

Reproductive Rights and Women's Health in India: A New Prospective

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There is no second thought that women are facing many injustices and inequalities globally, both in terms of protection and promotion of their rights. The most ignored part of this fact is their health. This fact points out that there is a need for a specific focus on women's health issues. Moreover, women suffer health issue generally because of their ability to reproduce. For this reason, when we talk about women's right it is important to focus on the reproductive health of women as right of women is incomplete without recognizing reproductive rights of women. Women's reproductive right can become an important instrument to change the status of women in the society.

The issue of reproductive right is very essential because there is lack of concern on the part of the government and lack of awareness in the society to recognize and protect this right. Freedom and rights of women is impossible to achieve without assuring them reproductive rights. Therefore, it is necessary to define and re-define reproductive right and to understand its importance in women's life. There is no doubt that the subordinate position of women in India has its direct impact on the health of women. Women hardly have access to health facilities. There is lack of awareness among women regarding quality of health and also facilities available for the good health. In reality, women bear an inconsistent burden because of their health issues (including capacity to reproduce) and fail to participate effectively in the development endeavour.² The social, cultural and political structure of the society prevent women from enjoying basic right i.e. right to health. For the overall development of the country, it is essential that the health of women especially reproductive health of women should be taken seriously by the government because only healthy mother can give birth to the healthy child.

I. Concept and meaning of reproductive right

The reproductive rights of women means the right of women to attain the highest standard of sexual and reproductive health and at the same

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time achieving full participation in the social and economic life.³ Reproductive rights also mean a state of complete physical, mental and social well being and not merely the absence of disease or infirmity, in all matters and to its processes. It includes various rights of women such as – right to abortion, right to make her own decision regarding her body and her reproductive life, right to safe sex, right to procreation and to have family etc.

Reproductive right implies that the people are able to have satisfying and safe sex and that they have capacity to reproduce and the freedom to take decisions as to when and how often to do so. It also impliedly provides the right to be informed and to have access to safe, effective, affordable and acceptable methods of family planning of their choice as well as other methods of their choice for the regulation of fertility and the right to access appropriate health facilities that help women to have pregnancy and childbirth in a safe and hygienic condition and also help a couple to have a healthy child.⁴

Reproductive rights assure equality of relationship between men and women, respect for the integrity of the person, consent and responsibility for the sexual behavior and its consequences. Thus, reproductive right is the ability of women to control her body and to enjoy all other rights including equality of men and women, right to free choice in matters of reproduction and sexuality and health care.

From the mid-nineteenth century, feminist and social activists advocated for the right to reproductive choice as a basis of women's freedom. A reproductive right, no doubt, touches the sensitive issues of the rights of women and their autonomy. In all the liberal societies reproductive rights has been recognized as a part of human rights.⁵

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 (1979). At Alma Ata Conference in USSR in 1978, primary health care was exclusively discussed and access to family planning, maternal and child health care was accepted as basic human rights.⁶

³ An interim at the African Women's Development and Communication Network (FEMNET) www.reproductiverights.org by Ritu Anyumba

⁴ International Conference on Population Development Program of Action, paragraph 7.2

⁵ Subash Chandra Singh "Reproductive Rights as Human Rights: Issues and Challenges" 31 (1&2) Indian Socio-Legal Journal 59 (2005).

⁶ WHO 1978 (33).

The Final Document of the Teran Conference on Human Rights, 1968, provides the “basic human right to decide freely and responsibly the number and spacing of children and the right to adequate education and information in this respect.” The Cairo Program further expanded the concept of reproductive rights as a state of complete physical, mental and social well-being.” The infant concept of reproductive rights matured with the Beijing Platform where it was held that “the reproductive health to women’s rights means to have control over matters relating to their sexuality free of coercion, discrimination and violence.”⁷

Moreover, the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) provides “the obligation to ensure the full development and advancement of women for the purpose of guaranteeing them the exercise and enjoyment of human rights where men and women have equal rights”.⁸ India is also a signatory country to the International Conference on Population and Development, 1994, and has determined to establish standards in family planning services including the right to reproductive autonomy and collective gender equality.⁹

The ability of women to control their own fertility is an essential criterion to enjoy all other rights and lays down the foundation for the equality between men and women.¹⁰ Reproductive rights include various human rights that have been recognized under different international instruments. These are as follows-

1. Right to health, Reproductive health and family planning.
2. Right to decide the number and spacing of children.
3. Right to marry and found a family.
4. Right to be free from gender discrimination.
5. Right to be free from sexual assault and exploitation.
6. Right not to be subjected to torture or other cruel, inhuman or degrading treatment.
7. Right to life, liberty and security.
8. Right to privacy.

⁷ International Conference on Human Rights in Teheran in 1968
www.reproductiverights.org

⁸ Upendra Baxi “*Gender and Reproductive Rights in India: Problems and Prospects for the New Millennium*” Kali Yug 24 (2000).

⁹ United Nations International Conference on Population and Development (ICPD) 5-13 September, 1994 Cairo, Egypt, www.issd.ca/cairo.html

¹⁰ Subash Chandra Singh “*Reproductive Rights as Human Rights: Issues and Challenges*” 31 (1&2) Indian Socio-Legal Journal 59-60 (2005).

9. Right to modify customs that discriminate against women.

10. Right to enjoy scientific progress and to consent to experimentation.

These rights have clear implications on all aspects of women's reproductive rights which results into freedom of choice in matters of sexuality and reproduction. There is no doubt that the reproductive right is the basic foundation of all other rights of woman and is inalienable and inseparable from basic human rights. The reproductive rights are directly or indirectly derived from basic human rights and are the part of human rights.

It is true that without breaking the barriers of cultural values and religious belief the achievement of reproductive rights as a basic right of women is impossible.¹¹ The inclusion of reproductive rights under international human rights is a major gain. But there is still a constant effort to recognize reproductive rights in domestic scenario. The freedom and progress of women's status in the society is not possible without recognizing reproductive rights as basic right of women.

Reproductive health of women is integral part of women's life and rights and freedom of women is meaningless without having reproductive rights of women. The right to life, right to privacy, right to health etc. is incomplete without having reproductive right.¹²

In India, there has been neglect on the health of women especially reproductive health of women. There is a need for the serious look in the current health policies, programmes and laws in India. The health policies and programmes have to be shifted from demographic target to much wider perspective. The health issues should cover the reproductive health needs of women and the services they require for the purpose.

The various policies and laws shows their concern on health issues such as the National Population Policy, 2000, affirms the right to voluntary and informed choice in matters of family planning.¹³ Abortion in India is illegal if it is beyond the reason given under the Medical Termination of Pregnancy Act, 1971. Similarly, sex-determination of foetus is also made illegal under Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994.

There is health programmes – such as NRHM National Family Welfare Programme, National Family Health Survey, Integrated Child

¹¹ Dr Subash Chandra Singh “*Reproductive Rights, A part of Human Rights*” 3 Supreme Court Cases Journal 14-15 (2002).

¹² Upendra Baxi “*Gender and Reproductive Rights in India: Problems and Prospects for the New Mellenium*” October Kali’Yug 23(2000).

¹³ National Commission on Population, Government of India, / National Population Policy, 2000. <http://mohfw.nic.in>

Development Services (1975), Reproductive and Child Health Programme (1996) etc. that has been launched for providing health care measures and awareness among women and girl child. But these programmes fail to focus on the issues of reproductive health of women. There is a need to deal with the issues of reproductive health of women by reshaping the health programmes and laws according to the reproductive health needs of women in India.

The reproductive health ensures that people have the capacity to reproduce and to undergo pregnancy and child birth safely. It further, provides that in case of any gynecological or other disorder there has to be facility for the medical services. The state must provide such condition where every individual enjoy reproductive right and more so by women because reproduction mostly affects women's life.¹⁴

II. Reasons for the slow growth and development of reproductive rights in India

There are various social, cultural, and economic factors which are responsible for the lack of awareness and recognition of reproductive rights of women in India. Few such factors are underlined below:-

II.I. Gender Inequality

Gender is socially and culturally imbibed in any society. In studying demographic figure it is clear that fertility, mortality and migration mostly consider women as child bearer. In a patriarchal society like India women have hardly any choice in procreation. As reproduction exist in close interrelation with social, cultural and political context without having condition for gender equality it is not possible for women to enjoy and exercise reproductive right.

There is no doubt that women are silent victim in the society. The percentage that shows unequal sex ratio and higher female infant mortality rate in large part of our country reflect the general devaluation of women. A female literacy rates lags far behind than that of males in most states. Gross enrolment ratio suggests that even in the 1990s only 88 percent of all girls aged 6 to 10 (compared to over 100 percent of all boys) are enrolled in school. Only about one in three girls 6-14 actually attended school comparing to about three in five boys.¹⁵

¹⁴ Shireen J. Jejeeboy "Adressing Women's Reproductive Health Needs" 475 Economic and Political Weekly March (1997).

¹⁵ Tulsi Patel "Gender Relations, NRTs and Female Foeticide in India" in Tulsi Patel (ed) Sex-Selective Abortion in India 27-28 (2007).

There is no denying that one of the reasons for poor reproductive health of Indian women is gender discrimination. The reasons of gender discrimination is complex and diverse such as poor status of women in the family, attitude of the people, low level of education, limited access to resources, cultural norms, etc.

II.II. Health Care Programme

The health care programme is limited to the Primary Health Care approach. The health care programmes made for women are maternal and child health services, reproductive and child health project and the family welfare programme. These programmes aim at providing better reproductive services encouraging institutional deliveries and spacing between the children.¹⁶ These programmes also take initiative to provide health education.

However, despite these programmes there has been decline in the sex ratio. Health and family planning services have not been sensitive to the situation of women or to their problems. It is true that women are facing problems in seeking and expressing their health care issues.

The main problem in India is that family planning programme is concentrated on population and lacks health care services and health education. The fact that India is second largest populated country in the world where the population has increased from 36 crore in 1951 to over 102 crore in 2001 has worried everyone including government. An uncontrollable population explosion has become the obstacle for country's progress. The government was so much occupied with population explosion that it has totally forgot the importance of good health of the mother for the good health of the infant.

II.III. Pre-natal and post-natal care

Unsafe motherhood is a reality in India especially in rural parts. Few women get facilities during pregnancy and delivery. Lack of care during pregnancy and child birth including both the obstetric conditions and gynecological conditions is not uncommon here. About 92 percent women suffer from gynecological disorders such as- genital tract infections, urinal track infection etc. out of these only 8 percent undergo for gynecological examination and treatment.¹⁷

Women hardly have access to antenatal care, high risk cases go undetected, anemia is acute during pregnancy and nutritional knowledge of

16 Reema Bhatia "*Health Policy, Plan and Impletation*" in Tulsi Patel (ed) Sex-Selective Abortion in India 205 (2007)

17 www.reproductiverights.org

health and nutrition needs during pregnancy and post natal period are poorly understood. The modern health facilities are beyond the reach of common people.¹⁸

II.IV. Health Care / Medical facilities

In India, medical facilities are poorly equipped to deal with reproductive health problems. It concentrated only on immunization and provision for iron and folic acid rather than on sustained care of women during pregnancy and after delivery. In traditional family there is no excuse for women. They have to take care of domestic work and sometime they even go to the field work to support the family financially.

II.V. Population Explosion

According to estimate at the period 1991-2001 the proportion of population growth attributable to population momentum was almost 70 percent, while unwanted fertility contributed about 25 percent of the population growth was attributed to couples desiring to have more children. This pattern will continue in future also because of the large number of young people.¹⁹

The dimension of women's poor reproductive health is behavioral concerns which include lack of autonomy, unequal gender relation, lack of medical facilities, inadequate health programmes and policies etc. Basically, the restrictions women are facing in attaining good reproductive health is because of socio-cultural reasons such as gender inequality.

III. Reproductive right – A New Prospective of Women's Rights

Today reproductive rights of women are increasingly used to realize the self – determination of women and their freedom and equality. The reproductive rights of women ensure –

- a) the right of women to choose whether to have children or not;
- b) the number of children they want;
- c) when and how to have children;
- d) the means and methods to exercise their choice regarding fertility management; and

¹⁸ Peter Olasupo Ogunjuyigbe “*The Risks Involved in pregnancy and Child Delivery: Strategies for Prevention in Nigeria*” 17 no. IASSI Quarterly 125 (1999)

¹⁹ Almas Ali “*Population: Myths and Facts*” in Shruti Pandey, Abhijit Das, Shravanti Reddy, Binamrata Rani (ed) *Coercion vs Empowerment* 6 (2006).

- e) access to good information on means and methods regarding fertility

The reproductive right is directly associated to the right and freedom of women. It is the extension of the principle of self-determination of women which provides that women must be able to decide about their own body and reproductive capacity. The social structure in the society has placed women in such position where women generally take care of the children. Thus, women have responsibility towards family and have to manage their career outside also; therefore, they must have choice regarding reproduction. They should be one to decide about the measures to prevent pregnancy and the time when they want to be pregnant. But the fact is that they hardly have their say in relation to reproduction.²⁰

There is a need to have an atmosphere where women can take decision to carry her pregnancy to term or not. The dilemma of reproductive right touches the most sensitive aspect of human life as reproduction involves both husband and wife and the expectation of other family members as well. It stirs strong emotions and brings fundamental changes in their life. However, it is woman who has to be mentally and physically prepared to have a child.²¹

The social and cultural attitude has always impairs women's ability to take decision and the right to protect their self-worth. The recognition of reproductive rights of women by legal framework would be an essential milestone for women to achieve their other human rights.

The state should ensure women the freedom to enjoy reproductive rights which include freedom to plan their fertility and to have medical facilities available to check their reproductive health. There is a need to have an environment where they should be treated equally in all matters including in decision making process. The involvement of women in the decision making process especially in the matter of reproduction is the new prospective of women's right in India today. The need for the legal framework for the protection of reproductive rights of women in India is the need of the hour to enhance the status of women as equal individual in the society.

Reproduction is fundamental to the very existence of mankind. Consequently, any questions relating to human reproduction are crucial and both the family and society has endeavoured to protect this impulse to

²⁰ Jyotsna Agnihotri Gupta, *New Reproductive Technologies, Women's Health and Autonomy* 22-26 (1st Edition) 2000.

²¹ Medani Abdul Raman Tageldin "Right to Privacy and Abortion-A comparative study of Islamic and Western Jurisprudence" xii Aligarh Law Journal 133 (1997).

reproduce. In modern times, this desire to reproduce has to be transformed into rights and obligations and should be materialized and protected by legal framework.²²

In India issues on reproductive rights has been so scanty and hardy cases are dealt by the judiciary as most of the cases goes unreported. There are various reasons for this condition such as-lack of awareness, social and cultural barriers, lack of education etc. The social fabric of our society is such that women are in the custody of their father till marriage and then to their husband after marriage and in the old age they are dependent on their son. Their individuality, rights and needs are always subject to their male members in the family. In spite of the avenues open to seek redressal of grievances in the court of law, practically they are constantly urged to submit, adjust and to have patience.

The Supreme Court has always responded to the issues of women in an optimistic manner. There are many cases where the court has significantly advance the cause and dignity of women. But issues relating to reproductive rights hardly come to the court as well as most of the cases remain unreported.

Though, reproductive rights have been recognized but with their traditional outlook and do not deal with the practical challenges. For instance, the condition of working women is very difficult as limited benefits are available to them in the name of Maternity benefit Act. The medical care, benefits and related complications during the period of gestation and thereafter during nursing and feeding period of baby has been totally forgotten. India should take the example from European countries where working women has been protected and given rights during the whole period of pregnancy and extended till the lactation period after delivery.²³

The concept of reproductive right is important today. There are very few occasions where the issue of reproductive right has been raised. However, with the development of reproductive technologies the arena of reproductive rights has been extended such as issue relating to abortion, sex-selection, artificial insemination, surrogacy, cloning, sperm donation, sterilization operation etc. These issues are sensitive and require wider perspective of legal framework.

²² Maja Kirilova Eriksson, *Reproductive Freedom in the context of International Human Rights* 166 (1ST Edition) 2000.

²³ Prinkal Joshi “*Whispers and Tears: The Fate of Health Care Needs of Indian Women and Challenges before Law*” AIR Journal 59 March 2014.

IV. Conclusion and suggestions

A focus on the health needs of women, their nutritional status, the risk of early marriage and child bearing is sensitive issue of concern and require urgent attention if condition of women has to be improved. At the same time, there is a need to provide health care information to the grass root level through awareness programme in the large scale. Moreover, there is a need for the proper legal framework to address and recognize the promotion and protection of reproductive rights of women in India.

However, the places from where the foundation of reproductive rights arise and can be exercised stand occupied by various factors such as the pharmaceutical industries, medical education and profession and public health specialists.²⁴ There is a need for the government to take initiative to make reproductive right as a prime concern in the health policies since reproductive right is the indicator to know the status of women in the society.

There is a need to have access to appropriate, affordable and quality health care facilities and related services for women. Health programmes should focus more on women's health including reproductive health. There is a need to have proper monitoring of health programmes whether it reaches every nook and corner of India or not especially rural parts of India. There is a need to have proper implementation of laws and programmes that has been made for the health of people and special care has to be given to women's health. There is also a must to have door to door services for health check-up for women on a monthly basis so that woman who cannot afford to go to hospital gets the essential treatment. Overall, there is a need to sensitize the health issues of women as an important issue of the Centre or the State. Health awareness programmes should be made with more result oriented scheme. There is a urge to have legislation as Reproductive Rights (Protection) Act in order to protect and promote reproductive rights of women and to look after all the issues of reproductive health of women whether it is as regard to providing medical facilities or creating awareness or having health policies and programmes concerning women. Reproductive right is to be placed in a central point in the priority of government in order to promote the status of women and to protect her rights.

²⁴ Upendra Baxi "*Gender and Reproductive Rights in India: Problems and Prospects for the New Millenium*" October Kali's Yug 24 (2000)