

REPRODUCTION AND ABORTION RIGHTS

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ABSTRACT

The magna carta charter of 1215 was the first ever document which codified human rights formally recognising their existence. These rights are guaranteed to an individual by virtue of living a life dignified guaranteed by the Article 21 of the Indian Constitution. Right to life comes with right to a health standard and right to make choice and right to survival. Women have been subject to indifference and discrimination throughout their life. starting from prostitution, to abortion to marital sex, the Gray areas where the legislations have remained silent.

In this paper some international instruments like WHO, ICPD, etc. along with India's current position with respect to these critical affairs will be discussed upon. The laws of UK have been taken for reference. The author suggests that sexual and reproductive rights must be included in the Human rights guaranteed to every person.

Keyword: Reproductive rights, Women, ICPD, Article 21, Legislation

1. INTRODUCTION

The inalienable and indivisible rights which are granted to a man by virtue of being human beings are called a human right. The increasing need and growing demand of being civilized and living a dignified life, made human beings recognize and fight for their own rights. The rights are meant for better development of the individual and society and protection against arbitrary exercise of power. The existence of human rights can be traced as back as the Babylonian laws; however, awareness of the rights came much later. Human life should be fruitful and worth living and human rights make everyone equal, gives freedom to life and liberty, right to be protected, freedom from slavery, freedom from torture, freedom of thought, expression and opinion, freedom of religion, etc.

The Magna Carta Charter was the first document in 1215 which spoke about human rights. The U.N. Charter with the aim of protecting international peace and security, recognized human rights (Universal Declaration of Human Rights) and the charter opens with words,

“whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and, peace in the world.”

Article 1 of the declaration states that all human beings are born free and equal in dignity and rights. And article 2 also entitles a person protection against discrimination on the basis of sex. The factual reality is far from being accomplished. Women and men have been treated

unequally, and the same ritual with minor changes is being continued.

To avoid serious repercussions and giving equality to women, a “Convention on the Elimination of all Forms of Discrimination against Women” was adopted, effective from 3rd September 1981. India ratified the same on July 30, 1980. The preaching of equality for men and women was done rightly, but sadly enough the practice for the same failed, this was the concern raised the 1993 World Conference on Human Rights held in Vienna.

2. HUMAN RIGHTS AND WOMEN

Equality between the genders and eliminating discrimination in any form including gender are fundamental human rights granted to every individual. Discrimination gives rise to differences.

Women's human rights have been a topic of constant discussion to ensure the equality which gives rise to severe political commitments. The international human rights instruments i.e. the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, works for the prohibition of discrimination and to ensure equality of rights amongst all human beings.

The commission on status of women was established by United Nations Economic and Social Council resolution 2/11 in 1946. The main target of the council was on promotion of political, economic, civil, educational and social rights. The UN millennium Development Goals of 2000 was besieged to achieve certain goals by 2015 which

includes ensuring gender equality in work, representation and education (goal 3).

3. REPRODUCTION RIGHTS IN INDIA

The most important yet not so articulated topic is the reproductive and sexual rights in India and most other nations. Reproductive rights as often presumed does not merely mean the right to reproduce. From a forceful sex by the husband to a forceful sterilization by the government, the women in our nation survived. There are two broad principles: all persons have the right to access the sexual health care and secondly, with respect to sexual and reproductive rights, people should be given freedom to make their own decisions. Religion caste and culture has played a significant and deciding role in regulating the aspects of women's lives. There has been increasing number of campaigns going on claiming women's rights over their own bodies.

Reproductive Rights as defined in WHO (World Health Organization) is,

“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.”

International Conference on population and Development (ICPD): Though the prime agenda of this conference was controlling populations, the delegates decided to talk also about the people controlling the population and i.e. the rights of women, it adopted the programme of Action. Reproductive health, birth control, women's health, ability of women to control and plan their own fertility and family planning are some of the most discussed agendas, which was ratified by 179 nations. The conference set a milestone which gave rights to the women to attain the highest standards of sexual and reproductive health. The states are under an obligation to address this issue in the best possible manner. This issue includes abortion, sexually transmitted diseases, violence against women, unwanted pregnancy, etc.

Women are granted right of reproductive health only under Article 21 of the Indian Constitution: Right to Life and personal Liberty. In the case of Ramakant Rai (I) & Anr. v. Union of India & Ors, in 2005, the court held that

under article 21, women have the right to take decision of their sterilization with informed consent and such decision should be free from coercion. In 2001, TARSHI provided a list of reproductive rights which is applicable to all human beings, but which must be granted to the women specifically in India. The list was also clearly addressed by the ICPD Programme of Action in Cairo. The first and the foremost is of standard of health, should be the highest attainable. Even for a woman reproducing, the primary consideration should her life and thus right to life and survival. This includes a right of women not only during pregnancy, but explicitly during pregnancy to have nutritious food and food in adequate quantities. Women also have the right to be prevented/protected from sexually transmitted diseases like HIV/AIDS, cervical cancer, STIs (Sexually Transmitted Infections). This right includes treatments of the diseases also. Security is a right which is granted to every citizen and also counted as one of the reproductive rights. It is very important for a woman to be given the right to decide the number and spacing of the children. With matters relating to sexuality, the decision-making power should be granted which includes free from coercion, discrimination and violence. It's often considered to be a taboo if a woman is pregnant before marriage and then she is forced/coerced to marry the person. In this respect, there should be same right for men and women to marry only if with free full consent. The right to privacy, right to education, right to access the information are some basic rights also extending to this domain. The rights also include counselling, as to what are the shortcomings, the mental and physical changes one needs to be prepared for and for the betterment of the future to ensure a quality of life. Surrogacy and other assisted reproductive techniques are highly used in India these days and have become a reality and there is no more discussion to it with respect to morality and legality. Therefore, they should also be included in the rights of reproductive health to go for any of the methods of pregnancy as desired.

It is highly suggested that the policy makers should take into consideration the reason and root cause of illness amongst the women, which is increasing with each passing decade.

In 1992, Indian government came up with the policy of two child per family and this was aimed at curbing the rapidly increasing population growth of the Nation. With this policy, it was uncertain whether the number of children was still considered to be a right of the women or the couple. This rule, though implemented with the aim

of a highly positive outcome, has failed in many ways, as it resulted in sex selective abortions i.e. preference to male child, desertion of child, forced abortion, etc.

4. ABORTION RIGHTS IN INDIA

In India, more than 7 million abortions are carried out in a year, sadly, legally only 50% of these abortion operations are valid. Globally, 22 million unsafe abortions are reported every year. Between the age of 15-19, 50% of the maternal deaths are because of unsafe abortions. A lady carrying a 32-week baby was forced to deliver the baby of her rapist aggrieved by the decision of the supreme court. Such situations create a situation of doubt on the judicial system and the process of justice, if adequately served.

Premarital sex is not encouraged in India neither morally nor legally. The true facts show increasing number of cases of abortion of unmarried girls starting from the age of 15. Most pregnancies which are unwanted as a result of premarital sex are terminated. The unmarried girls are legally entitled to abortion and in situations where the girl is below the age of eighteen years, the consent of guardian is required.

In 1971, the medical termination of Pregnancy Act was enacted to make abortion as a legal provision under certain conditions. This act was enacted after scrapping down Section 312 of the Indian Penal Code. Only at the willingness of the women, the operation of abortion cannot be performed. The condition precedent is that either the women should have mental or physical threat to herself or the baby so born out of this pregnancy will have such mental or physical abnormalities. Under the Indian law, abortion can be defined in two ways: medical abortions (seven weeks or less pregnancy) and surgical abortions (pregnancy beyond seven weeks).

A baby up to 20 weeks old can be aborted legally even without the consent of the husband. So, abortion be declared as legal but it is still not a right to the women. This would have so if the only factor given paramount consideration is the will of the women which should be free from any compulsion and coercion. The next unavoidable question which arises is how the misuse of this provision is prevented. There should be a committee consisting of law officers, medical practitioners and a woman to understand the reason of abortion and the same should be granted with their consultation and not permission, after all the prime target is safety and sound health of every individual. Right to privacy applies to the

cases of abortion, remarked by a Supreme Court judgment.

In 2016, the government took into consideration a situation of abortion of single women and considered it as a right. The ministry of health highlighted that presently in case of married women, and unmarried women there is a difference of laws. The health ministry suggested the two reasons namely being, "failure of contraceptive" and "unplanned pregnancy", as valid reason of abortion to be extended to single women. Also, suggested change in the duration in which pregnancy can be terminated to be extended to 24 months term because most abnormalities are not detected until the term of 18-20 weeks. Women who seek governmental aid termination of pregnancy are forced to accept the sterilization after the abortion is performed, this practice needs to be stopped. Sterilization is a process which disables a woman from reproducing. Since the MTP act, doesn't extend the above-mentioned reason for unmarried single women, they are denied of their right to safe and legal termination of pregnancy. For abortion of a baby up to 12-weeks, the consultation of one doctor is sufficient, for a baby from 12-20 weeks, consultation of two doctors are mandatory and for a baby above 20-weeks, permission from the court has to be obtained.

Abortion should be performed only at the will of the mother or due to medical grounds. There should be free will of the mother. Women are forced by their husband or family members to undergo sex-selective abortions, discrimination against a girl as unwanted species, such practices though not legal are highly in practice, affecting the women's right and also her physical and mental health by causing trauma. Reproductive rights should also include the choice of not -reproducing and to prevent a women and men from societal discrimination in case of infertility as a disability.

The POSCO and MTP act are in conflict with each other when it is with reference to the minor. As per the provision of MTP Act, in case of minor, abortion can be performed with the consent of the guardian and with the help of recognized medical practitioner and the details of the minor are meant to be anonymous. Alternatively, POSCO, while dealing with any abortion case of minors, imposes a duty upon the practitioners to inform the law enforcement authorities. India is a Signatory to the Convention on Child Rights, UN, 1992, as per which natural or forceful, children should not be involved in any sexual activity.

5. LAWS OUTSIDE INDIA

In countries like UK and USA, abortion has been declared legal and this helps the women to have better health care facilities during abortion. The access to women for safer abortion facilities are increasing constantly and the rights are being reframed to prevent the sanctity of the very existence. It is relevant here to mention that, though abortion has been made legal, USA has not yet ratified the convention on the Elimination of all Forms of Discrimination Against women, which is a convention advocating very peculiarly the right of reproductive health and its elimination.

The country to allow termination of pregnancy legally was Union of Soviet Socialist Republics (USSR) in 1920.

Sexual and reproductive health rights are Human Rights: As a result of poverty, poor governance, lack of awareness, inadequate and insufficient training, lack of workable statutory provisions are some barriers to the proper exercise of these Human rights. Sexual and reproductive health rights have its very core and foundation from the Human rights. Right to life, right to proper health, right of protection against discrimination are some of the contentions in favour of the same.

6. CONCLUSION

Women should be able to reproduce freely, regulate their fertility and also keep up their good health- that is how the reproductive health is defined. There is an urgent need to amend the provisions of MTP act, and also make all provisions of abortions similar and in conformity with other acts, to avoid confusions and doubts. With the increasing number of abortions and awareness of the same, the training program for the doctors should be increased. The court process is extremely slow, which makes it difficult for a pregnant woman to seek permission for abortion, in this respect another agency or doctors or police should be granted with the authority to decide upon these matters within the granted jurisdiction. Abortion thus merely exists as a qualified right, as there is no individual autonomy of a women over their bodies.

Reproductive rights are granted to a woman under the purview of article 21 and there is no explicit rule or guideline dealing with the same. Thus, there are enormous cases where such rights, basic survivals are violated yet no remedy is granted. Right to life, right of protection against discrimination, the right to plan the number and spacing of children are some of the indivisible rights with respect to reproductive rights and should be in

no circumstances be taken away. The law is warmer for single mothers, rape victims, unwed mothers and for women with health concerns.

REFERENCES

1. Proclaimed on 10 December 1948 (General Assembly resolution 217 A)
2. <http://www.un.org/en/universal-declaration-human-rights/>; last visited on 10-01-2021
3. Adopted in 1979, ratified by 189 states and referred to as international bill of rights for women
4. www.ohchr.org; last visited on 10-01-2021
5. <https://www.globalfundforwomen.org/womens-human-rights/#.W64ocmgzblV>; last visited on 10-01-2021
6. <http://www.who.int/reproductivehealth/en/>; last visited on 10-01-2021
7. Held from 5th-13th September 1994, in Cairo, Egypt
8. <https://www.ohchr.org/Documents/Events/WHRD/WomenRightsAreHR.pdf>; last visited on 10-01-2021
9. According to survey of National Family health survey, conducted in 2006
10. <https://timesofindia.indiatimes.com/india/Government-plans-equal-abortion-rights-for-single-women/articleshow/55931155.cms>; last visited on 09-01-2021
11. <https://www.financialexpress.com/opinion/womens-rights-to-reproductive-sexual-choices-why-unmarried-married-women-must-have-same-abortion-rights/473516/>; last visited on 09-01-2021