



Judicial Recognition of Reproductive Rights as Fundamental and Human Rights

Ratna Binodini Amiya Priyadarsini Das

Ph.D. Research scholar in SNIL

and

Trupti pragyan Rath , LLM

INTRODUCTION

Numerous human rights, such as the right to life, the right to be free from torture, the right to health, the right to privacy, the right to education, and the right to be free from discrimination, are linked to women's reproductive rights. Discover the importance of acknowledging women's reproductive rights by reading this article. A key element of women's human rights is reproductive rights, which include a variety of options and privileges pertaining to personal autonomy and reproductive health. Regarding domestic abuse against women, the Indian court, led by the Supreme Court of India, has shown a commendable example of judicial activism. Adultery, rape, dowry-related deaths, and physical or psychological abuse of the wife are all examples of domestic violence. These rights are essential for women's well-being, equality, and empowerment. The States have obligations to respect, protect, and fulfill rights related to women's sexual and reproductive health. Despite India being the forerunner in the world to come up with infrastructural and policy measures ensuring safe abortion and contraception, women continue to encounter obstacles in exercising their reproductive rights, including poor health services and dismissal of decision-making authority. It is a problem that encompasses reproductive rights, sexual health, family planning, and maternal health. Women are often made to face the weight of administrative delays. In one such example, a woman was prevented from having an abortion after 20 weeks, despite having requested one at 17 weeks. Furthermore, inconsistent judgments add to the general lack of clarity surrounding the conditions in which a woman may legitimately terminate her pregnancy. While a Supreme Court decision in 2019 enabled a woman from Mumbai to terminate her pregnancy at 24 weeks due to a fetal anomaly that would jeopardize her life, previous rulings have penalized women who seek abortions after the 20-week mark, even where medically proven problems existed. Like in early 2017, the apex court decided against a lady whose fetus had a down syndrome-diagnosed abortion at 26 weeks. She was forced to deliver the baby with severe brain disorders, all credit to India's archaic abortion law. Additionally, discriminatory precepts like spousal consent being an informal but imperative condition to obtain reproductive health services implicitly or explicitly sabotage



women's reproductive autonomy. Legal protection of reproductive rights as human rights is essential for gender parity and gender equity.

REPRODUCTIVE RIGHTS OF WOMEN IN INDIA

Reproductive rights for women in India, like in many countries, encompass a range of rights and issues related to their ability to make informed decisions about their reproductive health, family planning, and overall well-being.

- Women have the right to access a variety of contraceptive methods to make informed choices about when and if they want to have children.
- Reproductive rights include access to family planning services, which provide information, counseling, and services related to contraception and family size. The government of India has implemented various family planning programs to support these rights.
- Women have the right to make decisions about their bodies, including the right to choose a safe and legal abortion. India's Medical Termination of Pregnancy Act, 1971 (amended in 2021), permits abortion under specific circumstances and gestational limits.
- Access to comprehensive and accurate sexuality education is crucial for making informed decisions about reproductive health. This education empowers women to understand their bodies, make healthy choices, and protect themselves from sexually transmitted infections.
- Child marriage, which can lead to early and often unsafe pregnancies, is a violation of reproductive rights. India has enacted the Prohibition of Child Marriage Act, of 2006 to prohibit child marriage.
- Reproductive rights also involve protection from gender-based violence, including forced pregnancies and coerced reproductive decisions.
- Reproductive rights extend to the right to maternity benefits and support during pregnancy and after childbirth. The Indian government has enacted laws to protect these rights, such as the Maternity Benefit Act.
- Efforts should be made to address health disparities that affect marginalized and underserved communities, ensuring that reproductive rights are accessible to all women, regardless of their social, economic, or regional background.
- Women have the right to breastfeed their infants and receive support to do so. The government has enacted laws and policies to promote and protect breastfeeding.

In India, governmental and non-governmental organizations work to promote and protect women's reproductive rights. Ensuring the full realization of these rights is an ongoing process that involves legal reforms, healthcare infrastructure improvements, and education. Women's reproductive rights are essential for their overall health, well-being, and empowerment. The Supreme Court of India and several state high courts have made important strides in recognizing the denial of reproductive rights as a violation of women's and girls' fundamental and human rights.



- The Indian judiciary gave the landmark K.S. Puttaswamy judgment which bestowed upon an individual the sense and privilege of personal liberty under Article 21 of the Indian Constitution.
- In Navtej Singh Johar v. Union of India, the apex court has also extended the meaning of personal liberty by decriminalizing adultery and homosexuality.
- In the case of Independent Thought v. Union of India in the context of reproductive rights of girls SC held, that the human rights of a girl child are very much alive and kicking whether she is married or not and deserve recognition and acceptance.

CHALLENGES IN INDIA

Although India was among the first countries in the world to develop legal and policy frameworks guaranteeing access to abortion and contraception, women and girls continue to experience significant barriers to the full enjoyment of their reproductive rights, including poor quality health services and denials of women's and girls' decision-making authority.

- Women are often made to face the weight of administrative delays. In one such example, a woman was prevented from having an abortion after 20 weeks, despite having requested one at 17 weeks.
- Inconsistent judgments add to the general lack of clarity surrounding the conditions in which a woman may legitimately terminate her pregnancy.
- Recently, Upholding the right to life of an unborn child, the Supreme Court turned down the plea of a woman seeking termination of her 27-week-old pregnancy.
- Discriminatory guidelines like spousal consent being an informal but imperative condition to obtain reproductive health services implicitly or explicitly sabotage women's reproductive autonomy.

VIOLATION OF WOMEN'S REPRODUCTIVE HEALTH RIGHTS

Despite the obligations, violations of women's sexual and reproductive health and rights are frequent. These take many forms, including:

- denial of access to services that only women require;
- poor quality services;
- subjecting women's access to services to third-party authorization;
- forced sterilization, forced virginity examinations, and forced abortion, without women's prior consent;
- female genital mutilation (FGM); and
- early marriage

Violations of women's sexual and reproductive health and rights are often due to deeply ingrained beliefs and societal values about women's right to make choices.

- Patriarchal concepts of women's roles within the family mean that women are often valued based on their ability to reproduce.



- Early marriage and pregnancy, or repeated pregnancies spaced too closely together often as the result of efforts to produce male offspring because of the preference for sons has a devastating impact on women's health with sometimes fatal consequences.
- Women are also often blamed for infertility, suffering ostracism, and being subjected to various human rights violations as a result.

CRITICAL ASPECTS OF REPRODUCTIVE RIGHTS OF WOMEN

- **Right to Bodily Autonomy:** Women have the right to make decisions about their bodies, including whether or when to have children. This includes the right to access contraception, the right to terminate a pregnancy (where legal), and the right to choose when and how to become a parent.
- **Access to Contraception:** Women have the right to access a range of safe and effective contraceptive methods to make informed choices about family planning. This includes access to education about contraceptive options and affordable, barrier-free access to contraception.
- **Safe and Legal Abortion:** In places where abortion is legal, women have the right to access safe and legal abortion services. Access to abortion is a critical component of reproductive rights, and restrictive abortion laws can have negative consequences for women's health and autonomy.
- **Prenatal and Maternal Care:** Women have the right to access quality prenatal care, safe childbirth, and postnatal care. Adequate healthcare during pregnancy and childbirth is crucial for the well-being of both the woman and her child.
- **Freedom from Coercion and Discrimination:** Women have the right to make reproductive choices free from coercion, discrimination, and violence. This includes the right to refuse sterilization, abortion, or other reproductive medical procedures without their informed consent.
- **Education and Information:** Women have the right to access comprehensive, accurate, and non-biased information about their reproductive health. This includes sex education that empowers individuals to make informed choices.
- **Access to Assisted Reproductive Technologies:** Women who wish to have children through assisted reproductive technologies, such as in vitro fertilization (IVF) or surrogacy, have the right to access these services and to make decisions about their reproductive future.
- **Protection from Harmful Practices:** Women have the right to be protected from harmful practices, such as female genital mutilation (FGM), forced marriages, and child marriages, which can have severe consequences for their reproductive health and rights.
- **Reproductive Healthcare Services:** Women have the right to access comprehensive reproductive healthcare services, including screening for sexually transmitted infections, treatment for reproductive health conditions, and access to skilled healthcare professionals.
- **Privacy and Confidentiality:** Women have the right to privacy and confidentiality when seeking reproductive healthcare services. Medical information should be kept confidential unless the woman chooses to disclose it.



- **Support for Parenting:** Women who choose to become parents have the right to support and resources to ensure the well-being of themselves and their children. This includes access to parental leave, childcare, and support for working mothers.
- **Advocacy and Legal Protection:** Women have the right to advocate for their reproductive rights, and governments are responsible for enacting and enforcing laws and policies that protect and promote these rights.

JUDICIAL RESCUE

The Supreme Court has been extremely progressive on women's reproductive rights.

- By decriminalizing adultery and homosexuality in the landmark judgment of Navtej Johar the court has held clearly, that women have a right to sexual autonomy, which is an important facet of their right to personal liberty.
- The Puttaswamy judgment specifically recognized the Constitutional right of women to make reproductive choices, as a part of personal liberty under Article 21 of the Indian Constitution.
- In the case of Independent Thought v. Union of India in the context of reproductive rights of girls SC held, “the human rights of a girl child are very much alive and kicking whether she is married or not and deserve recognition and acceptance”.

These judgments have an important bearing on the sexual and reproductive rights of women. The right to safe abortion is an important facet of their right to bodily integrity, right to life and equality and needs to be protected.

Locating reproductive health rights within the constitutional provisions, the realization of reproductive rights is interrelated with, and dependent on, the protection and fulfillment of various human rights like the right to life, the right to health, the right to non-discrimination, and the right to protection from gender-based violence.

In India, the reproductive rights of individuals and couples can be located in a constellation of laws and policies relating to health, employment, education, provision of food and nutrition, and protection from gender-based violence. Certain fundamental rights are guaranteed under Part III of the Constitution of India.

Article 13 prohibits the State from making any law that takes away or abridges the fundamental rights. The right to life, the right to equality before law, the right against non-discrimination, and the right to freedom and expression are some of the fundamental rights recognized in Part III of the Constitution of India.



Article 14 prohibits the State from denying to any person equality before the law or the equal protection of the law within the territory of India. Article 15(1) prohibits the State from discriminating against any citizen on grounds of religion, race, caste, sex, place of birth, or any of them. Article 15(2) and Article 15(3) permit the State to make special provisions for women and children, and for any socially and educationally backward classes of citizens or for Scheduled Castes and Scheduled Tribes.

Article 16 guarantees equality of opportunity in matters of public employment, and provides that no citizen shall, on grounds of religion, race, caste, sex, descent, place of birth, residence, or any of them, be ineligible for, or discriminated against, in respect of any employment or office under the State. Article 21 provides that no person shall be deprived of his life or personal liberty except according to procedure established by law.

While the right to health (or reproductive rights) is not expressly recognised as a fundamental right in the Constitution of India, several Supreme Court decisions have interpreted the right to health and the right to timely and adequate medical treatment as integral to the right to life. In **Parmanand Katara v Union of India**, which was a public interest litigation (PIL) pertaining to the provision of emergency medical treatment to injured victims of motor accidents, the Supreme Court held that Article 21 obligates the State to preserve life, and doctors at government hospitals are duty bound to extend medical assistance for preserving life.

No law, procedure, or State action can void or impede this obligation of medical professionals. In **Paschim Banga Khet Samity v State of West Bengal**, it was held that the State is obligated to provide adequate medical facilities, and denial of timely medical intervention to a person in need of such treatment by a government hospital is a violation of Article 21.

The Supreme Court in **Suchita Srivastava and Another v Chandigarh Administration** stated that reproductive autonomy is a dimension of personal liberty as guaranteed under Article 21. It held: “It is important to recognise that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman's right to privacy, dignity and bodily integrity should be respected. This means that there should be no restriction whatsoever on the exercise of reproductive choices such as a woman's right to refuse participation in sexual activity or alternatively the insistence on the use of contraceptive methods. Furthermore, women are also free to choose birth-control methods such as undergoing sterilization procedures.

Taken to their logical conclusion, reproductive rights include a woman's entitlement to carry a pregnancy to its full term, to give birth and to subsequently raise children.” Several provisions in Part IV of the Constitution of (Directive Principles of State Policy) are related to issues of health. Vide Article 47; it is among the primary duties of the State to raise the level of nutrition and the standard of living of its people and to improve public health. Article 39(e) proclaims that the State should direct its policy towards



ensuring that the health and strength of both men and women workers, and of children, are not abused and that citizens are not forced by economic necessity to enter vocations unsuited to their age or strength. Article 39(f) provides that States must take steps to ensure that children are given opportunities and facilities to develop in a healthy manner.

Article 42 provides that the State shall make provisions for securing just and humane conditions for work and for maternity relief. Article 45 states that the State shall Endeavour to provide early childhood care and education for all children until they complete the age of six years. These provisions are not enforceable in any court, but the State is obligated to apply these principles in making laws and policies because they are fundamental to the governance of the country.

ASSESSMENT OF KEY AREAS OF REPRODUCTIVE HEALTH AND RIGHTS: ISSUES, GAPS AND COMPLIANCE

Reproductive and sexual health rights are a part of comprehensive health rights. To ensure the fulfillment of these rights, a nation country needs to have in place a well developed public health system that is capable of providing health care services that are comprehensive, of good quality, accessible to all, free at the point of access, and, above all, accountable to citizens.

Unfortunately, the public health system in India is challenged by a range of issues, including low public investment, poor infrastructure, including medical and diagnostic facilities, and inadequately skilled human resources.

Additionally, the past decades have witnessed increased privatization and corporatization of health care and an absence of robust regulation. This has led to a sharp deterioration in the accessibility, affordability, and quality of health care, resulting in further social, economic, and geographical distances from health care, particularly for girls, women, and marginalized communities.

The treatment of women, especially those from marginalized sections, at public health facilities is often inadequate, indifferent, and callous, stripping them of their dignity and agency. This results in women's reluctance to seek treatment at public health facilities, thus impacting access and reach. The upholding of reproductive rights and the provision of sexual and reproductive health services are essential to protect the human rights of women, particularly those belonging to marginalized and excluded groups like sex workers, LGBTIQ (lesbian, gay, bisexual, transgender/transsexual, intersex, and queer/questioning) groups, women with disabilities, and ageing women.

WOMEN HAVE THE RIGHT TO:

1. Decide freely and responsibly the number, spacing and timing of their children
2. Have the information and means to decide feely and responsibly the number of spacing and timing of their children.



3. Attain the highest standard of sexual and reproductive health (you have the right to be physically mentally and socially healthy with access to medical, mental and social facilities and services and supports to exercise your sexual and reproductive rights.)
4. Make decisions about your reproduction free of discrimination, coercion and violence
 - It is your decision whether you have 0, 1 or 7 children.
 - It is your decision whether you undergo female sterilization now or when you are 50 or not at all.

RIGHT TO EQUALITY IN REPRODUCTIVE DECISIONS

THE RIGHT TO EQUALITY IN REPRODUCTIVE DECISIONS INCLUDES THE RIGHT TO:

- Choose whether and when to marry and start a family.
- Marriage should be with the full, free, and informed consent of both individuals
- You have the right to make responsibly right to make reproductive decisions when it comes in your body your health and your family.

RIGHT TO SEXUAL AND REPRODUCTIVE SECURITY

THE RIGHT TO SEXUAL AND REPRODUCTIVE SECURITY GIVES YOU THE RIGHT TO:

- Live a life free of gender based violence (includes sexual violence, incest, trafficking , dowry related violence, and rape based on the fact that you are female)
- Protection of physical and mental integrity (you have the right to live a life free of mental harm and violence based on the fact that you are female.)
- Management and gynecological problems, infertility, prevention; and
- Treatment and prevention of sexually transmitted diseases sexually transmitted infections, and HIV/AIDS
- If you have HIV/AIDS positive or and STI, you have the right to medical treatment;
- The high incidence of sexually transmitted diseases, infections, and HIV/ AIDS reflects the practice of unsafe sex.

RIGHT TO REPRODUCTIVE SEXUAL AND HEALTH SERVICES

THE RIGHT TO REPRODUCTIVE AND SEXUAL HEALTH SERVICES INCLUDES THE RIGHT TO:

- Safe and affordable methods of family planning.



- If you decide to have children, you will be able to do so in a safe environment with medical care and assistance.
- If you decide to use family planning services, you will have access to these services in a safe and hygienic environment
- Safe motherhood
- You have the right to survive pregnancy

CONCLUSION:

Reproductive rights rest on the recognition of the primary right of all couples and persons to decide liberally and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the rights to attain the highest standard of sexual and reproductive health. They also include the right of all to make decisions regarding reproduction free. The struggle for women's 'reproductive rights' has resulted in the right to contraception being conceded in many parts of the world, although women still lack easy access to affordable contraceptives which are free from side-effects. Yet even today, these services are denied to women in many other parts of the world. Religious and cultural taboos prevent them from using contraception. In cultures such as India where motherhood is glorified and infertility viewed as a curse, the use of contraception is frowned upon. Nevertheless, thirty years after it began, the great effort for women's control over their own fertility has led to a severance between sexuality and reproduction, where women are able to experience their sexuality without pregnancy being the inevitable result.

All the above examples can be summarized as violations of one of three major human rights concepts - liberty, social justice and equality. The principle of liberty is key to notions of civil and political rights, while the principle of justice is key to notions of economic and social rights. The principle of equality is an overriding one. Questions of distributive justice arise in relation to the tragic economic choices that go to the fair allocation of scarce resources and the setting of priorities, and here we often find discrimination against women in the low priority given to their special sexual and reproductive health needs. But many of the issues raised by this paper go to the attitudes of policy makers and of health care providers in relation to their clients, and to the fundamental notion of respect for human dignity and the right to reproductive autonomy, which are not essentially a matter of economic cost.

Struggles over women's rights to sexual and reproductive health have been central in advancing women's human rights in general. Advocates of women's human rights have drawn attention to the ways in which women's status is fundamentally linked with the reduction of women, through social and political processes, to aspects of their physical selves. When reproductive health is understood to involve more than just the biological workings of a woman's womb, we arrive at "women centered" approaches to sexual and reproductive health. This means trusting women as autonomous beings, able to take control over their sexual and reproductive lives and to make decisions on these matters on the basis of access to adequate information. A woman's right to reproductive autonomy is often impaired because of her status in society. Enjoyment of this right depends on her right to act as an independent adult of full legal capacity to participate in civil society and to be free from discrimination in its various forms. Conversely, without the right of



reproductive choice, all other human rights - civil and political, economic and social - have only limited power to advance the well-being of women.

Human rights are aspirations to full participation, equal membership and active involvement in society. Rights structure relationships of power, responsibility, trust and obligation. Rights empower people. They make us aware of our own power and of our responsibility to others less fortunate than us, especially to persons in the most vulnerable and disadvantaged groups and situations. When we look around us and listen to the stories people tell, we learn ways in which we can exercise our own power and position to improve the lot of others. Thus a human rights to sexual and reproductive health is pertinent in diverse ways to policy makers, program designers, and providers.

The discourse of human rights does not provide any ready made answers to the problems and dilemmas that arise in any given context. Human rights are not absolute values in the sense that they trump all other considerations. Indeed, in some instances the rights of one person may be in conflict with the rights of another. But rights are absolute in the sense that they must be taken into consideration and balanced against other interests. In making and implementing law and policy, and in the delivery of services, the rule should be that violations of human rights may be justified only as measures of last resort; after all other possible means to achieve desired goals have been exhausted. Where several measures present themselves as comparably effective, there should be preference for that which is the least detrimental alternative in terms of its effect on the enjoyment of human rights. The process of deliberating among possible alternatives in terms of their effect on human rights, increases our sensitivity to the compromises we make in reality while aspiring to an ideal world in which human dignity is the paramount value.

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