



“Reproductive Rights Of Women In India: A Constitutional Perspective”

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ABSTRACT

Reproductive rights include the rights or freedom guaranteed to women in relation to reproduction and reproductive health. It is a multifaceted concept that encompasses various terms, including reproductive choice, reproductive rights, procreative liberty and reproductive justice. At its core, reproductive autonomy recognizes the significance of individuals and couple freedom to choose the number and spacing of their children.

This research paper especially focus on women's liberty and autonomy in making decisions about their bodies, health and well- being. The Constitution of India acknowledges these rights as fundamental rights. These rights are crucial for ensuring that individuals, particularly women, have control over their reproductive choices. This research paper further discusses the law changed when the Supreme Court in Suchita Srivastava & Anr. V. Chandigarh Administrator recognized the right to reproductive autonomy as fundamental right, and also discusses the recent judgement K.S Puttaswamy V UOI by the Supreme Court has given the much clarity to the jurisprudence on women's right to bodily autonomy and privacy. The Medical Termination of Pregnancy (Amendment) Act, 2021. aimed to improve access to safe abortion in India. Protecting women's dignity, autonomy, bodily integrity and privacy.

This paper will thus seek to explore the evolving jurisprudence on reproductive rights and the growing call for the liberalization of such rights, outline the concept of gender justice with reference to the role played by the Supreme Court of India to meet global legal standards of rights of women, and an analysis of the aforesaid case wherein the court dealt with the social stigma on unmarried women. The paper also seeks to delve into the philosophical discourse and ethical dilemmas women have to endure as regards their reproductive autonomy and its challenges in a multicultural society.

Keywords: Abortion, Equality, Medical Termination, Privacy, Reproductive rights.

Introduction

Reproductive rights of women are an integral component of human rights, encompassing the freedom to make deliberate choices concerning their reproductive health, free from coercion, discrimination or violence these rights are vital to women's empowerment, equality and overall well being, enabling them to control their bodies lives and futures.

Human civilization has its base in living being which includes men and women along with other components of the society. The male and the female both lay foundation of happy and healthy marriage. Although the symbol of love, coverage and strength in women, yet the present circumstances reveal that she has to constantly fight for recognition of her rights all over the world. Reproductive rights take much important place in today's era as the act of reproduction and the assistive process associated with it determine the position of woman in the society. It is said that the task of strengthening the women in complete manner will not stand accomplished unless and until they are given power to control their bodies completely without any interference from any other person.¹ It is become essential to provide the reproductive rights to woman so that society in our society the concept of gender equality and women empowerment are established in our society in its real sense.

Definition and Meaning of Reproductive Rights

Bodily autonomy in this context refers to the freedom of a woman to make decisions and choices about her sexual orientation and the exercise of her reproductive rights, in the absence of any abuse or coercion. This understanding is based on the principle of how one defines coercion and abuse, and the interpretation of choice is crucial. Informed consent and right to confidentiality extensively increase the freedom of choice of choice in healthcare services. And for the exercise of these rights, healthcare professionals and service providers are obligated to fulfill a number of allied responsibilities.² They must respect the women's right to refuse treatment, and provide her with information about the intended healthcare therapies and available alternatives in order to obtain her informed consent. Subsequently, they also have a duty to maintain confidentiality so that the woman can make choices unaffected by those who might not consider for her best interests.

1. Manoj Sharma, "Right to life vis-a vis Right to Abortion, An Analytical Study" 18 CILQ 410 (2005)
2. Dr. Carmel Shalev, Rights to Sexual and Reproductive Health - the ICPD and the Convention on the Elimination of All Forms of Discrimination Against Women, INTERNATIONAL CONFERENCE ON REPRODUCTIVE HEALTH, 1998.

Women have a right to full disclosure regarding all the medical care options available to them, including the disclosure of any probable undesirable effects as well as the probable benefits of the recommended treatment and can also exercise the option to decline treatment.¹

According Merriam Webster's Law Dictionary the term reproductive rights as "a women's right to choose whether or not she will have a baby."²

According to the WHO, "Reproductive rights rest on the principal of the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have information ant to do so and the right to attain the highest standard of serval and reproductive health."³

Thus it can be said that under the shed of the reproductive rights of both males and females get the power to control their own bodies and make free choice with regard to their own physical and mental health.⁴

The first principle is women's reproductive health care. It is essential for empowering individuals to safeguard their reproductive well-being, make informed decisions about their health, and create a healthy and resilient foundation for the rent generation. The second in self-determination unbodies the fundamental right to autonomy over one's own body, enabling women to make empowered decisions about their lives, including choosing whether to marry or remain single, deciding whether to bear children, adopt or remain childfree and exercising control over their reproductive health and well-being. Self-determination recognizes women's autonomy, dignity and capacity for self-governance, enabling them to shape their own lives and futures.

In conclusion, reproductive rights of women are fundamental human rights, essential for promoting gender equality, empowerment and overall well-being. The Indian constitution and international human rights frameworks provide a foundation for safeguarding these rights, emphasizing the importance of reproductive autonomy equality and access to safe and affordable reproductive healthcare services.

1. Id.

2. "Reproductive rights." Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/reproductive%20rights>. Accessed 2 Mar. 2025.

3. <https://www.who.int/news/item/16-05-2024-sexual-and-reproductive-health-for-all-20-years-of-the-global-strategy>.

4. Sexual and Reproductive rights, available. at "https://www.amnestyvsa.org/pdf/sexualreproductiveriths/pdf_(last visited on feb 24, 2025)

Reproductive Rights under Human Rights.

Understanding reproductive rights necessitates recognizing that they encompass fundamental rights. The reproductive health of the female can be protected if there exists equality in every sphere between men and women.¹ If we want to protect the reproductive rights of the women it is important that their human rights are also protected. Human rights always try to protect the life and liberty of the human being and lead a dignified life which is not to reduce to base animal existence. Reproductive rights can be claimed and exercised in a healthy manner if life and liberty of female is protected in complete manner. In other words, it signifies the duty on the part of the state to establish such social order where law is able to keep safe the females so that they can exercise their reproductive rights in a safe and sound manner.²

There are some ingredients which establish the Co-relation between the reproductive rights and the human rights and are recognized under the international instruments are discussed in detail as follows :-

1. Right to autonomy and self-determination: freedom to make choices about one's own body, health, and well-being.
2. Right to equality and non-discrimination: equal access to reproductive healthcare and freedom from discriminatory practices.
3. Rights to privacy and confidentiality: Protection of personal and medical information related to reproductive health.
4. Right to freedom from coercion and violence: Protection from forced marriage, forced pregnancy, and other forms of reproductive coercion.
5. Right to education and information: Access to accurate and comprehensive information about reproductive health and rights.
6. Right to healthcare and services: Access to quality reproductive healthcare services, including contraception, maternal healthcare and abortion services.

The above-mentioned rights along with their legal and technical aspects are discussed in detail to understand the objectives of incorporating such rights along with their success rate at national and international front. These rights are also essential ensuring that individuals, particularly women, can exercise their reproductive rights and make informed choices about their reproductive health.

1. Rickie Solinger, Reproductive Politics: what everyone Needs to know 122 (Oxford University Press, London, 2013)
2. Subhash Chandra Singh "Reproductive Rights as Human Rights: Issues and challenges" 31 Is LJ 59(2005)

Reproductive rights under The Constitution of India

The constitution of India object to protect the life, liberty and dignity of the citizens of India. The ideas of social economic and political justice to all the citizen of India including the women are highlighted in the Preamble. After independence, The Constitution of India is the guardian of the life, dignity and reproductive freedom of the women. So it is more essential to discuss these concerning articles which protect the life, liberty, dignity and the reproductive freedom of the women. These articles are.

Article 14- It is most crucial articles of the constitution of India.¹ The Indian constitution guarantees the right to equality before the law and equal protection of the law. Reproductive rights including access to safe and legal abortion, contraception and maternal healthcare are essential components of the right to equality. The Supreme Court of India has interpreted Article 14 to include reproductive rights emphasizing that.²

1. Equality in access to healthcare. The state must insure equal access to healthcare facilities. Including reproductive healthcare service.
2. Non-discrimination: The state must non-discrimination against individuals particularly women in accessing reproductive healthcare services.
3. Autonomy and decision-making: Individuals, particularly women have the right to make informed decisions about their reproductive health free from coercion or under influence.

The *Air India Vs Nergesh Meerza*³ case is a landmark judgment that tackles gender discrimination and reproductive right in the workplace. The case revolves around Air India's employment regulation that forced female air hostesses to retire at the age of 35, or if they got married within four years of service, or upon their first pregnancy. The Supreme Court observed that the reproductive rights of the women occupy much important place and no one can prevent the women from exercising their reproductive rights in their lives. The opposite gender does not come across such discrepancy.

1- Refer Article 14 of The Constitution of India which states, "The State shall not deny to any person equality before the law or equal protection of law within the territory of India."
2- Suchita Srivastava V. Chandigarh Administration (2009)
3- 1981 Air 1829, SCR (1) 438.

Article : 15 contains provisions for a specific implementation of the ordinary doctrine of “equality of treatment” embodied in Article 14, Article 15 (2) talks about prohibition of discrimination to public places on basis of certain grounds. Such as race, caste, sex, birthplace etc Articles 15(1) and 15(2) embodies an exception to the general principle against discrimination where Article 15(1) and 15(2) expressly asks citizens to avoid any kind of discrimination on the basis of sex, Article 15(3) confers upon the state a duty to grant and protect rights of women and enforce laws to facilitate encouragement and amelioration in the status of women.

In Indian young Lawyers Association And others Vs State of Kerala and others ¹ (Sabrimala Temple Case) in that case which was raised against banning the entry of menstruating women in Sabrimala temple ultimately pushed the court to set up the precedent of considering the prohibition of women who bleed as direct attack upon womanhood and ultimately paved way for opening entry of such women in the Sabrimala Temple.

Article 15(4) enables socially and educationally backward classes. It is an enabling provision. It confers discretion on the state to make special provision. The Supreme Court of India always of causes its attention on the enabling provision of the constitution and asks the Central and State Governments to make such policies and agendas which aim to improve the reproductive health of the women. In Centre for enquiry in Health and Allied Themes (CEHAT) Vs Union of India ² The Court held that the reproductive right health of the women can be improved by creating awareness among the women and providing them with the right kind of knowledge and education. The Court gave direction for publishing the information via the means of advertisement on electronic and social media so that illiterate women also come to know the negative Consequences of killing the girl child after giving her birth or aborting the girl child in the womb.

Article 21 This article is considered as one of the important and crucial article which aims to preserve life, liberty and dignity of human existence This article is the most dynamic and progressive provision of our living Constitution.

1. (2019) 11 Scc 1

2. 2003 (8) Scc 398

In landmark judgment of Justice K.S. Puttaswamy Vs Union of India held that right to privacy is integral part of Article 21 of the constitution of India. The reproductive rights are extended version of right to life and liberty and more particularly, the right to privacy. Therefore the Indian constitution confers upon women freedom to make reproductive choice in order to preserve their fundamental right to privacy.

In Suchita Srivastava Vs Chandigarh Administration¹, the Supreme Court held that the determination of extent and limitation court of “woman’s right to make reproductive choices” in view of the “right to privacy” preserved to be a crucial domain of “right to personal liberty” under Article 21 as also constitutionality of the Medical Termination of Pregnancy Act, 1971. Talking about ‘personal liberty’ as is clearly expressed under Article 21 of the India constitution, it was state by the Apex court that a woman shall have the power to protect her dignity and also make decision whether to procreate or resist from procreating.

Article 23- guarantees “the fundamental right against exploitation.” It means that neither the state nor any private person can infringe anyone’s fundamental right or exploit the other. Thus article 23 restrains trafficking in human beings, beggar and other equivalent kind of forced labor trafficking of the human beings especially of the women directly encroach and attack the reproductive freedom of women because the women are trafficked are physically. Mentally and sexually abused.

Article 39 (e) – Not only the Fundamental rights, but the Directive Principles of State Policy equally object to preserve the health of human beings. In Seenath Beevi Vs State of Kerala¹ the Kerala High Court while stressing upon the health of male and female workers held that Article 21 of the Indian Constitution enshrines the right to secure health of worker and is the integrated and deep-rooted part of Article 21.

1. AIR 2010 SC 235

2. AIR 2017 SCC 1

Article 42- aims to provide maternity benefits to the pregnant women become important part of the reproductive freedom of women, hence it becomes essential for the Government of India to lay down such policies which aim to provide all kinds of maternity benefits to the pregnant women. In *Municipal Corporation of Delhi Vs Female Workers*¹ The Supreme Court, very clearly, held that the women workers, who are in state of pregnancy in its advanced stage, should not be forced to indulge into hard labor activity, because it might prove to be harmful for the health of pregnant women and might also harm the development foetus. Moreover, the Apex court also directed the workplace authority to remain strictly vigilant in this concern.

The court also held that the respective state and the Central Government should make efforts to implement the provisions laid down in Article 42. So in this case the women employed on muster rolls were permitted to claim all the maternity benefits like regular female workers. The Maternity Benefit (Amendment) Act, 2017 has increased the maternity leave to be granted under Section 3 of the Maternity Benefit Act, 1961 from twelve weeks to twenty-six for the first two children and under section 11-A the provision of creche facility is also provided now.

Article 51-A (e) Apart from the fundamental rights and the directive principle, the fundamental duties also give importance to the life and dignity of women. Article 51-A(e) aims to shun all those practices which may prove derogatory for the female. In *State of Maharashtra & Ans Vs Indian Hotels & Restaurants Assn.*¹ the issue in question before the Supreme Court arose regarding the ban imposed by the Maharashtra State Government on dance performances by women in pub bars, eating houses and beers bars in the State of Maharashtra. The Apex Court held that even though the state and citizens of India are duty-bound to shun all those practices which operate against the dignity of the women yet in this case it was objected to introduce various ameliorative measures that would aim at bringing dynamicity in the conditions of such women who worked as bar dancers.

1. AIR 2006 (4) SCC 2705

Conclusion

This all the above provision of the constitution of India clearly talks about empowerment and upliftment of the women in one way or the other. The concept of socialism inscribed in the India constitution with the adjacent and parallel purview of democracy aims to remove all kinds of social hardships in terms of economic imbalances or health issues which are adjudged to account for discrimination prevalence in ordinary society at large. The State has empowered by the constitution to allow reasonable discrimination but in favour of women in every aspect of its operation and to ensure equality of status to women without considering any in proper ground for discriminating them. In spite of changes in society, access to healthcare facilities is restricted by resource limitations. A necessary component of true equality and freedom is expanding access to medical professional and healthcare facilities. In its capacity as the guardian of the constitution, the India judiciary-particularly the Supreme Court has taken the lead in defending minorities and preserving that multicultural spirit of nation. The government has been obliged to steer away from population control measures and consequently challenge the discriminatory assumptions that limits the women's authority, and instead prioritize their rights to dignity, autonomy, and bodily integrity in laws and policies linked to reproductive health, prolonged trial periods and the challenge of implementing judgments are just two of challenges that come with litigation.

