takes account of several other inequalities and contradictions prevailing in the society. On one hand, traditional feudal society has sought to regulate every aspect of women's lives (religion, caste and cultural, defining and controlling women's fertility). And on the other hand, at all phases, there has been a need to protect and preserve the rights of women in order to ameliorate the status of women. With regard to reproductive rights and laws relating to reproduction, before it is too late at least India has taken the right move in securing the reproductive rights of women. The actual need of the hour is to create awareness among the women about their right to reproduction and reproductive health to lead a safe and healthy life. And when we see a violation or irregularity, the same has to be recorded and reported to the concerned authority. The disgrace of abortion, lack of knowledge about safer services, and the scarcity of trained health care workers have led many women to undergo abortions in unsafe environments. Unwanted pregnancies being a social taboo in Indian culture, if an unmarried woman becomes pregnant and choose to abort due to fear of shame, she may be forced to undergo an abortion under unsafe conditions. Acting in a responsible way shall help not just the individual but also the society in total. Only then, there exist empowerment of Women in the truest sense.

Jai to Motherhood!

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