



Right to privacy vis-a- vis Women's right to make Reproductive choices

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Abstract:- Reproductive Rights rests on the recognition of certain indispensable basic human rights of all couples that provides ability to persons to have access to information about one's reproductive rights. A reproductive right addresses matters concerning sexual and reproductive health & provides liberty to persons concerning control of decisions concerning children birth and reproductive health; sterilization and fertility treatment. We believe that change begins with empowering women to take decisions freely without any discrimination and coercion. Today, women have right to decide whether, when & how many children they want. In India, abortion is not seen as a basic right. of a woman & people fail to understand the privacy of a woman. Also, Laws in India are not liberal enough for a woman and does not allow a woman to take decisions freely. Hence, women in India are denied of their right to life and personal liberty.

Key words:- Recognition; Reproductive Rights; Sterilization; fertility; Empowering

1. **Introduction:-** Women reproductive rights are crucial for empowering women to take decisions concerning their own bodies and health. In general terms reproductive rights are the rights relating to reproduction which provides privilege to the person to achieve reproductive health as well as to decide whether to reproduce or not. It also includes various other rights such as:- Right to plan a family; Right to terminate pregnancy; Right to use contraceptives; Right to achieve sex related education in public schools; gaining access to Reproductive health services etc. It has been proclaimed that essential & deep-rooted respect, nobility, basic and indisputable freedoms for siblings concerning one's house that is the core of liberty, decency, unity & placidity for a Nation. We have several municipal and international laws to protect and promote reproductive Rights of women, yet problem of violation of women's right continue to exist.

2. **What are Reproductive Rights:-** Right to reproductive choices refers to, women's right to choose whether or not to reproduce, including the right to decide whether to carry or terminate an unwanted pregnancy and right to choose their preferred method of family planning and contraception. Women's sexual and reproductive rights are the legal as well as indispensable rights. Woman cannot be denied freedom to exercise these rights. Every women has right to take decisions concerning reproduction free of discrimination, coercion and violence. Women's reproductive rights may include the following rights:-

- The right to Legal and safe abortion;
- The right to birth control;
- Freedom from coerced sterilization and Contraception;
- Right to access good quality reproductive health care services and
- Right to education and access in order to make free and informed reproductive choices

Reproductive rights began to develop as a subset of human rights at **United Nation Conference on Human Rights in 1960¹**.

These rights are legal rights. We believe that change begins with empowering women to take decisions freely without any discrimination and coercion. Today, women have right to decide whether, when & how many children they want. But it is unfortunate that even in many parts of India women is still facing new challenges like limited access to contraception's; safe abortion & reproductive health care services. In Indian Society, gender inequality manifests in many ways. Such as- Sex selective abortion, child marriage, domestic violence, dowry system, sexual harassment, lack of property rights etc. In many societies, even women are not allowed to speak for themselves.

3. **Surrogacy and Reproductive Autonomy:-** Surrogacy is a method of assisted reproduction whereby a woman agrees to become pregnant for the purpose of gestating and giving birth to a child for others to raise commercial surrogacy. Concept of surrogacy is not new. In India, womb for rent is a growing business. It is very difficult to test whether these women are exercising their own personal rights or they are forced to become surrogate mother due to their family members to fulfill their material and financial needs. Surrogacy as a new Assisted Reproductive Technology (ART) has developed in India and has become common among couples who are unable to conceive.

¹ Main United Nation bodies dealing with Human Rights adopted this convention and recognized the civil and political rights as human rights

In context of Privacy judgment in recent trial **Justice Puttaswamy Vs Union of India**, the nine judges Bench of Hon'ble Apex Court did not expressly mention surrogacy, but it affirmed existing Privacy Laws which has recognized personal decisions about birth of babies as being part of reproductive autonomy.

In case of **B. K. Parthasarathy Vs State of A.P.²**; the Hon'ble Apex Court has explicitly recognized surrogacy as a method of reproduction, thus bring it within the reproductive aspect of Privacy Rights.

4. **Abortion and Reproductive Autonomy:-** In context of Privacy judgment in the case of **Justice Puttaswamy Vs Union of India** ³(2012) SC, on 24 August, 2017, a nine judge Bench of Hon'ble Apex Court unanimously affirmed Privacy as a Fundamental Right under Constitution of India. It held privacy to cover personal autonomy relating to body, mind and to make choices and to informational privacy. A key aspect of personal autonomy is reproductive rights which entail right to make sexual and reproductive decisions as recognized by UNICPD (United Nation International Conference on Population and Development) in 1994. These Rights include: -

- The right to legal and safe abortion;
- Access to contraception;
- Right to make decisions concerning reproduction free of discrimination, coercion and violence

This verdict recognized women's right to make reproductive choices as a part of personal liberty under **Article 21 of Indian Constitution** i.e. women's right to make decisions regarding her own body.

5. **Conditions where Pregnancy can be terminated under MTP Act, 1971:-** Under the Medical Termination of Pregnancy Act, 1971 Pregnancy can be terminated by the registered medical practitioner where:-

- ❖ Where the duration of pregnancy doesn't exceed twenty weeks, if such registered medical practitioner is, or
- ❖ Where the duration of pregnancy exceeds twenty weeks but doesn't exceed twenty four weeks, if not less than two registered medical practitioners are,

Of opinion, formed in good faith that:-

A. Prolongation of pregnancy would involve risk to the life of the pregnant woman or that pregnancy would cause grave injury to the physical or mental health of the concerned woman, or

B. That there is substantial risk to the issues to be born & it would suffer from such physical or mental abnormalities as to be seriously handicapped.

Such abortion can be done with the consent of the concerned woman if she has attained the age of 18 year but if she is below 18 years of age and is not capable of giving valid consent I.e she is of unsound mind then the consent of the guardian is needed. The consent of the husband is not required to undergo an abortion or to terminate pregnancy. In case of such abortion doctors or the hospital authority is under obligation not to disclose such information in public so such information has to be kept confidential.

Such pregnancy can be terminated at:-

- A hospital maintained or established by the Government, or
- A place approved by Government or District level committee for the purpose of this **the Medical Termination of Pregnancy Act, 1971**

In 1994, The Government has passed **Pte-Conception and prenatal Diagnostic Technique (Regulation and prevention of misuse) Act, 1994 (PCPNDT Act)**. Since these tests are essential to detect the fetus abnormalities & genetic defects so Government could not ban these tests. These can only be regulated. Nowadays many strict conditions has been imposed on these tests & they can only be used not for the purpose of identifying the sex of the unborn fetus. Now it has become essential to registered all the sonography machines and also to display that the hospital or clinic doesn't disclose the sex of the unborn fetus.

6. **Pre-natal Diagnostic Test & Techniques:-** Pre-natal diagnostic test is an analysis of a pregnant woman conducted to detect genetic or metabolic disorders or chromosomal abnormalities or congenital abnormalities or haemoglobinopathies or sex related diseases. Only Genetic Counseling Centres, Genetic Laboratories or Genetic Clinics which are registered under PCPNDT Act can conduct activities concerning "Pre-natal diagnostic techniques"

No Pre-natal diagnostic techniques shall be conducted unless the person is qualified to do so by fulfilling the following conditions namely:-

- ❖ Age of pregnant lady must be above 35 years;
- ❖ The pregnant woman has undergone two or more spontaneous abortions or foetal loss;
- ❖ The pregnant woman had been exposed to potentially teratogenic agents such as drugs, infection, radiations etc;
- ❖ The pregnant woman or her spouse has family history of physical deformities or family retardation or any other genetic disorder
- ❖ Any other condition as specified by the Central supervisory Board

² AIR (2002) SC

³ AIR (2012) SC

Such Technology Can't be used for the purpose of sex selection as Sec 3A of the Act prohibits sex selection & the same is punishable with imprisonment and fine both.

7. Meaning of term Abortion:- Abortion is a medical process of terminating pregnancy or removing fetus from the uterus of a pregnant woman in case she is not willing to give birth to a child. In law it is prescribed that this procedure must be followed by a registered medical practitioner authorized or powered by **the Medical Termination of Pregnancy Act, I.e. MTP Act**. It is provided by law that if the procedure of abortion is not carried on by registered medical practitioner then it may pose a risk to the life of the concerned woman. In India every women has right to safe and legal abortion in Government Hospital under **the Medical Termination of Pregnancy Act, 1971**

In digital age, the term Abortion is the most controversial term. Abortion is a term which is used to describe procedure for ending of pregnancy or expulsion of embryo from the womb generally before the foetus is capable of surviving on its own. An abortion may occur either voluntarily or involuntarily. So, abortion may be caused intentionally by artificial means or may occur naturally without any medical intervention.

According to Oxford dictionary, the term Abortion means the intentional termination of pregnancy with reasonable knowledge that such termination will cause the death of embryo or fetus.

Law dictionary defines the term Abortion as the termination of pregnancy by various means, including medical surgery, before the fetus is able to sustain independent life.

Medical dictionary defines the term Abortion as the termination of pregnancy before the foetus is viable.

Hence, the term Abortion refers to premature termination of pregnancy or premature exit of the products of conception. So, abortion is the procedure of ending of pregnancy by expulsion /removal of embryo or fetus. Women's right to choose abortion is part of her self determination. Also, access to safe legal abortion is her human right that can't be denied to her. Right to abortion must be given as equal weigh as other fundamental rights.

8. Types of Abortion:- Abortion is generally of three type i.e.

- Spontaneous Abortion or Natural Abortion;
- The rapeutic Abortion and
- Criminal Abortion

Spontaneous Abortion generally takes place due to some illness or medical problem intentionally. It occurs naturally without any medical intervention in case there is any physical problem with a pregnancy. While, therapeutic Abortion takes place when there is threat to life or health of mother. Thus, there are chances of child being mentally or physically handicapped, if pregnancy is continued. Such pregnancy may be legally terminated. Lastly, a Criminal Abortion is caused due to circumstances which don't provide legal justification for such Abortion. Such Abortion takes place either intentionally or deliberately.

In India, the women still don't have full control over their bodies. Due to societal and familial pressure, there is scarcity of decent medical facilities for them.

9. Privacy and Reproductive Rights with Judicial verdicts:-

In case of **Suchita Srivastava Vs Chandigarh Administration (2009)**⁴, it was held that, Reproductive rights include women entitlement to carry pregnancy, to give birth and to subsequently raise children. These rights are the part of women Right to Privacy.

In Case of **Chandra Raja Kumari Vs Police Commissioner, Hyd**⁵, It was held that right to life also includes right to live with human dignity or decency as provided by **Article 21** of the Indian Constitution.

Recently, in the case of **Pawan Kumar Vs State of Himachal Pradesh**⁶, **the Hon'ble Apex Court** has observed that, "One is compelled to think and constrained to deliberate why the women in this Country cannot be allowed to live in peace and lead a life that is empowered with dignity and freedom. It has to be kept in mind that she has a right to life and entitled to live according to his choice. She has an individual choice which has been legally recognized It has to be socially respected. No one can compel a woman to live as per their choice. She has the arbitrary freedom to take her own decision regarding all the matters related to her life."

10. Various International, Constitutional and Legislative Provisions:- There are several covenants and conventions which have universally accepted women's rights as human rights, such as **UDHR (Universal Declaration of Human Rights, 1948); the United Nation Charter, 1945; ICESCR; CEDAW** etc. all recognizes this principle. **CEDAW and its protocol, 1999** provides that women must be given rights equal to that of men on equal terms. **Its Preamble** also states that "The full and complete development of a Nation, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields. Denying and limiting access to rights to women will hinder the progress of the Nation. Thus all Human Rights including Privacy Rights are

⁴ (2009) 9 SCC 1, AIR 2010 SC 235

⁵ AIR 1998 AP 302

⁶ (2017) 7 SCC 780

essential for all round growth of human personality against unjust and degrading treatment. As **Microsoft Smith in Web conference in London**⁷ has stated that “Privacy protection is essential to shield Human Rights.”

Indian constitution tries to uplift women in the society by providing certain basic rights to them which are often violated by the society. The precept concerning feminism or sexism is preserved and protected by involving various provisions in our Constitution in its preamble, fundamental rights and directive Principles as provided under part III and part IV of the Constitution.

- **Preamble of Indian Constitution and Women’s Right:** - Preamble which is soul of the constitution guarantees justice, liberty and equality to men and women alike. Preamble also respects and assures dignity of the individuals and assures equal status to men and women in the country.

- **Equality Provision in the constitution in Fundamental Rights:** - In India women are considered to be burdensome appendage. Discrimination against her starts from birth or even before it from the mother’s womb and continues till her death. Her birth is greeted with silence even in sorrow. In India, men are always considered to be superior to women. The framers of Indian Constitution were aware of the unequal treatment and discrimination meted out to women and thus included certain provisions to uplift the status of woman in form of **fundamental Rights contained in part-III of our constitution**⁸.

Article 14⁹ embodies the right to equality before law. Here the phrase equality before law and equal protection of the laws aims to establish equality to status and of opportunity of males and females.

Articles 15¹⁰: - prohibits discrimination on grounds of faith or devotion, kind, class, sexuality, cradle or native soil or either one of them. Any law discriminating on any one or more of those bases would be nullified.

Articles 16¹¹:- Provides equality of opportunity in matters of public employment of males and females.

Article 21¹² has been characterized as Magna Carta Protective of life and liberty. Right to life includes right to live with dignity, right to privacy, right to reproductive choices etc. Women’s right to take decisions is related to **Article 21 of Indian Constitution** as it’s violation weakens the self respect and dignity of women, who are victims.

Directive Principle of State Policy and women’s rights: -. Director principles reflected India as a welfare democratic State which provides for equal right to work, equal pay for equal work, and adequate means of decent and dignified livelihood to both men and women etc.

Article 39(a)¹³ governs a republic to make its strategy approaching to assure male and female identically and fairly while providing them sufficient resources of income as well as equivalent salary to both of them.

Article 42nd empowers a republic to make its strategy for securing generous and tolerant circumstances for female at workplace as well as for childcare leave.

Articles 51-A (e): - Provides that it shall be duty of every native of India to renounce practices derogatory to the dignity of women.

11. Reproductive Autonomy:- Autonomy means one’s ability to take decisions about one-self and life based on their desires, beliefs, morals and values. Thus, to have autonomy, liberty to make and execute their decisions is must. So, reproductive autonomy exists when a women has right to make decisions regarding fertility and sexuality, free from coercion or pressure of all types. Also, decisions relating to abortion deal with her personal life, and belong to her-self and right to terminate pregnancy emanates from right to self

⁷ Microsoft President Brad Smith was discussing tech’s broader societal implications at the Web Summit tech conference in Lisbon

⁸ *Fundamental rights* furnished through part III of the Indian Constitution by various articles i.e. Article 12 to Article 35, these are: Right to equality, including equality before law, prohibits discrimination on grounds of faith or devotion, kind, class, sexuality, cradle or native soil or either one of them. Any law discriminating on any one or more of those bases would be nullified.

⁹ Equal protection of law” has been given in *Article 14* of our *Indian constitution*) which has been taken from section 1 of the 14th amendment act of the constitution , it is the most significant fundamental right that deals with equality before law (-ve) and the equal protection of laws (+ve)

¹⁰ *Article 15* of the *Indian Constitution* prohibits discrimination on grounds of faith or devotion, kind, class, equality, cradle or native soil or either one of them. Any law discriminating on any one or more of those bases would be nullified.

¹¹ Article 16 of the Constitution of India guarantees equal opportunity to all citizens in matters related to employment in the public sector

¹¹ Article 16 of the Constitution of India guarantees equal opportunity to all citizens in matters related to employment in the public sector

¹² Article 21 of the Constitution of India is safeguard of Life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law

¹³ *Article 39A* of the *Constitution* is providing assistance to the people who are unable to afford legal representation and access to justice

determination. Reproductive autonomy is a woman basic as well as fundamental right. Women should have right to choose when, how and under what circumstances they will bring child in this universe.

Logically a woman, who has been granted right to life under Article 21 of the Indian Constitution and have full control over her body. She is free to enjoy her personal liberty and alter her body in the way she can. In India, abortion is not seen as a basic right of a woman & people fail to understand the privacy of a woman. Also, Laws in India are not liberal enough for a woman and does not allow a woman to take decisions freely. Hence, women in India are denied of their right to life and personal liberty.

International Conference on Population and Development (ICPD) recognizes woman's reproductive rights as well as sexual health on basis of various human right treaties and conventions.

Also, **CEDAW, 1978 (Convention on Elimination of All Forms of Discrimination against Women)** ¹⁴also known as Women Convention is particularly pertinent to the enjoyment of sexual and reproductive health.

According to **ICPD (International Convention on Population and Development)**: - Reproductive Rights rests on the recognition of the basic rights of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have information and means to do so and the right to attain the highest standard of sexual and reproductive health.

Hence, **International Convention on Population and Development (ICPD)** ¹⁵recognizes reproductive rights, which includes right to make decisions concerning reproduction free of discrimination, coercion and violence as expressed in Human Right Document.

Section 16 (1) (e) of Women Convention ¹⁶states that, The State parties shall ensure on the basis of equality of men and women, the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise their rights.

According to **OHCHR (Office of High Commissioner for Human Rights)** ¹⁷, Women sexual and reproductive health is related to multiple Human Rights including Right to life; Right to be free from torture; The Right to health; Right to Privacy; The Right to education and prohibition of discrimination.

12. **Conclusion**:- Generally, a man does not take responsibility for family planning. According to them, it is the business of woman only. But, family planning is not a women issue, it is peoples issue. Men have to take more responsibility than women as they have the entire agency. Women have lack of opportunity to take decisions about child bearing.

In order to protect women health as well as their Human Rights, reproductive autonomy is an indispensability of the society. Also taboo/ban combined to discussion of abortion needs to be done away and a balance approach must be adopted to allow women to live a dignified life in all respects in true sense.

A door is much smaller than a house & A window is much smaller than a door,

A key the smallest of all, but a key has capacity to open the entire house,

Our privacy is the key to open the door of our life for others to disturb our rights,

Human Right rests on human dignity & human dignity can't exist without privacy,

Human dignity and privacy are inextricably woven out of thread of diversity into the fabric of plural culture,

Life without privacy is just like our body without spirit,

Our privacy is the open window, through which the light of human dignity and human respect is entered,

Privacy is the postulate of human dignity and decency itself which enables people to preserve our thoughts, expressions, faith, beliefs & choices etc,

Privacy is the foundation of all human rights; privacy underpins the human dignity,

Without dignity our privacy is erased, our privacy is not for sale & human rights should not be compromised, privacy encircles liberty to safeguard our identity,

I ask people to respect my privacy, respect my decisions as well as for other woman also,

Don't cross boundary as every woman has her own space, time & privacy,

So, don't ruin other's privacy rights to run your own activity.

¹⁴ CEDAW, 1978 (Convention on Elimination of All Forms of Discrimination against Women) also known as women's Convention

¹⁵ International Conference on Population and Development (ICPD) held in Chiro, in 1994 and Human Rights Document

¹⁶ Section 16 (1) (e) of Women's Convention protects women's reproductive rights

¹⁷ OHCHR (Office of High Commissioner for Human Rights) views on women's sexual and Reproductive Health