

Reproductive Rights of Women: A Socio - Legal Study in Indian Context

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Abstract- *Reproductive rights consist of a set of human rights that include various fields regarding reproduction, fertility, and reproductive health. To protect the constitutional dignity of women, reproductive rights are the most important instrument for achieving developmental goals related to health. Throughout different categories related to reproductive rights including reproductive self-determination, sexual and reproductive health services, information and education and right to equality regarding health. It is a legal right towards reproductive health. This paper focuses on how reproductive rights can enhance support for reproductive health outcomes among women with the basic aims of identifying the holistic outcomes related to health through reproductive rights. This research paper also tries to focus the discourse on reproductive rights in India, understanding the need for a multidimensional approach to ensure women's reproductive well-being. This paper also finds that most of the women are unaware of their reproductive rights, and they are also marginalised in accessing health benefits. Addressing to rural women, the ignorance of health is a fundamental issue that needs to be eradicated. They are often seen as suffering from 'trauma' inflicted by their husbands and households when they give birth to a girl child. It is recommended that the legal framework and enforcement of reproductive health services be implemented, enhancing reproductive health services, and promoting women's empowerment through education and economic opportunities. Many other provisions are also made in enhancing the reproductive rights related to health concerns. So, there is an unmet need to elevate their rights regarding reproductive health in the current situation.*

Keywords: *Reproductive rights, Women, Reproductive health, Legal rights, Constitutional dignity.*

1 INTRODUCTION

Reproductive health was first introduced at the *International Conference on Population and Development [ICD]*, which was held in Cairo [1994]. 180 countries' representatives were present in this conference. The terminology was accepted all over the world since then onwards ICPD program

declares that 'All countries should protect and promote the rights of adolescents to reproductive health education, information and care and greatly reduce the number of adolescent pregnancies.'

The World Health Organisation (WHO) states that "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". (Kumar, 2020). Reproductive rights can be understood to encompass both gender self-determination over their bodies and sexuality. (Chowdhury,2021). In general, the right of a person to choose whether to reproduce or not is the right of the patient to determine whether to reproduce or not and to achieve reproductive health. The Constitution of India has recognized a certain right, which is referred to as sexual and reproductive health for women. Reproductive rights are a legal right concerning the reproduction and reproductive health of women. It encompasses a set of legal rights in multiple areas including contraception, abortion, birth control, family planning, fertility issues, maternal mortality, reproductive health and related services. It is a right that allows women to express their freedom and make decisions regarding their health and reproductive capabilities. (Chowdhury,2021). In this context, Indian Court has also a crucial part for adopting the definition of 'Reproductive Health' for every woman.

1.2 Review of Literature

Dewangan (2020) in his article Examines how Indian courts and law recognize reproductive rights with a focus on how they fit into the framework of international agreements and fundamental rights is the aim of this analysis. It searches for barriers that keep women from fully exercising these rights possible. Findings: The study demonstrates that there are still gaps, particularly about access to

abortion and reproductive autonomy, even though Indian laws and court rulings have made significant strides in acknowledging reproductive rights as a component of the right to life. The findings demonstrate the need for more comprehensive clauses and legislative changes to enhance women's reproductive autonomy and eliminate existing legal constraints. Current laws must be changed to eliminate punitive measures and allow for greater access to abortion to strengthen reproductive rights in India. Schurr and Miltz (2020) in their article, by using qualitative techniques like interviews and spatial analysis, aim to investigate the intersections of reproductive rights and justice through an intersectional lens. It will identify disparities in access to reproductive health services and, in the end, recommend the need for more inclusive policies that address these inequalities. Mathur in her article, *The Lives, Rights and Health of Young Married girls* (2003), ensures that all people, especially women, can make independent reproductive health decisions without discrimination or coercion. It implements the comprehensive policies on education and awareness of reproductive rights, as well as access to health services. Result improves on health issues and gender equality by helping people make informed decisions about family planning. It recommends building strong legal frameworks and support programs to improve access to reproductive health services and raise awareness of rights. The purpose of Tanvi's (2023) article is to highlight the current issues and developments in women's reproductive rights in India using qualitative analysis of judicial decisions and policy frameworks, and to conclude that despite progress, significant barriers and challenges remain. Conflicts remain, and further advocacy and legal reform are needed to ensure equal access to reproductive health services. Shalev (1998) in his paper examines the structure of women's rights to sexual and reproductive health in international human rights instruments using qualitative analysis of CEDAW and related treaties, and to identify and propose solutions to systemic violations such as maternal mortality and under-reporting, access to services, improved access to health care, human rights education, accountability mechanisms, and inclusive policies to promote these rights globally. Kosgi et.al (2011) examines the status of reproductive rights in India, focusing on the obstacles women face in accessing reproductive health services and the implications of spousal consent for these rights. It aims to highlight the need

for a gender-responsive approach to reproductive health policy and practice, particularly in the context of socio-cultural norms. This study uses qualitative analysis of existing literature, national policies and case studies, and field evaluations to assess the implementation of reproductive rights and services in several states in India. The study found that there is a significant gap between policy and practice, as many women, especially in rural areas, lack access to informed reproductive choices, face coercive pressures, and deal with inadequate health services. Furthermore, requiring spousal consent for abortion and sterilization often undermines women's autonomy and exacerbates existing inequalities. To expand women's reproductive rights, the study suggests improving community health services, promoting gender equality in reproductive health decisions, providing legal protection that prioritizes women's autonomy, and considering men's participation in reproductive health issues.

Garg, et.al (2022) conducted a cross-sectional study on women's decision-making power in reproductive health issues that can lead to unplanned pregnancies, unsafe abortions, and other negative reproductive health outcomes. It was conducted among married women aged 18-49 years with at least one child in Punjab, India. Study variables included socio demographic characteristics, reproductive health characteristics, contraceptive choice, interpersonal communication, and interpersonal relationships with spouses. Of all the married women who participated in the study, only 51 (58.6%) reported that they were physically and psychologically ready for marriage. Fifty women (57.5%) reported using condoms, and about one-third did not use contraception. Sixty-two women (75.5%) reported that decisions about the health of the child were made jointly. Seventy-eight women (88.6%) discussed the place of birth. Interpersonal communication was rated as very good or good by 72 women (81.8%). In addition, women with higher education than their spouses were less satisfied with their spouses' communication. There was no significant association between women's higher education than their spouse and women's active role in various decision-making. Women should be encouraged to make their own decisions about their reproductive health and well-being and should be supported by other family members. Efforts to raise awareness about sexual and reproductive issues should begin in adolescence.

1.3 Rational behind the Study

There is a high demand for reproductive rights, especially for women, which is overwhelming for various reasons in the context of India. Reproductive rights are the recognition of liberty of women in relation to certain types of reproductive decisions. It has been used to refer to a psychological state of awareness. According to World Bank's collection of development indicators, in 2023, 63.64% of the total population of India live in rural areas. Most of the women are still completely unaware of their reproductive rights concerning their health due to their low economic status, a lack of proper education about health, unaware of new health infrastructure and a lack of knowledge about family planning. As already mentioned above reproductive rights are concerned with various fields related to health outcomes, encompassing a broad range of health issues. Reproductive Rights are more important in Indian context for the following crucial points:

1. For decision making for women's reproductive choices.
2. For promoting economic empowerment.
3. Equal opportunities in every field such as men.
4. Population management.
5. Providing the knowledge about reproductive rights for removing child marriage.
6. Providing mental health care.
7. Reduce vulnerability.
8. Beneficial for society and their household.
9. Reduce MMR rate and IMR.
10. Right to abortion.

1.4 Aims and Objectives

The basic and fundamental aim of this research paper is to provide a holistic understanding of the issues surrounding reproductive health among women and to offer some suggestions and initiatives for promoting reproductive rights in India.

1.4.1 Methodology and Database

The methodology of the present study involves the descriptive analysis, along with secondary data source. For finding the sources, it is collected from multiple journals, articles, books, and media.

1.4.2 Hypothesis

Reproductive rights can enhance the women's freedom of speech and expression and their liberty regarding their reproductive options.

2 DISCUSSION

2.1.1: Issues and Challenges regarding Reproductive Health of Women and to provide some Strategies in addressing these issues:

Poor health conditions lead to a decreased ability to maintain good health. Reproductive health is a complete state of physical, mental, emotional, behavioural and social well-being and it is completely absence of disease or infirmity. Human reproductive system refers to both male and female reproductive system at all life stages of life. It implies that people are more able to have a secure sex life, and they became more capable of reproducing and have a freedom to decide it. This paper focuses solely the female reproductive system, and their reproductive rights. Reproductive health is a major and consuming issue that demands more attention in present circumstances. When it comes to women's reproductive health issues, it focuses on basically on two aspects of their reproductive system. One is 'Physical health issue' and another one is 'Mental health issue'. In physical health issues, it includes Menstrual disorder, high risk of infertility, uterus cancer, sexual transmitted disease (STD), unsafe abortion, high rate of Maternal Mortality Rate (MMR) and Infant Mortality Rate (IMR), polycystic ovarian syndrome (PCOS), pregnancy problem, primary ovarian insufficiency (POI), puberty disorder. In Mental health issues it covers hypertension, trauma stress, depression and anxiety, postpartum issue. Furthermore, Social conditions are among the various factors contributing to the poor health of women. These factors include lack economic resources, living in slum areas, insufficient awareness regarding health, inadequate health infrastructure, illiteracy and ignorance about health concerns. (Weckstein et, al 2024).

Strategies to elevate such kind of health issues: Strategies may include by the following ways:

- 1) Family planning and birth control.
- 2) Awareness program regarding reproductive health.
- 3) Providing sex education.
- 4) Knowledge of STD.
- 5) Provide good health infrastructure.
- 6) Human rights and equity.
- 7) Environment and sustainable development.
- 8) Human consequences of fertility.
- 9) Proper use of contraceptive method.
- 10) Safe abortion (Stover, et.al, 2016).

2.1.2 Feminism and Women's Right:

The term 'feminism' refers to a belief in social, economic, and political equality of all genders. Feminism occurred in 4 waves, the first of which was introduced in 19th and the 20th centuries and was mostly concerned with 'women's right' (*suffrage*). Second wave consists of 'liberation' or 'gyno criticism' which was introduced in 1960's and 1970's. The third wave feminism was introduced in 1990's to 2008, focussed on 'post-structuralist interpretation' or 'individualism'). And the last wave was introduced by Kira Cochrane in 2008 which was based on 'psychology'. Mary Wollstonecraft is called the grandmother of British Feminism. Moreover, feminism has different form like 'Cultural feminism', which occurs to promote feminine behaviour. *Eco feminism* focuses on matriarchal condition. *Liberal feminism* focuses on gender equality towards social, legal and political rights. The slogan of *Radical feminism* is 'sisterhood is powerful' and 'Red stockings. *Marxist feminism* focuses on 'reconstruction of capitalist economy.' Karl Marx mainly inspires it. (Brunell and Burkett, 2024). Feminism is nothing, but an equal right and opportunity for social, economic, and political events. Feminist concept is key element in achieving equal rights for every woman in the world. (Musindarwezo, 2021). It is observed that marginalised women are often deprived of equal opportunities. Addressing the poor health issues faced by women, they are often completely ignored by their husbands and family members.



Figure: 1

It even feels as though it is a sin for them to give birth to a baby girl. Ultimately, feelings of trauma and high blood pressure contribute to their poor physical and mental health. Regarding reproductive rights, they are completely dominated by their husbands and heads of household. (Bhagawati, 2015).

2.1.3 Theoretical Perspective on Feminism

'Feminism', is a set of movement which aims at equal rights and opportunities for every woman in

different aspects of social, political, cultural as well as economic disparities. Feminism is viewed from various views that have a unique facet of girlish egalitarianism. From the point of giving women's rights, it advocates from legal and governmental fixes to gain manlike equality. Radical women's rights ask to challenge and demolish the patriarchy itself. Intersectional and black women's rights stress in what way or manner grammatical rules applying to nouns that connote sex or animateness hardships intersects following race, class, and supplementary forms of marginalised. Eco-women's rights and post-colonial feminists' movement consider the link between linguistic rules requesting to nouns that cannot e-sexuality and being pre-judice, refer to practices or procedures that do not in another way influence the atmosphere depravity and legacies of expansionist opinion. For the purpose having to do with this study, the analyst asks to study the appropriate from the point of post pioneering feminist theories on corpse and desire.

Post-colonial women's dissident such as Foucault in his concept of body and sexuality has a basic influence on women's dissident theory. He clarified a few key concepts related to the body and sexuality in association to woman's rights. Foucault fought that the body is an area where control relations are endorsed through teach, guidelines and talks and women's activists' researchers, particularly post-structuralists have utilized this thought to see at how societal rules, therapeutic sharpens and wonderfulness guidelines control women's bodies, shaping their behaviour, sexuality and parts in society. Once more Foucault's thought of biopolitics, which outlines how government and organizations organize bodies and interdenominational hones to claim social organize, has happened utilized by women's activists to consider in what way women's generative rights, healthcare and sexuality are spared, routinely fortifying patriarchal control, especially in ranges such as untimely birth, contraception, and childbirth. He as well fought in *The History of Sexuality* that sexuality is shaped by control relations and conversation, a concept women's activists utilize to assess how societal wants construct women's sexual identities as both locks in and cruel.

3.1. Legal and Constitutional Framework: A Significant Contribution to Reproductive Autonomy of Women:

On behalf of reproductive autonomy, a constitutional and legal approach can be taken to ensure the reproductive health of women. Now women are more conscious of their reproductive rights in relation to equality, non-discrimination, maternal health, contraceptive, safe abortion and the prevention of forced pregnancy and child marriage.

Women and girls in India face struggle for their reproductive self-determination as a maternal death occurs every five minutes in India. Women now have realized that the struggle for reproductive rights has become an integral part that recognizes her dignity and worth as a human being. (Kaur, 2012). Reproductive rights are an integral part of basic human rights as they deal with the health and wellbeing of the mother and child. Reproductive right falls indirectly under the right of health of Universal Declaration Human Rights and Article 12(2)(a) of the International Covenant on Economic, Social and Cultural Rights. (Mittal, 2018). Over the past decade, Indian Judiciary have given many landmark judgements that recognizes women's reproductive rights as part of the fundamental right to life. In cases like maternal health, contraception, abortion and child marriage the Indian Judiciary have taken some strong definition of "reproductive rights" that consider human rights standards.

3.1.1 The Current position of Reproductive Rights in India

India being the first country in the world to introduce legal and legislative framework guaranteeing access to abortion and contraception, but unfortunately women in India still face hurdle to enjoy and avail their reproductive rights, this also includes poor quality of health services and refusal of women's decision-making authority. India has always failed to take women's rights-based approach, but it kept the focus on demographic targets like population control. It also undermined women's reproductive choices through discriminatory provisions like spousal consent for availing reproductive health services. Despite penal consequences of child marriage and policies and schemes guaranteeing women maternal healthcare, still India continues to be at the highest number of child marriages and 20% of all maternal death globally. Abortion being legal in India until 20 weeks of gestation and throughout the term of pregnancy whenever necessary to save the life of the woman under the Medical Termination of Pregnancy Act, there are records that says 56% of the 6.4 million abortions estimated to

occur in India annually that are unsafe, and which has resulted in 9% of all maternal deaths.

Looking at the increasing number of reproductive rights issues such as maternal mortality rate, unsafe abortion and poor quality of post-abortion care, lack of awareness and access to contraceptive methods, child marriage and lack of knowledge about reproductive rights and sexual health the U.N. Human Rights bodies have raised concerns to the Indian Government. India is called for by the U.N. Human Rights experts to address this increasing violation of reproductive health care.

3.1.2 Reproductive Rights: A Constitutional Background

Article 21, which guarantees right to life and personal liberty have a wide scope and it can be interpreted extensively. Article 21 includes dignity in every individual, thus making the Right to make reproductive choices fall within the ambit of personal liberty.

The Madhya Pradesh High Court in 2012 resonated the Delhi High Court decision in Sandesh Bansal vs Union of India; this was a public interest litigation searching accountability for maternal deaths. This case recognized the fundamental right of a woman to live guaranteed under Article 21 of the Constitution of India is violated a woman is unable to survive pregnancy and childbirth due to lack of proper health care facilities. This case primarily focused on the matter that financial constraints should not be an issue for the violation of Reproductive Rights guaranteed under Article 21 of the Constitution of India, thus it requires immediate implementation of maternal health guaranteed under the National Rural Health Mission which includes all the basic infrastructure like availability of blood whenever required, water and electricity, skilled medical personnel. There should be an efficient grievance redressal mechanism where women can approach whenever maternal health care is denied.

3.1.4. A Legal Analysis of the Medical Termination of Pregnancy Act and its Amendments

This act originally meant to address the married women but now it has evolved to address wider reproductive issues. The 2021 Amendment Act extends legal protection toward medical termination of pregnancy to unmarried women. This change indicates that law changes with the changing needs of society and hence the need for inclusion of

reproductive rights. The amendment illuminates requirement of marital status of women for opting for her reproductive choices. The judiciary denotes an important role of Registered Medical Practitioner in the abortion decision-making under the MTP Act (1971)

Thus, in the coming times, the Indian Judiciary will seek reform by making the MTP Act stronger, making stringent laws for prohibition of child marriage, reducing maternal mortality rate and upholding women's Reproductive Rights.

3.1.5. Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994

The act of identifying the sex of the fetus and getting rid of the unwanted of the fetus with undesired sex is known as Sex selection. The want for a male child has led to a rise in sex-selective abortion. After the sex of the fetus, is known through sonography families opt for abortion if it is found that the sex of the fetus is female. Therefore, for the prohibition of sex selective abortion, the Government passed the Pre-conception and Pre-natal Diagnostic Techniques (Regulation and Prevention of misuse) Act, 1994. This act regulates the use of pre-natal diagnostic techniques. These techniques should only be used to detect genetic abnormalities, metabolic disorders, chromosomal abnormalities, certain congenital malformations and sex-linked disorders. This act prohibits laboratories and clinics to conduct any test or ultrasound for the detection of sex of the fetus. The 2003 amendment renamed the act as Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex selection) Act.

The Apex court in the case of CEHAT vs Union of India, directed the Central and State Government to conduct awareness programs in rural as well as urban areas to stop sex-selective abortion and prevent medical science from abusing its techniques to abort female fetus. Therefore, such act also enables women to make her own reproductive choice to not abort her fetus whether it is male or female child. (Singh et, al. 2023)

3.1.6 Indian Scenario of Surrogacy and Women's Right to Reproduction

The practice of monetary surrogacy, frequently referred to as "interior for rent," has arose as an increasing manufacturing in India, driven by determinants in the way that the extensive use of English and lower costs of helped reproductive

duties. This wonder raises complex righteous, allowable, and social questions about the associations for stand-in founders and intended people alike. Proponents of surrogacy contend that it establishes freedom for economically disadvantaged girls to develop their fiscal chances. However, critics argue that the practice concedes possibility be usable, efficiently commodifying the reproductive volume of mothers' invulnerable positions. There are concerns that surrogates, frequently motivated by monetary need, concede the possibility is not exercising their independence adequately but instead ceasing to familial or pertaining to society pressures to achieve the desires of wealthier customers. Opponents of marketing surrogacy equate it to forms of bleeding comparable to whoredom, declaring that surrogacy contracts dehumanize girls by lowering their generative roles to absolute undertakings. This outlook focal points the potential emotional and intellectual suggestions for surrogates, the one grant permission struggle to separate their gestational experiences from the commodified type of surrogacy. Critics contend that the lack of allowable protection for surrogates, containing issues surrounding conversant consent and motherly well-being obstacles, renders the practice practically uncertain.

Since the authorization of commercial surrogacy in India in 2002, the country has located itself as all-encompassing director in this place industry, illustration meaningful consideration from worldwide clientele. Estimates plan that the surrogacy retail in India maybe costly at approximately \$445 heap occurring, lifting alarm among advocates the one indicate the using of unsafe women, specifically in a framework place motherly mortality rates wait precariously extreme. The righteous implications of proxy maternity raise meaningful public discourse regarding the movement for equal rights for women complicated in surrogacy plans and the situation of the so-called "instructed baby." Concerns have existed vocal about the potential for wealthier things from developed countries with its own government to exploit exhausted wives in India for generative services, composing it as a practically inconclusive form of economic utilization. In response to these issues, the Ministry of Women and Child Development is launching a comprehensive legislation to manage surrogacy practices in India. A draft bill inclined for one Indian Council of Medical Research (ICMR) inquires to impose accurate

requirements on helped generative technologies, containing disadvantages on the number of fetus transfers and limits on the number of live births a surrogate concede possibility bear during the whole of her life. Furthermore, directions display that only close nieces or popular individuals concede the possibility present image of surrogates, and age limits relate to ensure the happiness of two together the proxy and the adolescent. Despite these regulatory works, concerns await concerning the adequacy of protections for proxy founders, in addition to the moral implications of admitting very young wives to engage in surrogacy understandings. The evolving duty of girls inside surrogacy plans necessitates a fault-finding reevaluation of motherly rights and the more extensive suggestions of reproductive commodification. (Anu et, al 2013)

4 RESULTS

Addressing the reproductive rights of women, the socio-legal landscape in India reflects a progressive framework and vastly ingrained societal norms. India has made progress in recognising reproductive rights of women. The Indian Constitution also protects the focussing areas of women like abortion, surrogacy, societal norms etc. Recent findings underscore the critical importance of reproductive rights in empowering women to participate in various aspects of life. The socio-legal study, also promotes the legal changes for better protect women's reproductive rights', raises awareness of reproductive rights, reduces stigma and encourages women to make decisions. Moreover, the Pre-Conception and *Pre-Natal Diagnostic Techniques (PCPNDT) Act, 1994*, *National Health Mission (NHM)*, *Right to Safe and Legal Abortion under the MTP Act* have a crucial role in reproductive autonomy for women. Overall, this paper provides a clear snapshot on advancing reproductive rights for Indian women, fostering more inclusive and supportive socio-legal values.

CONCLUSION

The conclusion of this paper indicates that reproductive rights of women are essential to achieving gender equality, improving health outcomes, and promoting the social and economic stability. These rights also encompass access to comprehensive reproductive health services. It also ensures reproductive autonomy in all aspects of decision making. In India, reproductive rights represent a socio-legal challenge. The Indian legal

system has been framed to protect and promote the dignity, reproductive autonomy and health of all women. Addressing not only the health issues of women, but also the legal reforms can enhance judicial interpretation and societal awareness.

SUGGESTIONS

In the opinion of this research paper, it can be improved through multiple suggestions regarding reproductive rights of women in India. Importance should be placed on reproductive health education, addressing violence against women, reducing feelings of trauma, tackling discrimination issues and mitigating gender inequalities in various fields. This paper suggests that comprehensive sex education, including, family planning knowledge should be provided in schools. It also advocates for supporting women's legal right to abortion ensuring they have safe options for terminating pregnancies if they choose. The paper further emphasizes the need for adequate health care particularly for women and calls for the elimination of coercion and discrimination. It concludes by advocating for strengthening the legal framework to protect women's reproductive rights, enabling them to make autonomous choices about their bodies and health. In this regard, suggestions are also based on constitutional rights and judicial interpretations. *The Right to Equality (Article 14)*, *Right to Freedom (Article 19)*, *Right to Right and Personal Liberty (Article 21)*, *Right Against Exploitation (Article 23)*, *Fundamental Duties (Article 51 A)*, *Recommendation of Law and Policies* etc can serve as a foundation for reinforcing rights in India. These rights emphasise equality, autonomy, health and dignity for women.

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