

INTRODUCTION

In most of the societies, sexual behavior is regulated by certain norms and values that vary among different groups and communities. In the past, sexual behaviour was conservative and confined to particular period of one's life, like post puberty and duration of marriage, but such restrictions tended to give rise to sexual liberation. At present, the diversities and complexities of sexuality is greatly influenced by the cultural practices, social development, impact of the mass media and modernization of a given society. Earlier, sexuality was considered personal but today, it has assumed several social forms with the spread of mass media, family planning, diseases like AIDS, STD and mostly with the emergence of the concept of reproductive rights.¹

Major aspects of sexuality have undergone change and are influenced by both traditional and changing values. The concept of sexuality can be defined only after taking into consideration various factors such as culture, religion, situation, environment and other related factors like education and socialisation. Thus, today, the concept of sexuality is much more vast and involves various rights of human being. It is not just an act of sex but it is the right entitled to human being and thus called as reproductive rights.²

When we talk about reproductive rights, we are indirectly talking about women's rights because it is a woman whose life is mostly influenced and affected by the reproduction. So, it is inevitable to mention women when discussing about reproductive rights as they are the focal point of the discussion.

The concept of reproductive rights comes from International endeavour. The first time when reproductive right was clearly mentioned was in Convention on the Elimination of Discrimination against Women. More to the point, reproduction as a

¹ K. Mahadevan, S.Raju, R.Jayashee and P.M.Sandhya Rani "*Sexuality and Reproductive Health: A Conceptual Model and Policy Implications*" 65 *The Indian Journal of Social Work* 572 (2004).

² *ibid*

social function was discussed in several International Human Rights Instruments and thus, reproductive right is entitled as part of human rights.

Emancipation of women will be incomplete without assuring them reproductive rights. It is only when women have control over their bodies; they can exercise all other rights. Women can be physically and mentally free simply when they have right to take decisions regarding their bodies themselves.

At Alma Ata Conference in USSR, in 1978, primary health care was exclusively discussed and access to family planning, maternal and child health care and prevention of communicable diseases was accepted as basic human rights.³

Reproductive right is thus, central to women's rights and their autonomy and respect depends upon their right to take decisions whether about their career, education or reproduction. No doubt, reproductive rights does not barely include events associated with birth but also with women's day to day life, their status, their roles in their home and society.⁴

Also, the length of advancement of women's reproductive right is a good indicator of their position and their autonomy within the family, community and state. Hence, reproductive rights demands respect and pride for women's body contains within it various other human rights that can be called upon to ensure protection and promotion of reproductive rights.

The past few decades have seen significant advancement in women's human rights throughout the world, but the struggle to fully acquire them is not yet over. There has to be a proper legal system for the promotion and protection of these rights. There is a need to create proper legal framework for the protection of these human rights.

³ WHO 1978 (33).

⁴ L.P. Freedman and S.L. Isaacs, 1993.

Moreover, the system for the promotion and protection of human rights of women has tremendous potential to become a key factor to ensure the full recognition of women's rights, especially their sexual and reproductive rights.⁵

Reproductive health as received by women is very blink as women hardly encompass an opportunity to have control over their bodies. Health facilities are considered as privilege for women. They have rarely any control over sexual behaviour. For most of the women, the decision regarding the timing and physical and financial cost of health services sought are closely connected to the demands of the household, its assets and resources, the nature of health care services available and the perspective of the causes of illness and the perceived effectiveness of various cures sought.⁶

Women carry more of the burden of the household and therefore, have less time to seek for health care services making them disadvantaged relative to men in their access and utilization of health care services. Especially, in their role as mother, women carry a greater health risks as well as a greater reproductive health burden than men in households. The gender inequality approach to health considers the gender skewed allocation of resources and power in the household as among the critical factors responsible for women's disadvantageous position in the health care system.⁷

Recent studies have also shown that despite the vast network of health care provision in India, the outreach continues to be poor for women. The focus on women in health delivery programme deals mainly with regard to family planning emphasizing more on population control.

At least until 1994, reproduction has been narrowly defined and was considered important in view of demographic position only. The health care of women generally

⁵ Reproductive Rights in the Inter-American System for the promotion and protection of Human Rights, Briefing paper- www.reproductivereights.org

⁶ Maya Unnithan Kumar "Households, Kinship and Access to Reproductive Health Care among Rural Muslim Women in Jaipur" March Economic and Political Weekly 621 (1999).

⁷ *ibid*

focuses on menstruation and childbirth and local perceptions of the body, reproduction and ill-health.⁸

With the cases of maternal mortality, there has been high incidence of maternal morbidity, disease of women in their reproductive life span with far above the ground relationship between poverty and maternal and infant mortality is widespread. It is well known that infant mortality is crucially connected with maternal health.

Even though, women articulate their health problems in very general terms. It has become important to consider women's reproductive health in the context of their wider complaints regarding reproductive facilities like safe delivery, hygienic condition, family planning measures, safe abortion etc.

The social status of women, the cultural barriers and ineffective policies and programmes of the government is responsible for the lack of reproductive health facilities. Various survey reports clearly show that the maternal morbidity of women is related to a combination of physiological, social, economic and psychological factors. The social consequences of aborted fertility, poverty and lack of nutrition, inability to control infant mortality, the lack of information about diseases and ineffective recourse to cure were some of the realities which took their toll on women's lives.

The fact that the weakness of mother and infant is largely due to their under-nourishment is connected with the quantity and nature of the dietary intake of mothers during pregnancy and after child birth. These small truths are the evidences of poor reproductive health infrastructure.

The task of enhancing reproductive health services outreaches the villages which address not only the question of access to health services but also the provision of facilities which take into account the context specific, gender and age health needs of the local population⁹.

⁸ *Supranote 6.*

⁹ *Supranote 6.*

Despite the legal emancipation of women in India, their education and employment in modern occupation; the traditional biasness towards female children has not undergone a change. Persistent gender inequality and deprivation of females are among India's most serious social failures. The situation is alarming as there is pre as well as post natal risk to girls.¹⁰

A venomous fall out of the subjugating position of women is their vulnerability to violence like domestic violence, rape, sexual abuse, dowry harassment, trafficking etc. There is little or no mechanism to combat these violences either by way of effective laws and implementation or civil society action. A pernicious form of violence against women in most parts of India has been still existed such as female foeticide/ inf-anticide.¹¹

Reproduction is a biological and social phenomenon which touches interpersonal relationships, the concept of family and structure of society for childcare and child rearing. The subject of women and reproduction is a highly controversial one. The ability of women to bring forth children has been seen both as a capacity, a source of power, providing status-basically as something positive- as well as an incapacity, a source of women's vulnerability and thus as something negative.¹²

In all ages and in all places, there is an attempt to control women's reproductive capacity both by others as well as by women themselves. As pregnancies take place in women's bodies, control over fertility/ reproduction is closely linked to control over women's sexuality. Various societies have devised different kinds of taboos and laws for this purpose.

However, with the introduction of reproductive technology, the phenomenon of reproduction has been changing. There is an increase in scientific understanding of reproductive processes which have become more visible and controllable and

¹⁰ Ashok K. Jain , *The Saga of female Foeticide in India 2* (1st Edition 2006).

¹¹ *ibid*

¹² Jyotshna Agnihotri Gupta, *New Reproductive Technologies; Women's Health and Autonomy* 580 (1st Edition 2000).

intervention has become technological and increasingly diverse and precise. While contraceptive technologies made it possible for women to have heterosexual intercourse without becoming pregnant, with technologies like assisted reproduction, pregnancy become possible without intercourse as well, thus, now sexuality and reproduction is more definitely linked. Therefore, the struggle for control over women's bodies has become even more crucial.¹³

The increasing use of reproductive technologies and the importance given to them in determining reproductive decisions has been responsible for bringing reproduction further into the political domain. It has been pointed out that the technologies are socially controlled, i.e. access to them, their use and application is regulated or controlled. On the one hand, they make wider choices for women in their life, on the other hand, they lead control by others- such as the State, religious leaders, the medical profession and men (through these institutions and individually)- possible. In varying degrees reproductive technologies also have a potential to reduce women's role in procreation and carried to an extreme, they may take the production of human life away from women's bodies' altogether.¹⁴

Undoubtedly, reproductive technologies redefine reproduction and place before us new dilemmas. They are responsible for a change in our reproductive consciousness. There is a belief that conception can be perfectly controlled. For some women, the desire for a child has given way to the right to biologically own child. New reproductive technologies have brought controversies not among only feminist but among a public as a whole because they crystallized issues at the heart of society-contemporary controversies over sexuality, parenthood, reproduction and the family. It also brought within its womb a philosophical question about the beginning of human life and so on. Specially when used within international and national population policies, these technologies have wide application and acceptance. In promoting population policies through the use of reproductive technologies, national government, population control organization, the multinational drug industry, public and privately

¹³ Jyotshna Agnihotri Gupta, *New Reproductive Technologies; Women's Health and Autonomy* 581 (1st Edition 2000).

¹⁴ *ibid*

funded International bodies, medical researchers and health workers have significant impact on the health and autonomy of women¹⁵.

At this point, it is important to place the development and use of new reproductive technologies within the framework of:

- a) The cultural context of the ideology of motherhood.
- b) The practical realities of health care provision, and
- c) Impact of population control policy.

Some of the crucial questions are - Do the new reproductive technologies contribute to women's autonomy? To what extent can women take autonomous decisions in this regard? Autonomy refers to having control or power over one's own life and one's own body in relation to others. In this aspect, autonomy implies two main elements- a) the ability to withdraw from power and control exercised by others; and b) the possibility to exercise control or self-determination. The struggle of the women's movement is not just against individual man but primarily against the structure of a society to achieve full autonomy of their life.¹⁶

The impact of these new reproductive technologies on women is very important to study. In tracing women's struggle for reproductive autonomy and self-determination whether New Reproductive Technologies are useful in this process and for the larger goal of women's emancipation is vital to study and analyse.

The biological fact that woman's body is made such that it can only conceive and carry foetus for nine gestational months and thus, women must have control over their fertility and sexuality. The reproductive role of woman has always been sidelined and the government's attention is on population control rather than on the impact of reproduction on woman's life or their health.

¹⁵ *Supranote 13.*

¹⁶ *Supranote 13.*

Women have hardly any choice in childbearing. The decision depends upon the specific conditions in which they live. They are based on several factors, such as gender relations, one's own income, adequate housing, facilities and measures such as, information regarding contraceptive methods and accessibility, affordability and availability of services for the same. Their choices are also influenced by the patriarchal structure which determines gender relations, population control, state policies and development policies. As a result of political, cultural, social and economic differences, there is a great variety in the degree of control women have over their own lives.¹⁷

Viewing reproductive technologies closely shows that it can help women to achieve self determination and control over their bodies; at the same time, they can easily become an instrument of those in power to control women's life including the ideology of motherhood. In theory, birth control can liberate women from being overburdened with unwanted children, provided contraceptive methods are brought within the reach of women. The question of autonomy of women also depends on how much facility women have for availability, affordability and regulation of fertility or infertility management.

Within the context of population issue, reproductive technologies are advocated to achieve the goals of national population control policies. Since 1950s, family planning has been widespread for controlling the demographic problem. Controlling the procreative capacity of women is considered as an instrument in achieving this end. To resolve problems of hunger, poverty, backwardness, degradation of environment and depletion of ozone layer- population growth is seen as a primary cause. For these reasons, reproductive technologies such as – contraceptive, abortion and pre-natal test has been encouraged. Further, Population control programme perceive women as an tool for managing population growth and reduce women to fertility factors. This has led to the emphasis on efficacy of contraceptive rather than the health and safety of users.¹⁸

¹⁷ *Supranote 13.*

¹⁸ *Supranote 13.*

Women's movement has indulged in the need for safe and effective methods of birth control including abortion as a means for self – determination and autonomy. But the government has not focussed on the real issues such as women's health, availability, affordability of family planning measures, access to services, health care programmes etc.

In the process of development and modernization, science and technology have come to play an extremely important role. Not only technologies for production but also technologies for reproduction are proliferating rapidly. We need to ask; what are the ideas that lie behind the development of New Reproductive Technologies? And how do these development influence women's autonomy?¹⁹

Reproduction is now medicalised at different stages both to avoid pregnancy and to induce pregnancy when it is desired. It may begin with genetic screening of parents to determine whether they may be likely to pass any hereditary diseases/disorders to their offspring. In case of inability to conceive, sperm analysis and screening for tubal pathology etc. may be resorted to. If necessary, artificial insemination and or In-vitro Fertilization may be used for fertilization in a laboratory.

Therefore, there is unnecessary medicalisation of women's lives; for instance, interventions in women's bodies as a solution to male infertility. Similarly, the pre-natal diagnostic technique helps pregnancy to be supervised and conducted under the supervision of a gynecologist. In this way, pregnancy and child birth has now become string of medical events, where pregnancy is viewed as a disease and pregnant woman as needing control and supervision that starts even before conception. First, we had sex without reproduction (through contraception) and later, reproduction without sex (through artificial insemination etc.). Now, the ultimate project of science seems to be to have reproduction outside women's bodies may be in laboratories like cloning.²⁰

Further, it is also vital to examine the concept of women's right to choose. In the early years of this century, birth control was seen as an essential part of women's

¹⁹ *Supranote* 13.

²⁰ *Supranote* 13 at pg. 595 .

emancipation. The demand for birth control was combined with the demand for self determination. It was not limited to controlling the number of children but extended to control over the circumstances under which pregnancy and childcare take place. Earlier, there was the demand from women and the concept of self determination and control over one's body was made not just as an individual right but as a social right. Later on, with the development of technologies in the field of assisted reproductive technologies – the demand now is for the right of equal access to technologies such as technology like artificial insemination is not just for heterosexual but for homosexuals also.²¹

In India, talking about abortion which is a burning issue under reproductive rights; abortion was regulated on ground of the health of the mother. It has since been widely interpreted, in practice, to mean that the health of the mother would suffer from too many pregnancies. Abortion is widely used as a contraceptive measure by women. Further, the practice of sex selective abortion on non medical grounds brought out the new-fangled difficulty. It threw up a new dilemma- can the right of women to decide about abortion be extended to women's use of pre-natal diagnosis and abortion of a female foetus, if found? Most Indian feminists, while supporting women's right to abortion, condemned the practice of sex selective abortion and succeeded in having it banned in 1994.

While some women reject certain technologies, others embrace them in their strategies for autonomy or control over their bodies and lives. With New Reproductive Technologies, there is an increase in individual choices for some women. An increasing number of women are using contraceptive to remain free from unwanted pregnancy. Some lesbian women seek to fulfill self- insemination at home or artificial insemination by donor sperm (AID) performed at a clinic. These technologies provide them with the means to escape from the institution of marriage and the norms of heterosexuality and yet have their own biological children. They have also begun demanding access to In-Vitro Fertilization, surrogacy which gives some infertile women a chance to become

²¹ Jyotshna Agnihotri Gupta, *New Reproductive Technologies; Women's Health and Autonomy* 595 (1st Edition 2000).

pregnant or to realize their desire for a biological child. Through, genetic screening of parents and pre-implantation or pre-natal diagnosis, there is an increased chance of detecting congenital abnormalities and of preventing the conception or birth of an “abnormal child”. Infertile couples have new choices to have a child through artificial insemination by donor sperm, through in-vitro fertilization or through a combination of technologies including embryo-transfer (to a surrogate). They can even have a genetic child without the woman desiring the child being actually pregnant for nine months. Older women may also become biological mothers. There are also women who want to profit financially from the new reproductive industry, rather than only be used by it. Surrogacy is a case in point, there are women who are willing to bear a child for another woman/couple for money, although, they believe they are doing it for altruistic reasons.²²

In India, there are vital issues regarding reproductive rights where some women are seeking recourse to prenatal diagnostic technology followed by sex selective abortion to avoid producing another female child. They see it as a strategy to enhance their individual status or security within the family. What will be the legal consequences of such women?

More choice does not necessarily mean or lead to more autonomy. New Reproductive Technologies also make unnecessary interference in women’s reproduction which is now possible. Technologies which give some women certain rights and choices are at the same time bound to give those in position or power, by allowing or denying access to them on a selective basis. The politics around the question of women’s access to legal and safe abortion in different parts of the world is an illustration of this.

Unfortunately, the high value attached to fertility in many culture puts an enormous pressure on women to get married and bear their first child as soon as possible. However, these same societies deny information and services for contraception and abortion to adolescents and unmarried women, leaving them vulnerable to coerced

²² Jyotshna Agnihotri Gupta, *New Reproductive Technologies; Women’s Health and Autonomy* 604 (1st Edition 2000).

motherhood. The control over women's mobility may often restrict them from availability of information and services for fertility regulation. Besides this, the control over women's productive labour power and other economic resource and restrictions on their right to inherit movable and immovable property is important factors influencing women's reproductive autonomy.²³

What's more, patriarchal ideologies including the restrictions on the freedom to dispose of one's sexuality and the ideology of motherhood play an important role in women's freedom to choose.²⁴

Do these new reproductive technologies help women? Do they widen their choices? While the difficulties are located in women's social situation, for example, they are not literate, they have no control over their own lives etc.; no one takes initiative to change the situation and so new methods are sought in which women become passive acceptors/ users of methods where women's participation itself is minimized.²⁵

Eventually, reproductive freedom is an essential element of women's autonomy but as a pre-requisite for gaining autonomy in other areas of life, it is difficult to achieve. Technological innovation is not a sufficient condition for women's autonomy because technologies do not improve sexual/gender relations in conservative attitude of the society.

Though, new reproductive technologies offer some new freedom to women but with an increase in possibilities to choose, the freedom to choose also increases. What is required, at this junction is more visible and accurate legal framework for the resolution of complex issues of reproductive rights and new reproductive technologies. It is essential to protect and promote women's reproductive autonomy. But without having proper legal system, it is not possible to get out of the age old dogmas and practices.

²³ *Supranote 22* at pg. 607.

²⁴ *Supranote 22*.

²⁵ *Supranote 22*.

The official draft Programme of Action in Cairo and Beijing has mainly adopted the holistic perspective on reproductive health and rights as part of human rights. It spells out a framework of policies and programme strategies to ensure that these rights are to be exercised in all the signatory states. It calls upon national government and International agencies to reshape their laws and policies to ensure women's health and rights and to make resources available for implementation of those policies. The International women's movement has to ensure implementation of the reproductive health and rights framework. This ranges from transforming gender relations and ideology that govern sexuality and family structures to pressurize governments for creating laws and policies for comprehensive health care and reproductive health services, literacy and education of women and men.

The existing gender inequality in the society also affects sexual and reproductive behaviour of men and women. It is imperative to study economic, social, cultural, religious and political aspects which influence gender inequality in the society. There is no doubt, the scope of women to exercise choice, self determination and control over their sexuality and fertility can be seen in the context of their total lack of control over life circumstances and the lack of basic needs fulfillment.²⁶ This situation is because of gender discrimination where women are silent victim of age old customs and traditions.

In a culture where patriarchy is accepted as the only proper family system, men and women may be trapped in a pattern of relationship and dependencies. It is taken for granted that change in public sphere- whether economic growth, political transformation, new means of communication and transport will be reflected from changes in individual attitudes and behaviour. But this expectation does not extend to the private sphere where basic issues of identity and family are involved. This anomaly is at the root cause of continuing gender inequality. In patriarchal family system, men are the primary decision makers in family and social relationships. Women always urge for better reproductive health, maternity and child care leading to safe pregnancy and

²⁶ *Supranote 22* at pg. 618 .

delivery and breast feeding.²⁷ But their subordinate position in family or society has been responsible for the lack of reproductive health facilities.

Various programmes have been launched to improve the reproductive health of women. Several projects in India demonstrate valuable measures to improve the reproductive health issues. Efforts have been made to spread awareness about reproductive health, gender relation and the services available.

As gender, sexuality, reproductive rights and health are pertinent issues that affect all women in their lives and experiences. Reproductive role of women is part of the larger social roles defined for women which determine their individual lives and the choices they make. The battle for reproductive right is about freedom to decide about their bodies and right to take decision about their body themselves.²⁸

Attaining women's freedom requires that individual is able to exercise control over their sexual and reproductive lives. This includes the right to:

- i) Reproductive health as a component of over all health throughout the life cycle, for both men and women.
- ii) Reproductive decision-making including voluntary choice in marriage, family formation and determination of the number, timing and spacing of one's children and the right to have access to the information and means needed to exercise voluntary choice.
- iii) Equality of men and women, to enable individuals to make free and informed choices in all sphere of life, free from discrimination based on gender.
- iv) Sexual and reproductive security, including freedom from sexual violence and coercion and the right to privacy.

The importance of reproductive rights in terms of meeting International development goals has increasingly been recognized by the International Community. In the World Summit (September 2005), the goal of universal access to reproductive health was

²⁷ <http://www.unfpa.org/swp/2000/English/ch04.html> -10/9/2009.

²⁸ http://www.psb.org/general/sexual_rights-health.

endorsed at the highest level. Reproductive rights are recognized as valuable ends in themselves and essential to the enjoyment of other fundamental rights. Special emphasis has been given to the reproductive rights of adolescent girls and to the importance of sex education and reproductive health programmes.

The various factors that help to protect reproductive rights are in the following areas:²⁹

- a) Improving health infra-structure
- b) Making motherhood safer
- c) Family planning measures
- d) Prevention of HIV/AIDS
- e) Addressing gender-based violence
- f) Supporting adolescents and youth

In reality, to incorporate above factors under health infra-structure needs lot of commitment from the government. the causes of poor health is regarded as lying as much in the social domain as physical domain, it makes cultural sense to also seek cures from healers other than from the medical profession where various problems like nutritional deficiency, information about family planning, etc are the root causes.

In India, the provision for health care facilities lies on government's shoulder. It is their main responsibility to provide people with adequate health services everywhere. There are instances where people are dying of hunger; where there is only one or no earning member; in such condition getting adequate food for women or pregnant women or breast feeding mother is almost impossible. There are various cases of the weakness of mother and infant which is caused largely due to their under-nourishment. There is very few steps taken by the government in connection with emphasis on the quality and nature of the dietary intake of mothers during pregnancy and after child birth. Women themselves did not consider it important to take care of their diets and other health issues as there are other more relevant survival issues that they are dealing with, perhaps.

²⁹ <http://www.unfpa.org/rights.htm>.

The task of enhancing reproductive health services outreach in the villages at many levels addresses not only the question of access to existing health services but also the provision of facilities available and fulfillment of the requirement of the health needs of the people.³⁰

Moreover, maternal health facilities are unbalanced focusing on immunisation and the provision of iron and folic acid rather than on sustained care of women or the detection and referral of high risks cases.³¹

Women and health rights activists have been looking forward to the drafting of the bill in the light of the unregulated practices of these technologies and the increasing commercialization and commoditization of women's reproductive capacity. The bill has been drafted and is named as "National Guidelines for Accreditation, Supervision and Regulation of ART Clinics in India issued by the Indian Council of Medical Research in 2008.

The draft bill aims to regulate and promote the interest of the providers of these technologies rather than regulate and monitor the current practices. But the bill is inadequate in protecting and safeguarding the rights and health of women who undergo these procedures, surrogate motherhood, egg donors and the children born through these techniques.³²

Women's life has been revolving around reproductive task, mostly and it is in this area where they are facing critical problems not only relating to physical health but also social problems like gender discrimination, denial of health services etc. Even in the era of equality of sexes; equal status of women is a distant dream. Their capacity to reproduce has become a reason for their dominant position in the society. Therefore, there is a need to protect and promote reproductive rights of women through proper legal framework.

³⁰ Jyotshna Agnihotri Gupta, *New Reproductive Technologies: Women's Health and Autonomy* 627 (1st Edition).

³¹ *ibid* at pg.628.

³² <http://www.issuesinmedicaethics.org/171co36>.

Here, it is pertinent to draw attention on what is the meaning of reproductive right? It means right of all couples and individuals to have highest standard of sexual and reproductive health. It also means to be able to decide numbering and spacing of children. It also includes right to make decision free of discrimination, coercion and violence.

Therefore, in this thesis work, Chapter I is pertaining to “*Delineating the Boundaries of Reproductive Rights of Women*” where the meaning of reproductive rights as given under various International Instruments has been elaborately discussed. Why reproductive right is important for women for their emancipation has been underlined in this chapter. The general observation of how reproductive right plays an important role in the path of women’s empowerment has been analysed. Various human rights guaranteed under various international instruments have also mentioned as reproductive rights being part of human rights is also mentioned.

An assortment of human rights which contains the seed of reproductive rights has been discussed here such as right to health, right to privacy, right to life etc. Thus, chapter II delineates the boundaries of reproductive rights of women to the extent of new horizon and encompasses within it the foundation of reproductive rights framework.

Chapter II is “*Women’s Health and Medical Technologies-Emerging Challenges*”. In this chapter, what are the new reproductive technologies available and its effects on women’s health has been discussed. Whether women have been benefiting from these technologies or not has been analysed. New reproductive technologies starting from contraceptive pills to condom; abortion to sex selective abortion; In-vitro fertilization to egg/sperm donation; surrogacy to cloning, all known methods has been categorically discussed highlighting briefly its merits and demerits. An effort has also been made to overview on the subject of how reproductive technologies has brought new phase in the medical world. How far these technologies are using for the benefit of women? Whether these are helping women to achieve their autonomy or not? Whether there are any health risks that women suffers due to these technologies or not? Whether women

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are decision maker in choosing these technologies are some of the vital challenges that are brought by these technologies or not? Here, effort has been made to answer all these queries and the impact of reproductive technologies on women.

The most relevant issues of reproductive rights have been highlighted in chapter III i.e. *“Ethical Dilemmas and Legal Issues in case of Reproductive Rights”*. The research work is based on examining highly ethical and legal issues of reproductive rights. What are the challenges before the state to regulate the reproductive rights? What are the challenges brought by new reproductive technologies? Whether these technologies are affecting the quality of life women living? Whether these technologies has been misusing or not? If misused what is the redressal agencies? Whether women have control over their fertility or sexuality? What is the status of children born out of such technique? What would be the definition of motherhood/parenthood in the light of these technologies? All these and many more ethical, social and legal issues have been researched into this chapter.

What are the existing laws available for the protection of reproductive rights of women? Whether existing laws are adequate enough to meet the growing challenges of reproductive technologies? What measures could be adopted to achieve quality reproductive health care of women? The policies and programmes that have been implemented so far to enable women to meet their reproductive health goals have been enlighten. What are the defects, if any, that exists in achieving quality reproductive health care of women. What are the areas that are not yet covered by the existing laws? By scrutinizing both international and national instruments, the visible framework for the protection of reproductive rights has been discussed under Chapter IV i.e. *“An Analytical study of laws, policies and programmes for the Protection of Reproductive rights”*.

As International community has always shown their commitment towards women’s health and rights including reproductive rights. Various rights were recognized at International Conference several times on the human rights of women. The Universal Declaration of Human Rights (1948), The International Convention on Civil and Political Rights (1968), The International Convention on Economic , Social and

Cultural Rights (1966), the Convention on the Elimination of all Forms of Discrimination against Women (1981), The Convention on the Rights of the child (1990), The International Covenant on population and development 1994, Fourth world conference on women (FWCW) etc, all have addressed women's reproductive health as a fundamental human right.

Next to recognition of reproductive rights by International Community, in national level, effort has also been made for the protection of these rights under Indian legal framework. The Constitution of India itself guarantees under Article 14 - 16, gender equality, Article 21 guarantees Right to life and also under Directive Principles of State policy, Part IV provides provision for elimination of inequalities in status, just and human conditions of work and maternity relief and to regard the improving of nutrition, standard of living and public health as among its primary duties. It also provides fundamental duties under Article 51 (A) to renounce practices derogatory to the dignity of women etc.

Besides there are very scarce legislation i.e. The Medical termination of Pregnancy Act 1971, legalize abortion under certain circumstances; The Pre- Conception and Pre-Natal Diagnostic Technique (Prohibition of Sex selection) Act 1994 prohibit sex-selective abortion and The Maternity Benefit Act 1961 protects the right of working women during post- natal care and allows maternity leave for the period of three months (amended to six months but not yet implemented).

So, there are very few existing laws for the protection and promotion of reproductive rights of women. The government's effort is till now limited to the family planning measures with aim to control demographic problem. Though, other health facilities are almost negligible; women have been facing unacceptably high risk of dying during pregnancy and child birth. Sometimes, they even have to take the burden of unwanted pregnancy due to the failure of family planning devices or failure of sterilization operation. The issues arising out of such cases are complex and need to be addressed. There is a need for a sensitive and visible laws and policies to safeguard women from such reproductive health alarm.

Though, five year plan also concentrated on population but reproductive health of women is not much dealt with. The only available facilities are Primary Health Centers with ill equipped techniques and inadequate service providers. However, National Population Policy has been framed but still reproductive rights has not been promoted and protected to the extent it requires.

Over the years, many cases have come before the judiciary on such issues. But the judiciary has never recognized reproductive and sexual rights of women clearly. The court suffers mostly due to the technicalities or practical difficulties. Though, recently court seems to be viewing such issues with wider perspective. It has set a new trend by providing compensation in cases of failure of sterilisation operation.

The new reproductive technologies have also posed many new legal issues. Few years before, a couple reached Mumbai High Court seeking permission to abort foetus at the stage of 24 weeks. The legal abortion cannot be performed after the period of twelve weeks under Medical Termination of Pregnancy Act 1971. But here foetus was found with cardiac anomaly with the help of prenatal detection of foetus. However, court denied to grant permission to abort on the ground of Medical Termination of Pregnancy Act. Such issues require urgent solution. Whether Medical Termination of Pregnancy Act, 1971 is required to have second look? With the latest technology abortion can be done safely even after the period of twelve weeks. These issues are vital for the protection and promotion of reproductive rights.

Chapter V is "*Role of the Judiciary in Protection of Reproductive Rights of Women*" provides case laws on various reproductive rights problems has been discussed. Both International and National cases has been discussed to find out the appropriate solution on emerging issues of reproductive rights. Also to measure how far judiciary is efficient in dealing with the crisis of present scenario that has brought by New Reproductive Technologies. Whether Judiciary has its impact on the protection of reproductive rights? How far judiciary helps in shaping reproductive rights of women in India?

As, in the present situation where there is inadequate laws and existing laws are almost invisible, the only last resort would be the judiciary. Therefore, burden lies on the judiciary to implement and interpret laws according to the present situation.

The reproductive technologies have brought phenomenal changes by separating reproduction from sexual intercourse and marriage. This has led to the change in the concept of parenthood or motherhood. Today, it is possible to have offspring by hiring donor or can hire women who can contribute the egg or carry the gestation over nine months and give birth to a child and paid for the service. This scientific breakthrough has brought new fears.

The Indian legal system is still silent in these emerging issues. There is likelihood that some day people would bang on the doors of the judiciary for an answer to these new problems.

The new techniques of reproduction can be useful to a single woman or lesbian etc who has a desire to have a child without involving in long term commitment but there is no law to carefully spell out the legal status of such a single unmarried mother, child status (born out of such techniques) and their acceptance in the society. Reproductive right means women have the right to reproduce and freedom to decide how and when to do so. But once such right will be exercised; what will be the social status of such women is still jeopardized.

The reproductive right framework guarantees a powerful instrument for advancing women's health and empowering them to address the social conditions that influence their health and their lives. As there is still violence against women rampant in the society and there are no adequate laws to safeguard women from such violence. In such a situation recognition of reproductive rights by the state agency is an urgent need.

Though, women movement for their right is going on for so long but still the concept of reproductive right is very recent. The issue on reproductive right of women is not very visible in the Indian legal framework. There is no system of check and balance of new reproductive techniques and thus urgently require clear legal framework.

Moreover, the legal fraternity mostly now reaches into the sphere of family, community and tradition- the areas where the rights of women have to be recognized through legal instruments.

Therefore, it is essential to well equip the legal structure of our country to deal with the challenges of reproductive rights. The present research work is intended to make significant contribution in this area.

The main object of this study is to identify the laws and available legal framework. It aims to invoke the areas where there are no laws or even if there are laws, they are not adequate enough to meet the present challenges. It also attempts to suggest necessary steps to be taken to protect and promote reproductive rights of women in chapter VI as heading "*Conclusion and Suggestions*".

The hypothesis of the present thesis work is that there is no visible and comprehensive legal system for the protection of reproductive rights in India. The existing laws are scattered and underutilized. Even, the Judiciary is reluctant to explore this area fully and basically very few cases have come before the judiciary. Above all, women themselves are hesitant to approach court for their rights.

The methodology of this research work is doctonire in nature where both historical and analytical approach has been adopted. The study has been conducted on the basis of primary and secondary documents. The data necessary for the study of this research work has been collected from established sources and also from local health services available.

Thus, the struggle for the empowerment of women's right will be incomplete without having arena for the protection of reproductive rights. In order to realize this right, visible legal structure is the prime necessity. Thus this thesis is titled as "*A Study of the Legal Framework for the Protection of Reproductive Rights of Women in India*". Here, through this thesis a sincere effort has been made to elucidate the moot causes existed in recognition of reproductive rights. Now moment has come where serious problems

will arise in the absence of clear legislation. Thus, this is high time for the legislators to enact and enforce reproductive rights under Indian legal system.

It is viewed that women constitute the vulnerable section of the society thus every state has to develop an effective legal system for the protection of this group. Though, there are laws for the protection of women but they are not sufficient enough to encourage participation of women in decision making process and enforcing their rights. There is a need to draw attention on the helpless condition of women and their sufferings. Perhaps, what else would be a better tool for women to protect themselves from their age old misery than that from freedom to control their bodies, their sexuality and fertility and freedom to take decision regarding reproduction?

It is high time for the government to plunge into motion with a comprehensive action plan involving various ministries, departments and other non- governmental organization for overhauling the existing social structure. To the end, it is extols that the virtue of motherhood has been seen and still hope to continue to see as god's gift "*as a blessing and not as a curse*".

Indeed, time has come where women would make great reaffirmation in the heart of the humanity where policies and ideals are changing to give them new destiny; the environment where women live with dignity and respect. The moment has come where women has to demand for their self respect and self determination. There has to be an effort for resolution on the part of women to demand that they are women of the highest status of their womanhood and proud to be a woman.