

Reproductive Rights, Reproductive Wrongs: A Literature Review

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Abstract

This paper is an attempt to raise consciousness about the concerns affecting women's reproductive rights. Women in India, as well as various developed and third world countries are staging low-key protests to protect their reproductive rights. This paper based on secondary data includes investigation of a number of literature reviews and case studies acquired throughout the exercise. In several cases, the honourable judiciary had to intervene to defend women's reproductive rights. The presence of orthodoxy, social stigma, son preference, and prevalence of cultural beliefs play a pivotal part in a woman's decision to conceive or abort a child. Other family members such as parents, in-laws and even peers impose their thought processes on the female, eventually affecting her decision. Taking such decisions which are influenced by others cannot be regarded as a part of one's independence. Depending on the quality of their relationship and the level of support they receive from their husband, women are compelled to terminate pregnancies. Due to restrictive legislation and a fear of disgrace, they are forced to use illegal abortion procedures, putting their health at risk. In many circumstances, using contraceptive pills without consulting a doctor or turning to an inexperienced health worker to perform an abortion leads in the death or injury of the mother, foetus, or both. Because abortion is still one of the leading causes of maternal mortality, the government should step in and take some substantial measures to mitigate the looming threat to women's health.

Keywords : reproductive rights, influential decision, orthodoxy, social stigma and abortion

Introduction

"No woman can call herself free until she can choose consciously whether

she will or will not be a mother.” – Margaret Sanger

Margaret Sanger coined the term “birth control” in 1914 and went on a mission to make women aware of contraceptives and ill effects of frequent pregnancies. She argued that the ability to control family size is one of the major factors which can contribute to ending the cycle of women’s poverty.

Reproductive rights as defined by WHO “... 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 information to do so, and 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.”

According to WHO, reproductive rights include the following rights:

- Right to legal or safe abortion.
- Right to control one’s reproductive functions.
- Right to access in order to make reproductive choices free of coercion, discrimination and violence.
- Right to access education about contraception and sexually transmitted diseases and freedom from coerced sterilization and contraception.
- Right to protect from gender based practices such as female genital cutting and male genital mutilation.

Women’s control over their own childbearing was identified as a critical aspect of reproductive rights in the Cairo Agenda. Despite the fact that India was one of the first countries in the world to build legal and legislative frameworks ensuring access to contraception and abortion, women have yet to fully enjoy these rights. As a result, individuals face a number of challenges in terms of decision-making, contraception access, and health services, among other challenges. (Reproductive Rights in Indian Courts)

Reproductive Rights as Human Rights

Reproductive rights were recognized as an inseparable component of Human Rights by the United Nations International Conference on Human

Rights in 1968. Reproductive rights are crucial because they reduce prejudice while also providing gender equality and rights to health, choice, life, and equality. The right to a freely and informed choice in contraception was also recognized in the National Population Policy of 2000.

In case of violations of such right, the repercussions reverberate in the society and manifest in the form of inadequate legal, social and political representation of women's rights and issues. For women to be able to participate like men in all spheres of public life they should be empowered with choice and control over their fertility decisions.

Article 39(a) of the Indian constitution mandates that the government promote equal access to justice and free legal aid as a means of ensuring that all citizens have equal access to justice.

Legislations and reproductive rights in India and other countries

The Indian Constitution stresses the importance of health, dignity, freedom from torture and ill treatment, and privacy in protecting women's rights. India is also a signatory to various international conventions like the Vienna Declaration, International Conference on Population and Development(ICPD), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); World Conference on Women (WCW); the International Covenant on Economic, Social and Cultural Rights (ICESCR),etc. These agreements, to their credit, acknowledge reproductive and sexual rights as inextricably linked to human rights. We present here some landmark judgements from around the world that maintained reproductive and sexual autonomy beyond abortion rights.

Suchita Srivastava v. Chandigarh Administration, 2009

Reproductive rights are indeed an essential consideration of a woman's right to privacy, dignity, and bodily integrity, according to the Court.

Devika Biswas v. Union of India

The judgment given by the Supreme Court against sterilization camps for women held that policies by Government should be made gender neutral.

Hallo Bi v. State of Madhya Pradesh and Ors

The Court affirmed women's reproductive rights in 2013, ruling that the

decision to give birth is a woman's personal right, and that no one else should be allowed to interfere with her decision to carry or abort the child.

Justice K.S. Puttaswamy and Anr. Vs Union of India and Ors

In 2017, the Supreme Court in its landmark judgment held that, "Privacy includes at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation... Privacy safeguards individual autonomy and recognises the ability of the individual to control vital aspects of his or her life."

Independent Thought v. Union of India, 2017

The Court held that "The human rights of a girl child are very much alive and kicking whether she is married or not and deserve recognition and acceptance."

Josephine Oundo Ongwen vs. Attorney General & 4 Others (Centre for Reproductive rights)

The court ruled in 2018 that the neglect, physical and verbal abuse of women seeking maternity health care services is a violation of their rights as stipulated by Kenyan law and international human rights instruments.

Mellet vs. Ireland; Whelan vs. Ireland (Centre for reproductive rights)

In a landmark judgment in 2017, the United Nations Human Rights Committee stated that Ireland's severe abortion restriction is responsible for women being subjected to cruel, inhuman, and degrading treatment.

R.R. vs. Poland (Centre for reproductive rights)

In 2011 the European court of human rights in a verdict proclaimed that Poland's denial of legal reproductive care is a violation of human rights.

P. and S. vs. Poland (European court of Human Rights)

In 2013, the European Court of Human Rights established guidelines for teenage rights to reproductive health services, highlighting adolescents' vulnerability and affirming young people's reproductive autonomy.

These rulings have left an indelible mark on women's sexual and repro-

ductive rights. These rights must be maintained as they are a crucial part of girls and women's right to equality, physical integrity, and life. Human rights and the right to personal liberty are mirrored in reproductive rights.

Reproductive Rights and Social Stigmas

In the context of India, reproductive rights are something out of the patriarchal pedagogy. In such kind of societal structure, reproductive rights are coupled with a tremendous taboo. Majority of females are unaware about their rights. When a girl child is born she is socialized to become a good wife and mother. Having an abortion or getting a choice in the conception of a child is considered a sin. Males or other family members, rather than the female herself, make reproductive decisions in most families. Even if difficulties or abnormalities arise, women are hesitant to induce abortion since cultural and religious teachings have instilled this fear in them. The life of the foetus is more valuable than the life of the mother herself. In a male-dominated culture, pregnancy is also seen as a tool to exert control over a woman's life.

Unmarried women, who lack reproductive rights due to cultural and social restrictions, face a worsening scenario. In India, reproductive rights are inversely proportional to marriage. Without a husband, a woman has no choice to conceive. Social traditions will prevent her from living a decent life if she conceives which could lead to a decision to abort or commit suicide.

The approval of the partner or parents is required for running basic medical tests, such as sonography. A woman cannot have an abortion without her partner's agreement. Since both the male and female are accountable for the pregnancy, a collaborative choice should be made. Is dominating this decision, however, the best option? Isn't it true that because a foetus is a part of a woman's body, they should have sole control over their reproduction choices? In a developing country like ours, such questions must be investigated to see whether we are capable of ensuring that every woman has access to this basic right.

"The ability of women to participate equally in the economic and social life of the nation has been facilitated by their ability to control their reproductive lives."

Justice Sandra Day O'Connor

Review of Literature

Sex Equality Arguments for Reproductive Rights: Their Critical Basis and Evolving Constitutional Expression

Reva Beth Siegel

Siegel emphasized the importance of family and culture in establishing the structure of men and women's sex roles in society and limiting women's life choices. On the one hand, men's sexual liberty, pleasure expression, and decision-making are valued more than women's. Gender-based sexual expression rules, on the other hand, deprive women of their freedom and dignity in diverse relationships. As a result, women are frequently regarded as a sexual minority, robbing them of their equal sexual freedom. In practice, equal rights protect a woman's liberty throughout her life and allow her to attain the status of equal citizen in a society. Equal and dignified access to gender justice is hampered by a restricted view of reproduction.

Abortion and Personhood

Joseph S. Spoerl

The author of this paper critically examines American philosopher Mary Anne Warren's idea of personhood. According to Warren, a newborn or foetus lacks the attributes of a person and hence does not have the same rights as a person. As a result, abortion is as routine as getting a haircut. Famous philosophers Boethius and Saint Thomas, on the other hand, regarded an entity with a rational essence as a person. They reasoned that because a foetus is eventually changed into a human through appropriate indoctrination, it must be accorded human rights. Mary, according to the author, is unable to explain whether a person is sleeping, unconscious, in a coma, or sedated, and is unable to perform above qualities whether they are sleeping, unconscious, in a coma, or sedated. According to Mary, a human enters and exits personhood several times throughout their lives, yet she is unable to establish her thesis. As a result, the author declared that abortion is the same as killing a human being.

A Half-written Promise

Jayna Kothari, et al

The writers are concerned about the lack of emphasis placed to and recognition of reproductive rights problems in India by political parties.

Menstrual health and hygiene, child marriage, female foeticide, and sex selection are all examples of restricted reproductive rights. The authors suggest that sexual and reproductive rights should cover a broader range of issues, including maternal fatalities, adolescent sexuality, the prohibition of coerced medical procedures, and gender discrimination and treatment access. Despite the fact that the law guarantees women the right to make decisions alone about their bodies, medical practitioners frequently need them to obtain approval from their parents or spouses. As a result, the number of cases of unsafe abortion is on the rise, as women are left with no other choice.

Role-Players in Abortion Decision-Making in the Accra Metropolis, Ghana

Akwasi Kumi - Kyereme, et. al.

The writers of this study based on the global issue of illegal abortion. Abortion is the most common form of contraception in underdeveloped countries. One out of every five pregnancies is aborted, according to the author, for a variety of reasons including personal needs/concerns, the interests of the potential kid, existing child/children, sexual partner, and extended family. According to this study, the decision to induce abortion is frequently affected by the pregnant woman's mother, her male partner, and others (friends, neighbor, health worker etc.). In many circumstances, females seek confirmation that they are not doing anything wrong because of the social, religious, and cultural factors that influence abortion.

Realizing Reproductive Choice and Rights Abortion and Contraception in India

Anju Malhotra et al.

In a study on decision-making capacity among Madhya Pradesh women, it was discovered that family members have a significant influence on women's ability to have abortions. The study discovered a correlation between contraceptive access and abortion, and showed that a lack of information, limited access, and familial disapproval are all substantial impediments to women exercising their rights. The authors claimed that abortion services need to be restructured and that concerns other than abortion legalization should be considered. They continued by stating that developing countries such as India must address social, health, and gender-based hurdles in order to address gender disparities, access to rights.

Abortion Law and Policy around the World: In Search of Decriminalization

Marge Berer

The paper examines the advantages and disadvantages of abortion laws and policies in various nations. Restriction and criminalization, according to the author, violated it all over the world. Some countries, such as Canada, have decriminalized abortion while maintaining a low mortality rate. According to the author, the origins of criminality can be traced back to the colonial era, when technology and medical facilities for safe abortion were unavailable. Because circumstances have changed, the author advocated for decriminalization rather than legalization of abortion. She went on to say that a lack of understanding and deficiencies in policy made it difficult for women to choose a safe and inexpensive abortion method. The author concluded that policy changes are urgently needed to make abortion reasonable and accessible to women, based on various instances and protests occurring around the world.

Social Perspective: Abortion and Female Behavior

Winston P.Nagan

The process of abortion has been examined from the perspectives of both the fetus and the woman in this paper. The author has gathered instances from numerous abortion verdicts around the world and critically evaluated them. Abortion, from the standpoint of the fetus, is a violation of the right to life, but we must also consider the right to privacy of women. Each individual has some control over his or her body and organs, and we cannot regard a female and a fetus to be biologically and psychologically separate units. As a result, women have complete control over whether or not to have an abortion. There are two points of view: first, no one accepts abortion unless they are the one who initiates it, and second, abortion is an unavoidable phenomenon, similar to poverty and illness, that exists in society whether we embrace it or not. According to Robert Bryne, legalizing abortion would jeopardize the value of life, which would eventually lead to euthanasia, with only those who contribute to society having the right to live. As a result, the author concentrated on the legal, social, and moral aspects of abortion.

The Role of Intimate Partners in Women's Reasons for Seeking Abortion

Karuna S. Chibber, et al

The role of a spouse in inducing abortion has been discussed by the author. According to the author, the spouse may not directly influence the decision, but is somehow responsible for it in the background. Relationship problems are also a major reason for inducing pregnancies. Intimate partner violence is also a factor in the choice to get an abortion. Emotional pressure also played a significant role in abortion induction. Females do not want to lose their partners or burden them financially. Some also believe that it is a joint decision and they do not want to take it alone. The paper also pointed out some of the study's limitations, such as low participation, difficulty in generalizing because abortion is induced at different gestation weeks, and the need for a more in-depth qualitative study to determine whether a partner's influence on decision-making is real.

Discussion

The answer to the limits and pressures that women experience on the route to making decisions about their own bodies should not be judicial intervention. *A 30-year-old domestic helper said that her in-laws are refusing to speak to her because she underwent a tubectomy. Her in-laws believe she has committed a sin for which God will punish their entire family. She went on to say that feeding two children in an urban setting on such a meager wage is really challenging for her. Her work was being harmed by her regular use of contraceptive tablets and aborting the undesired pregnancy. She is pleased that she chose the correct course, despite her family's opposition.* In a democracy like India, everyone has a say in how decisions are made, and failing to follow this paradigm leads to the framework being called into question. The right to reproduction remains a critical facet of family and community welfare in all societies, regardless of culture, because it supports gender equality. It is especially crucial to engage rural women in discussions on such issues, as they are typically the silent victims of traditional norms and orthodoxy. *A 35-year-old woman, married with two children, recounts having to abort several times with pills since her spouse was unwilling to use protection. Her reproductive organs have been significantly harmed by her long and frequent usage of contraceptive tablets. According to her, the spouse neglected her health in order to appease his male ego, and she now needs to undergo surgery to remove her uterus. Her health conditions and doctors' counsel had compelled her to do so.* As Hillary Clinton correctly stated, "You cannot have mater-

nal health without reproductive health. And reproductive health includes contraception and family planning and access to legal, safe abortion." Because of family members meddling in the name of safety, women are expected to ask permission before consulting a health professional. The lack of awareness and use of illegitimate reproductive rights is due to the taboo connected with sex education and adolescent sexuality. Abortion is related with cultural, moral, and ethical difficulties. Karen Horney, in a discussion on womb envy said that women were envious of males for their power in society rather than a manhood they would never be able to have. Womb envy, she argued, develops when men find they are not really in control and dominant in women's life as they thought they were. *A 24-year-old newlywed woman confronts that the pressure from in-laws and relatives to plan a family had already begun as she approached our first anniversary. The couple delayed planning a family only because of the husband wants to put his time into his career currently. She stated unequivocally that her husband and his family make the majority of the decisions both inside and outside the domestic sphere.* There is a never-ending argument about the rights of women and foetus, which is often contradictory. Modifying and upgrading the legislative framework can lead to more dignified reproductive rights access. *A 45-year-old mother of daughters shares her decision to abort her pregnancy. She asserts she could not have done it without the support of her parents, and that her in-laws and husband wanted her to have a son to ensure the family's future. She got sterilized with her parents' support since she was afraid of becoming pregnant again.* The orthodoxy and dogmatization-based societal thinking must be upgraded. New policies enabling safe and fair access for women in their reproductive decisions should be pushed, keeping the right to privacy at the forefront.

Conclusion

In theory, Planned Parenthood provides birth control and even abortion rights to women, but in effect, men continue to fight against women's access. As a result, men seek to impose as much control over the female body as possible, and having power over women is nothing new for men, as power dynamics between sexes are taught from an early age all around us. There have been instances of religious interference, as well as cases of double oppression based on women's economic and social status. Women are unable to access reproductive health care and information due to these restrictions. One of the most important aspects of personal autonomy is the ability to make decisions without being influenced by others and without having to face any discrimination. On the one hand, science and medicine technology is rapidly advancing; on the other hand, restrictions and ta-

boos surrounding women's bodily autonomy persist. Other than medical reasons for abortion, the law and political machinery frequently fail to recognise the other reasons like forced pregnancy as a result of marital rape. History has it that women could create generations of rulers and soldiers, which enraged men, who sought to compensate by seeking more power.

The study confirms the point made by NasimPedrad during an SNL show,

"If men could get pregnant, abortion clinics would be like Starbucks – there would be two on every block, four in every airport, and the morning-after pill would come in different flavors like sea salt and cool ranch."

References

- Berer M. (2017). Abortion Law and Policy around the World: In Search of Decriminalization, *Health and Human Rights Journal*, 19, 13-27.
- Chibber K.S., Biggs M.A., Roberts S.C.M.&Foster D.G.(2014). The Role of Intimate Partners in Women's Reasons for Seeking Abortion, *Women's Health Issues Journal*, 24(1), 131-138. Retrieved from - <https://dx.doi.org/10.1016/j.whi.2013.10.007>
- Devika Biswas v. Union of India, Law Times Journal Abhishek. (2016 14 SCC 382). <https://lawtimesjournal.in/ms-x-vs-union-of-india/>
- Hallo Bi v. State of Madhya Pradesh and Ors, Indian Kanoon Muskan. (2013 14 SCC 453). <https://indiankanoon.org/doc/52366476/>
- Hockenberry, L. (2017). How Womb Envy Has Caused Men to Control Women's Bodies. (March 2017), *Medium Cooperation*, 47. Retrieved from <https://medium.com/applied-intersectionality/blargh-fbfd39098f42>
- Independent Thought v. Union of India*, Law Times Journal Jismin. (Writ Petition (civil) no. 382 of 2013). <https://lawtimesjournal.in/independent-thought-vs-union-of-india/>
- International Centre for Research on Women. (October 2016). *Reproductive rights and choice: Abortion and contraception in India*. Retrieved from -<https://www.icrw.org/wp-content/uploads/2016/10/Realizing-Reproductive-Rights-and-Choice-Abortion-and-Contraception-India.pdf>
- Justice K.S. Puttaswamy and Anr. Vs Union of India and Ors*, Law Times Journal Aparajita. (Writ Petition (civil no.) 494 of 2012). <https://lawtimesjournal.in/justice-k-s-puttaswamy-ret-d-vs-union-of-india/>

- Kothari, J., Unnithan, M.&Gloppen, S. (2019).A half-written promise. *The Hindu*. Retrieved from <https://www.thehindu.com/opinion/op-ed/a-half-written-promise/article26914712.ece/amp/>
- Kyereme A.K., Gbagbo F.Y. &Adjei J.A. (2014). Role-Players in Abortion Decision-Making in the Accra Metropolis, Ghana, *Reproductive Health Journal*, 11(1), 2014, 1-9. Retrieved from - <https://www.reproductive-health-journal.com/content/11/1/70>
- Mellet vs. Ireland; Whelan vs. Ireland. <https://reproductiverights.org/case/mellet-v-ireland-2016-whelan-v-ireland-2017-united-nations-human-rights-committee/>
- Nagan W.P. (1972). Social Perspective: Abortion and Female Behavior, *Valparaiso University Law Review*, 6(3), 286-314. Retrieved from <https://scholar.valpo.edu/vulr/vol6/iss3/3>
- National Population Policy. (2000).*Report by National Commission on Population*. India, Government of India.
- P. and S. vs. Poland, European court of Human Rights, Judgment 30.10.2012 [Section IV], Law no.156. <https://hudoc.echr.coe.int/fre/#%7B%22display%22:%22%22itemid%22:%22002-7226%22%7D>
- R.R. vs. Poland, European Court of Human Rights. <https://reproductiverights.org/case/r-r-v-poland-european-court-of-human-rights/#:~:text=On%20May%2026%2C%202011%2C%20the,European%20Convention%20on%20Human%20Rights>
- Siegel, R.B. (2007). Sex Equality Arguments for Reproductive Rights: Their Critical Basis and Evolving Constitutional Expression, *Emory Law Journal*, 7(2), 121-135. Retrieved from - https://www.researchgate.net/publication/228177347_Sex_Equality_Arguments_for_Reproductive_Rights_Their_Critical_Basis_and_Evolving_Constitutional_Expression
- Spoerl, J.S. (2018).*Abortion and Personhood*. Department of Philosophy, St. Anslem College, 1-4. Retrieved from: <http://who.int/reproductive-health/gender/index.html>.
- Suchita Srivastava v. Chandigarh Administration, Law Times Journal Rupa-li. ((2009) 14 SCR 989). <https://lawtimesjournal.in/suchita-srivastava-vs-chandigarh-administration/>