

## Conceptual Contours of Human Rights and Reproductive Freedom of Women in India

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**Pratibha Vijay**

Research Scholar Apex School of Law, Apex University, Jaipur

**Dr. Uma Shanker Sharma**

Associate Professor (Supervisor) Apex School of Law, Apex University, Jaipur

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### Abstract

The topicality of the subject, its scope and its importance were solid reasons to put this on paper - Reproductive Rights and Women's Health: a whole new perspective. For this reason, the broad outlines of the subject are based on the social and legal situation of women, especially in the Republic of India. The stereotypical position of women and thus the dynamic dimension of women's struggle for their rights at the time made this subject very fascinating. It is even very useful because reproductive law is at the heart of women's rights and their freedom. Emancipation of women is not complete without assuring the reproductive rights. Once women have control over their body they can use all other rights. Women will be physically and mentally free when they are ready to take the call about their bodies themselves. Women's human rights are often non-hereditary, but they will exercise their right to procreation.

### 1. Introduction

The current work focuses on the invisible space of women's struggle for their rights, rights that are particularly fruitful. Theoretical analysis is given and particular importance is given to women's rights and this concept is supported by various approaches to the subject in the literature. The construction of women's right and their struggle for equal status within the society is incomplete without understanding their desire to make a choice in every area, whether it is their education, career, marriage or sexual activity. They must be assured of the right to demand a call in their lives associated with the reproductive right is an asset for ladies to achieve this goal.

It is impossible to rethink the fact that women face several injustices and inequalities in the world, each in terms of protecting and promoting their rights. The most unnoticed part of this reality is their health. This reality shows that it is necessary to select a specialty specialized in women's health problems. In

addition, women suffer from health problems generally attributable to their ability to reproduce. For this reason, after mentioning women's rights, it is essential to specialize in women's reproductive health, as women's rights are incomplete without recognizing women's reproductive rights. The successful right of women will become a very important instrument to alter the status of women in the society.

The issue of the reproductive right is extremely important because of the lack of concern on the part of the government and the lack of awareness within society to recognize and defend this right. It is not possible to achieve freedom and rights for women without guaranteeing them reproductive rights. There is little doubt that the subordinate position of women in India encompasses a direct impact on women's health. Women don't have access to health facilities. There is a scarcity of awareness among women about the standard of health and jointly the facilities in the market for good health. In reality, women bear an inconsistent burden thanks to their

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health issues (including the power to reproduce) and fail to participate effectively with in the development effort. The social, cultural, and political structure of society prevents women from enjoying the fundamental right, the right to health. For the overall development of the nation, it is necessary that women's health, which is particularly reproductive, be taken on priority by the government, because only a healthy mother can give birth to a healthy child.

## 2. Objective of the study

The object of the research is to explore the extent to that freedom within the matters of reproduction is granted to the individual. the problems arising out of reproductive freedom aren't simply legal however conjointly social, non secular and moral. the world of the study would be to explore the issues and their solutions within the matters of reproduction particularly in relation to right to conceive and right to abortion. The enormoussness of the topic would necessitate restrictions on the scope of study. it's projected to limit the scope of study in the main to human rights problems. the main objectives of the study are:

1. to make awareness among individuals concerning their rights.
2. to check the requirement and abstract contours of reproductive freedom and its evolution through ages.
3. to check the scope of reproductive freedom because it not solely includes right to conceive however conjointly right to abortion and different allied matters.
4. to look at the present international standards on reproductive freedom and their influence on Indian legal and policy framework.
5. to judge national policies, legislative and body measures in relation to reproductive rights in India.
6. to check the role of judiciary in recognizing reproductive freedom in India.

7. to find numerous lacunae within the implementation and social control of the laws regarding reproductive freedom and to recommend numerous steps to create it more practical for achieving the required results.

## 3. Research Methodology

The quality and value of research depends upon the right and explicit methodology adopted for the completion of analysis. The methodology applied within the study is each belief and analytical. to create the findings of the study and to achieve a significant conclusion, a attempt has conjointly been created to debate, examine, analyse and critically value completely different provisions of varied legislations, that are regulated beneath Indian Constitution, Indian penal code, 1860, The Medical Termination of pregnancy Act, 1971, Prohibition of child marriage Act, 2006 and Pre- Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex- Selection) Act, 2003 and therefore the issues and flaws in this as known.

Greater stress, during this study, has been on secondary data. numerous books, articles, reports, analysis papers, journals, determined cases etc. were collected, assembled and analysed to trace the event of the thought of reproductive freedom, the international standards and to access the impact on these international measures on India.

### Concept of Reproductive Freedom

The beginning of the formation of the family is also either the marriage, or the parenthood, or each. Since sexual activity is paramount to the existence and survival of humanity. Therefore, the requests associated with human reproduction area unit of significant importance and involve each the relationships and society as a whole. it is essential to guarantee the reproductive rights of women, because the flexibility to freely determine associated with sophisticated the quantity and spacing of children is "the beginning in women sanctioned to exercise different selections".

Reproductive freedom as understood in today's society is the capacity to separate sexual activity from leisure. the right to create selections regarding sexual activity can be a fundamental right, due to the

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fact that it is essential to an actualised thought of the free individual, and if any right is undoubtedly necessary to an individual's freedom, that is to say, to the power to direct one's very own life, it is to think about the basic. With the advent of contemporary contraceptives and pills, most reproduction occurs either through alternative or failure of contraception. while the mental object still fuels reproduction in youngsters, adults conceive only after opting for or failure occurs. consequently, reproductive freedom is the freedom to possess children or to avoid having them. although usually expressed or supplemented in the context of some, it is first and foremost a personal interest. it must be distinguished from freedom in the adjunct aspects of reproduction, such as freedom in the conduct of gestation or selections of where or how children are born.

## Women's Human Rights: Origin and Development

Human rights for women, as for all individuals measure protected within the tenets of law of nations and also the international conventions give the chance for presidency to form or repeat declarations of commitment. however tragically, women measure most frequently those whose human rights measure desecrated and that they can ne'er gain full dignity till their human rights measure really revered and guarded. The causes and consequences might take issue from nation to nation, however prejudices and discrimination against women still be widespread and involve the complete vary of human rights violations famed to the modern world.

Women suffer discrimination on each sex and gender grounds. Sex is set as a matter of biology, however gender could be a product of social construction, culture and scientific discipline. several languages judge gender to things, recognizing them to possess a masculine or a female character, whereas some use term gender in neutral kind. On the far side language its characteristics and activities are often classified as basically masculine or female. Masculine activities square measure related to strength, firmness of can, consistency, and, as an example, courage. Activities of law-making, politics, warfare, trade, and higher cognitive process, as well as medical higher cognitive process, measure seen as masculine and

ladies United Nations agency measure engaged in these activities seem to act artificially. Naturally female behavior is inventive, emotional, fickle, and indecisive, conjointly sensitive, nurturing, and caring. Traditionally, laws were wont to exclude women from membership in such male-gendered establishments as universities and medical colleges, and to stop them from connection the legal, military, and clerical professions. Ladies consequently suffered express discrimination supported sex and implicit discrimination supported gender. In the context of recent reproductive rights conjointly, women still suffer, each sex and gender discrimination. Women square measure thought-about incapable of prudent higher cognitive process regarding abortion, access to that remains wide ruled by legislation formed by male values, and women's resort to sterilization and birth prevention is usually obsessed with a husband's authorization.

A assumption of feminist theory is that women have the control to reproductive freedom and management over their own bodies, which this 'freedom- right-control' is vital if they're to possess complete civil right in society. Though their concern is the most amount for the high birth rates within the developing nations as for the essential rights of women, those that measure active within the birth control movement are more and additional job for generative freedom for women. While feminist thought acknowledges the importance of reproductive rights, the feminist definition of reproductive rights is just too slender as a result of it doesn't includes the voices of women of colour and divides women in their efforts to attain reproductive rights. Feminists have outlined the fight for reproductive freedom around access to birth prevention and also the right to a secure and legal abortion. though the feminism embraces reproductive rights, it fails to ascertain a broad reproductive right agenda around that all women will rally. In general, most women of minority read the abortion rights movement to be "white woman-led and white woman- outlined. Consequently, the 'coloured' reproductive rights movement has fought to expand the feminist movement's definition of reproductive movement. Critical race feminist students have long petitioned for a broader definition of reproductive freedom that features the power of women in touch of children, to conceive,



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to hold a foetus, to possess associate degree abortion, to deliver a baby, and to care for a child.

International human rights law prohibits discrimination against women in their enjoyment of all human rights and elementary freedoms. whereas fairness is a vital part to the conclusion of women's rights, its comparative approach measures women's equality against men's enjoyment of rights, reinforcing the masculinity of the universal subject of human rights law, whose rights measure absolutely promoted and expressly giving protection. it's to the extent that violations practiced solely or primarily by women, not even measure expressly recognized within the introduction of the human rights instruments. Wherever they're treated as sub-category of the universal and developed as 'protective' measures instead of as human rights. There are efforts to handle the ensuing marginalization of women's rights, as well as the adoption of the Convention on the Elimination of All types of Discrimination against ladies and also the mainstreaming of women's human rights. whereas these efforts are productive in several respects, there are continued abstract and sensible issues, including, not solely the restrictions of anti-discrimination law, however conjointly the danger that specific recognition of women's rights violations might merely reproduce women's secondary standing.

## Sexual health and well-being

Although sexual and reproductive health rights overlap to some extent, notably in regard to data and services about contraceptives, abortion and sexually transmitted diseases; nevertheless, the scope of sexual health is a lot of expansive. Sexual health and well being is recognized as an indivisible by facet of human rights, with its roots within the right to health. The term 'well being' confirms that its domain isn't restricted to unwellness hindrance and treatment, however includes aspects relation to autonomy and pleasure with reference to sex.

Recognized *ab initio* in conjunction with reproductive health, sexual health has evolved into a definite thematic space that has physical, psychological, social and medicine aspects about sexuality; and therefore the linkages of every of those aspects with material and social conditions

that form access, experiences and health outcomes of various population teams.

The intersections and linkages of sexual health with totally different thematic fields are affirmed, detailed by totally different thematic accord bodies and special mechanisms. There is growing recognition that besides women – different victims of gender primarily based violence embody youngsters, persons with non-normative sexual orientations or gender identities, which vulnerability to violence is exacerbated by disabilities, legal status, conflict things, and social and economic standing.

The inter-dependant net of sexual health rights includes the provision more matured acceptable, scientifically correct sex education, data and health services, unwellness hindrance and treatment like of HIV/ AIDs and sexually transmitted diseases (STI). It additionally includes protection from gender-based violence, respectful of the evolving capacities of adolescents, and therefore the desires of persons with disability.

International human rights standards demand that Sexual and reproductive Health (SRH) services ought to be available, accessible, acceptable and of good quality (AAAQ). Stigma around sex, legislating of same-sex and adolescent sexual expression, and legal ambiguity around sex work renders specific population teams like LGBT persons, adolescents, persons with disabilities, and sex workers a lot of vulnerable, antagonistic them from sexual health services, whereas magnifying abuse and violence in their lives. Once the few do access these services, they confront a time of violations and degrading treatment that serves to penalize those that request health care. AN assessment of access to tending services additionally unconcealed an absence of sensitivity among healthcare providers towards the sexuality of those population teams.

These factors additionally discourage these population teams from seeking health services like blood tests for HIV and different STIs. The section on HIV/AIDS hindrance additionally underscores the necessity to expand the main target of intervention programmes to incorporate adolescent girls and women, on condition that there's a

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disconnect between public health programmes on family planning and people on HIV/ AIDS.

Scientific and unbiased data around sexual health may be a pre-condition for creating aware sexual selections, have interaction in sexual activity practices, and stop unwellness – all of that area unit elementary to making sure sexual health. Age-appropriate Comprehensive sexuality Education (CSE), that encompasses problems like gender relations, roles, identities, body and relationship of the self with the body, positive and negative sexual contact, damage and pleasure, unwellness hindrance, amongst others, is wide recognized because the approach of sanctioning youngsters and young persons in colleges to become aware of their bodies, personal hygiene, gender identities moreover as sexual activity practices. However, international intelligence agency as per international standards has not nevertheless been enforced anyplace in India. Age acceptable sex education for adolescents has featured appreciable resistance from some quarters.

Protection from sexual violence and from the regulation of one's sexual autonomy has additionally been recognized as intrinsic to sexual health rights. However, despite important reforms, the law continues to be not consistent in distinctive accordant sex from non-consensual sex. The law doesn't uphold sexual autonomy of adults since it neither criminalizes all kinds of non-consensual sexual contact, nor decriminalizes all accordant sex. supported a moral understanding of fine and dangerous sex, the law obstructs legal redress from sexual violence to persons with non-normative sexual orientations and gender identities, sex staff, and to girls in regard to marital rape with the exception of limiting legal redressal, the standard of redressal has additionally been referred to as into question, for inadequate victim care and compensation.

## **Definition of Sexual health**

WHO defines sexual health as: “...a state of physical, emotional, mental and social well-being in reference to sexuality; it's not just the absence of sickness, disfunction or frailty. Sexual health needs a positive and respectful approach to sex and sexual relationships, still because the risk of getting

*gratifying and safe sexual experiences, freed from coercion, discrimination and violence. For sexual health to be earned and maintained, the sexual rights of all persons should be revered, protected and consummated.”*

Consensus on the definition of sexual health by the World Health Organisation (2010) has been growing, and also the right is currently understood to incorporate inside its scope linkages with positive sex, sexual relationships and sexual rights.

As sex altogether its diversity shapes the sexual health outcomes of individuals, it's a big concerning fulfillment of sexual health. The subsequent operating definition of sex has been projected by the WHO: “...a central aspect of being human throughout life encompasses sex, gender identities and roles, sexual orientation, eroticism, pleasure, intimacy and replica. Sex is fully fledged and expressed in thoughts, fantasies, desires, beliefs, attitudes, values, behaviours, practices, roles and relationships. Whereas sexuality will embody all of those dimensions, not all of them are forever fully fledged or expressed. Sex is influenced by the interaction of biological, psychological, social, economic, political, cultural, legal, historical, spiritual and religious factors.”

## **Reproductive health and rights**

Reproductive rights as human rights have been progressively recognized since the Declaration of the International Conference on Human Rights in 1968 and by the International Conference on Population and Development in 1994. The International Covenant on Economic, Social and Cultural Rights, 1996 (ICESCR) and also the Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW), has also put forward the primary objective of reproductive rights as necessary to realize the human rights of girls.

India is the soul of these covenants and conventions is expected to ensure that these goals are incorporated into its policies and laws. Compliance with national laws and policies related to RHRs presents a mixed picture of compliance in addition to huge gaps. for example, up-to-date evidence from the bottom in addition to because the mapping of

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policies and programs reiterates the ongoing implementation of goals in the "family planning programmes," resulting in clear types of violations of reproductive rights and autonomy, particularly of women from marginalized communities.

Laws on voluntary medical termination of pregnancy (abortion), protection against forced or sexual choice, limits on motherhood, protection against violence as well as sexual violence by the intimate partner nursing associate, etc. have direct or indirect impacts on women's enjoyment of reproductive health rights. Many considerations are raised regarding the inadequacy of these laws. However, the fact that the implementation of these laws has also been grossly inadequate is clearly reflected in the case studies, government information and independent analysis.

While there has been a planned widening of focus to incorporate completely different life stages and transcend maternal health, as within the National Health Mission (NHM) (2012-2017) including reproductive Maternal Neonatal Child and Adolescent Health (RMNCH) programme, the RashtriyaKishor Swasthya Karyakram (RKSK) strategy additionally because the recent within the National Health Policy 2017, ground realities and assessments of the general public aid system give proof to the contrary. The slender target terribly selective parts of maternal health and planning have flagged serious considerations regarding the deficit of take care of different aspects of reproductive health and rights.

Further, the public health system in country is challenged by a spread of problems together with low public investment, poor infrastructure together with medicines, diagnostics; inadequate versatile human resources, etc. to boot, the past decades have witnessed increased privatization and corporatization of health care, Associate in Nursing an absence of sturdy regulation. All of this has caused deterioration within the accessibility, affordability and quality of aid, together with for reproductive health desires, making more social, economic and geographical distances notably for women, girls and marginalized communities. Inequities in access to generative aid and health outcomes in India are unit apparent for vulnerable teams, additionally as between and inside states.

Even in states wherever overall averages area unit up, marginalized communities and poorer economic quintiles of the population, and among them the girls and women, still fare poorly.

Assessment of government schemes and programmes associated with reproductive health yielded a embarrassment of programmes cutting across the areas of planning, maternal and child health, adolescent health, etc. Analysis of schemes, policies vis-a-vis the involved problems with reproductive health and rights additionally pointed to the shortage of comprehensive programmes and restricted application of RHR in their implementation through health and different allied services. Reproductive morbidities stay grossly neglected inside government schemes and policies. Similarly, access to safe, quality abortion services, together with data, counsel and post abortion care area unit considerably lacking. Early wedding and its negative outcomes for reproductive health and rights has additionally remained a neglected space.

## 4. Conclusion

Reproductive freedom is considered important to achieving equality between women and men. However, this idea has not been adequately addressed by international bodies, which have the power to interpret the contours of human rights and humanitarian law standards. Human rights law cannot be used as a magic wand, but its doctrines should be used to encourage governments to deploy their resources to promote most human rights on a non-discriminatory basis. For too long, government policies that fail to produce information and thus have a negative effect on maternal and child health have been widely criticized internationally. Therefore, the government should be responsible for leadership at the national and indigenous levels. If international treaties and developing norms are to be measured by their own impact, they must be incorporated into national laws and policies and used by national courts, health departments, health care providers, and other state holders.

The focus on women health needs, nutritional status, danger of early marriage and child bearing is a sensitive issue and requires imperative attention if the status of women is to be improved. At an equivalent time, there is a desire to generate



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information on health care at the grassroots level through a huge outreach program. In addition, there is a desire for an appropriate legal framework to address and recognize the promotion and protection of the reproductive rights of women in India. There is a need for the government. to require an initiative to form a reproductive right as a major concern in health policies since the reproductive right is that the indicator to capture the status of women within the society.

There is a need to have access to applicable, low-cost, quality health care facilities and connected services for women. There is a desire to have proper monitoring of health programs, whether or not they reach every corner of India or not particularly rural elements of India. There is a desire to own the proper implementation of laws and programs that have been created for the health of individuals and the special care needs for women's health. there is also a need to have door-to-door services for a monthly health check-up for women, so that WHO cannot afford to go to the hospital to get the essential treatment. Overall, there is a willingness to raise awareness of women health issues as a vital Central or State issue. Health awareness programs should be created with an additional results-oriented theme. The right to health must be placed in a very central objective within the priority of the State in order to promote the status of women and protect their rights.

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