

WOMEN'S SEXUAL HEALTH RIGHTS VIS -A -VIS ASSISTED REPRODUCTIVE TECHNOLOGIES

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Abstract

The welfare of the family and individuals is the ultimate purpose of the right to procreate. Artificial insemination is now a viable substitute for natural procreation in the context of a marriage due to recent advancements in reproductive science. Techniques such as artificial insemination, in vitro fertilisation, embryo transfer, and surrogate mothering have expanded the options available to a person who wants to start a family in which they will be the only parent responsible for raising the child. Despite evidence that suggests significant care is necessary, IVF and related methods have transitioned from experimental to therapeutic status too quickly and easily. Regretfully, solid proof of IVF's effectiveness in expanding women's and couples' reproductive rights has come before, not after, its widespread adoption. Finding the causes of infertility and preventing fertility issues might be better uses of resources.

Key Words: Sexual and reproductive health, Fertility, Assisted Reproductive technologies

Introduction

Although reproductive rights are seen as fundamental human rights, it is unclear if these rights include the ability to use ART. This question depends on how human rights documents define the right to procreate and how legal regimes apply it. However, it is important to note that none of these documents really grant the right to procreate; rather, the right to procreate is presented as a key component of the rights to privacy, health, life, and marriage and family. Procreation no doubt is a biological procedure and take place naturally, yet, in case of infertile couples, could such couples take support of ARTs techniques or not. In recent years, a wide range of methods have been widely accepted as treatments for infertility

problems and for preservation of sexual and reproductive health rights(SRHR). However, despite the rapid adoption of new treatments, basic questions remain about how ARTs affect reproductive rights and the allocation of scarce medical resources. This further move towards technology-mediated reproduction will make the legal, ethical, and policy issues we confront even more complicated. This article examines these issues in respect to in vitro fertilisation (IVF), a widely accepted treatment for infertility that is a form of artificial reproductive technology (ART).Protecting the rights to sexual and reproductive health is state's duty. The laws and rules that are now in place in India regarding

SRHR leave a lot of potential for improvement. Despite general agreement that such rights are crucial to a person's right to life, the method of implementing reproductive rights has long been contentious.

Evolution of the Definition of Sexual Health

International Conference on Population and Development

The Cairo Conference was held in September 1994. Family planning, unsafe abortions, and STDs are among the subjects covered in Chapters VII and VIII of its Program of Action, Reproductive Rights and Health. Penalties also apply to governments that enforce particular regulations in these areas.

This conference was the first worldwide declaration that the concept of reproductive rights includes complete physical, mental, and social well-being as well as all issues pertaining to the reproductive system, including its functions and procedures, in addition to the absence of disease or disability.

This was based on the idea that everyone has the right to the best sexual and reproductive health, the freedom to make reproductive decisions free from discrimination, violence, or torture, and the freedom and responsibility to choose how many children they want and how far apart they should have them, according to human rights documents.

Beijing Declaration and Platform for Action, was established following the Fourth World Conference, and it urges the international community to support women's economic, social, and political emancipation by supporting their right to procreate. The state of women's and adolescent girls' reproductive rights such as access to knowledge, privacy, respect, and consensus as well as the powerlessness of women who have been sexually abused are highlighted.

World Health Organization (WHO), "States must ensure that laws, rules, and policies pertaining to specific aspects of sexual and reproductive health comply with the United Nations Convention on the Rights of Persons and that these restrictions are removed."

Reproductive rights have also been incorporated into international criminal law and international humanitarian law. The International Criminal Court (ICC) frequently deals with reproductive issues. According to Article 2(d) of the Convention on the Prevention and Punishment of the Crime of Genocide and Article 6(d) of the ICC Statute, acts aimed at preventing birth such as forced sterilisation and abortion that are committed against a national, racial, ethnic, or religious group can be considered acts of genocide. The ICC deemed them to be crimes against humanity.

Determinants of Sexual Health

They include "access to safe and potable water, adequate sanitation, adequate food and nutrition, adequate housing, safe and healthy working conditions and environment, and health-related education and information." These physical factors have an impact on (sexual) health. "Social determinants" are social norms and systems that, in addition to sexual orientation or gender identity, stigmatise, oppress, or marginalise persons based on their sex, marital status, age, aptitude, caste, race, or status as a member of a minority. Therefore, legal protection from abuse, torture, and discrimination is crucial for the health outcomes and vulnerability of various demographic groups.

Definition of Sexual Health

The World Health Organisation defines sexual health as "a state of physical, emotional, mental, and social well-being with regard to sexuality; it is not merely the absence of disease, dysfunction, or infirmity." Sexual health requires both the capacity to have happy and safe sexual experiences free from coercion, discrimination,

and violence, as well as a positive and respectful perspective about sexuality and sexual relationships. To achieve and preserve sexual health, everyone's sexual rights must be acknowledged, protected, and respected.

Evaluation of Reproductive Rights and Choices in India:

In India, legislators and national courts have played a significant role in abolishing discriminatory criminal laws, particularly those that may be hazardous to an individual's health.

Reproductive Health and Rights

Reproductive rights have been progressively recognised as human rights since the 1968 International Conference on Human Rights Declaration and the 1994 International Conference on Population and Development. The Convention on the Elimination of All Forms of Discrimination against Women of 1979 (CEDAW) and the International Covenant on Economic, Social, and Cultural Rights of 1996 (ICESCR) both emphasise the importance of reproductive rights in advancing women's human rights. Reproductive rights are acknowledged both directly and indirectly in a number of Sustainable Development Goals (SDGs) and former Millennium Development Goals (MDGs) objectives. As a signatory to several covenants and conventions, India must ensure that these goals are reflected in its laws and policies. When national laws and regulations relevant to RHR are examined, a complex picture of compliance with notable gaps is presented. For example, the mapping of policies and programs and current empirical data from the field verify that the "continued implementation of goals of the family planning program has resulted in egregious forms of violation of reproductive rights and autonomy, particularly for women from marginalised communities."

Violation of Reproductive Rights

Reproductive rights are often defined as the freedom to maintain good reproductive health and

to decide whether or not to have children. The ability to use contraception, choose when to start a family, terminate a pregnancy, receive reproductive health care, and learn about sex education in public schools are all examples of reproductive rights. The legal protection of these rights as human rights is crucial to achieving gender justice and equality for women. Numerous violations and disparities in access to reproductive rights have an impact on the occurrence of maternal death. Women are particularly harmed by infringement of their reproductive rights because of their capacity to get pregnant. Maternal mortality and morbidity, Unsafe abortion and poor quality of post-abortion care Lack of access to the full range of contraceptive methods Reliance on forced and substandard female sterilization Child marriage and Lack of information and education on reproductive and sexual health.

Provisions on Medical Termination of Pregnancy

In certain ways, India's Medical Termination of Pregnancy (MTP) Act of 1971 might be considered the country's first abortion law. It gave details on where abortion can be legally done as well as the qualifications needed to be eligible for the procedure. Within a year of the Act's passage, the lady had to obtain the written consent of one licensed physician. If the pregnancy continues over twelve weeks, two doctors will be needed. This rule's "sine qua non" was the "good faith" requirement, which meant that even if a woman wanted to terminate her own pregnancy, one of the primary criteria used to decide whether or not the abortion would be allowed was whether or not she posed a risk to her physical safety.

Other cases in which abortion may be granted were:

When pregnancy is caused by rape

A married couple may be responsible for any subsequent pregnancies if they do not use a contraceptive method or device to reduce the size

of their family. The law stated that no one under the age of eighteen or who was clinically diagnosed as insane could have their pregnancy terminated without the consent of their legal guardian, and that abortions could only be carried out in government-run hospitals or other facilities that were specifically designated by the government.

Due to its reliance on the term "women," the MTP Act of 2021, like its predecessors, has limitations in its application and does not provide rights to transgender individuals or those who identify as other gender minorities. This is true even though rape and sexual assault are among the most common forms of violence experienced by transgender people in India. When a transgender or intersex person conceives in this way, her options are limited compared to those woman. Cases such as *ABC v. Union of India* (2017) and *Suchita Srivastava v. Chandigarh Administration* (2017) have extensively examined the importance of bodily autonomy in relation to this Act.

According to the MTP Regulations, the Act places an additional maximum gestational age cap of 20 to 24 weeks on a certain subset of women. Benefits of the changes are not limited to women who have experienced violence (e.g., rape or incest victims) or who are otherwise vulnerable (e.g., children or women with impairments). One doctor's opinion is sufficient until the twentieth week of pregnancy. Though far from flawless, this is an improvement over the earlier acts. The fact that unmarried women can now have abortions for "failure of contraception" is a significant positive move.

Section 312 of the Indian Penal Code

The provisions of the IPC 1860 were never intended to provide instructions on how abortions must be performed, even though the law has been the focus of numerous publications on the topic. Many abortions were carried out illegally during this time due to a lack of legislation, putting the health of the women seeking them at risk. The

most recent mention of this clause, which is still in force, occurred on August 7, 2014, in *Smt. Sumita Mukherjee v. The State of Madhya Pradesh*, in which the defendant filed an appeal with the High Court. According to the High Court, previous courts ought to have taken into account the potential that the prosecutrix's miscarriage was purposefully induced in order to protect her health. Therefore, Section 312 of the IPC the law could not be used to prosecute the petitioner. Despite the significance of this clause, no legislation has been passed to support it. This indicates a deficiency of information regarding the true situation. Forced miscarriages caused by starvation, torture, or other brutal methods frequently go unreported since women are largely unable to report abuse to authorities, usually from their own or their in-laws' families.

ART and Reproductive Rights

According to one viewpoint, a person's reproductive sovereignty may justify their use of ART. Therefore, the state needs to assist infertile couples who require treatment in order to conceive. In actuality, exercising the freedom to procreate requires the ability to use ART. However, this right pertains to the right to use facilities and assisted reproductive technology (ART) in order to try to conceive, not the right to a child. It includes not only the option to reject to implant or abort a foetus with unwanted qualities, but also the freedom to alter an egg, sperm, or embryo to produce the desired offspring. Here, it is important to emphasise that procreative rights are not unqualified, and that reasonable limitations may be required for the child's wellbeing and for the good of society.

In order to address reproductive health issues where ART is required to become a parent or to freeze gametes, embryos, and embryonic tissues for later use due to infertility, illness, or social or medical concerns, the Indian government passed the 2021 Act on Assisted Reproductive Technology (Regulation) last year. This

legislation aims to regulate ART clinics, prevent exploitation, and ensure the safe and ethical use of ART services. The clinics will use assisted reproductive technology services in accordance with Section 21(g) of the Act, providing them to: i) women over the age of twenty-one and under the age of fifty; and ii) men over the age of twenty-one and under the age of fifty-five. Additionally, Section 22(1)(b) of the Act provides the commissioning couple or woman with insurance coverage of the prescribed amount for a period of twelve months from an insurance company or an agent appointed by the Insurance Regulatory and Development Authority, which was created in compliance with the provisions of the Insurance Regulatory and Development Authority Act, 1999.

Laws on Surrogacy

While commercial surrogacy is prohibited in India, altruistic surrogacy is permitted by the Surrogacy (Regulation) Act, 2021. This is done to stop human trafficking through surrogacy. The laws outline the conditions that must be met by the "intending pair" before surrogacy can be used. Again, this law's use of binary terms has the consequence of excluding the queer community; for instance, a non-binary person cannot utilise a surrogate to conceive a child since they are not considered a "intended parent," even if they are biologically capable of bearing a child. Similar to adoption restrictions, the Bill discriminates against gay couples.

Judicial Response

The Supreme Court has adopted a somewhat progressive position with regard to women's reproductive rights. The court made it clear that women have a right to sexual autonomy, which is an essential part of their right to personal liberty, with the landmark ruling in **Navtej Johar**, which decriminalised homosexuality and adultery.

The **Puttaswamy** ruling specifically recognised women's fundamental right to choose how they

wish to produce children, as stated in Article 21 of the Indian Constitution.

The Supreme Court held in the case of ***Independent Thought v. Union of India*** that a girl child's human rights should be respected and upheld whether or not she is married. The sexual and reproductive rights of women are significantly impacted by these rulings. We must defend their right to a safe abortion in order to uphold their rights to equality, bodily integrity, and life.

According to the constitutional provisions that place reproductive health rights there, the realisation of these rights is linked to and dependent upon the protection and fulfilment of other human rights, such as the right to life, the right to health, the right to non-discrimination, and the right to be free from gender-based violence.

In India, there are laws and policies that address the reproductive rights of individuals and couples in the areas of food and nutrition provision, employment, education, and protection from gender-based violence. Several fundamental rights are guaranteed by Part III of the Indian Constitution.

Article 13 forbids the State from enacting any legislation that limits or revokes basic rights. Some of the fundamental rights recognized in Part III of the Indian Constitution include the right to life, the right to equality before the law, the right against discrimination, and the right to *freedom and speech*.

In accordance with **Article 14**, no one may on Indian soil be denied equality before the law or equal protection under the law. The State is forbidden by **Article 15(1)** from discriminating against any citizen on the basis of their religion, race, caste, sex, place of birth, or any combination of those factors. The State is allowed to establish special arrangements under **Articles 15(2)** and **15(3)** for women, children, Scheduled Castes and

Scheduled Tribes, as well as any socially and educationally disadvantaged segments of citizens.

Article 16 guarantees equal opportunity in matters of public employment and states that no citizen shall be disqualified from or subjected to discrimination in relation to any employment or office under the State on the basis of religion, race, caste, sex, descent, place of birth, or residence, or any combination of these factors. According to **Article 21**, no one may be deprived of their life or personal freedom until a legal process has been followed.

Although the Indian Constitution does not directly recognize the right to health (or reproductive rights) as a basic freedom, the Supreme Court has ruled in a number of cases that the right to health and the right to prompt and adequate medical care are essential components of the right to life. The Supreme Court ruled in *Parmanand Katara v. Union of India*, a public interest litigation (PIL) involving the provision of emergency medical care to injured victims of motor vehicle accidents, that Article 21 requires the State to protect life and that medical staff at government hospitals have a duty to provide medical assistance for doing so. This commitment of medical practitioners cannot be revoked or hindered by any law, practice, or State action. According to the ruling in *Paschim Banga Khet Samity v. State of West Bengal*, the State is required to provide proper medical facilities, and it is against Article 21 for a government hospital to refuse prompt medical intervention to a person who is in need of such care.

If reproductive rights are taken to their logical conclusion, they include a woman's right to carry a pregnancy to term, to give birth, and to later raise children. The Directive Principles of State Policy, Part IV of the Constitution, contains several clauses that deal with health-related topics. According to **Article 47**, one of the state's main responsibilities is to promote the standard of life, nutrition, and health of its citizens. According to

Article 39(e), the State shall focus its policies on preventing abuse of children's health and strength and on preventing citizens from being compelled by economic need to choose careers that are inappropriate for their age or physical capabilities.

According to Article 42, the State must establish policies to ensure fair and compassionate working and maternity leave conditions. The State shall endeavour to provide early childhood care and education for all children until they reach the age of six, according to Article 45. Because they are essential to the nation's governance, these clauses are not enforceable in any court, but the State is required to use them when creating laws and regulations.

Evaluation of Important Reproductive Health and Rights Topics:

The rights to sexual and reproductive health are part of comprehensive health rights. To ensure that these rights are fulfilled, a nation has to establish a strong public health system. Comprehensive, excellent, universally available health care services that are free at the point of access and, most importantly, answerable to the local population must be provided by this system. Unfortunately, India's public health system is threatened by a variety of issues, such as low public investment, poor infrastructure, including medical and diagnostic facilities, and under qualified human resources. As a result, healthcare is now much less accessible, affordable, and of higher quality, putting more people especially women, girls, and marginalised groups farther away from health care on a social, economic, and geographic level.

Women have the right to:

Decide on their own, in a responsible manner, how many, how far between, and when to have children. Possess the knowledge and resources necessary to make an informed decision about how many children to have and when to have them. Attain the highest level of sexual and reproductive

health (you have the right to be physically, mentally, and socially healthy with access to facilities, services, and supports for exercising your sexual and reproductive rights). Avoid compulsion, aggression, and bias while making decisions about having children. Whether you have 0 kids, 1 kid, or 7 kids is entirely up to you. You can choose to get female sterilization now, when you become 50, or not at all.

Right to equality in reproductive decisions like:

Decide if and when to get married and have a family. The two people involved should give their complete, informed, and free consent before getting married. When it comes to your body, health, and family, you have the right to make decisions about reproduction that are considered appropriately. Right to security in sexual and reproductive life.

The right to Sexual and reproductive security:

Live a life free from gender-based violence, which includes sexual assault, incest, human trafficking, violence tied to dowries, and rape committed against you because you are a woman. Protection of one's physical and mental integrity (since you are a woman, you have the right to exist without experiencing violent and mental injury) management of gynaecological issues, prevention of infertility, and HIV/AIDS treatment and prevention, sexually transmitted illnesses, and other sexually transmitted disorders The high prevalence of STIs, HIV/AIDS, and infections indicates the use of unsafe sex. If you have one of these conditions, you have the right to medical care. The right to reproductive and sexual health services includes the right to affordable and secure family planning options.

You will be able to have children if you choose to do so in a secure setting with access to medical care and support. If you choose to use family planning services, you will be able to do so in a setting that is secure and sanitary. safe pregnancy You have a right to conceive and give birth.

Actions to strengthen women's sexual and reproductive health rights

Families and communities are also concerned about women's reproductive health; therefore, it is not the main priority. Communities and organisations should implement more inclusive and equal policies, according to a gender viewpoint. Since women are the main users of reproductive health care services, they must be involved in the creation and execution of policies and initiatives. In addition to evaluating how their actions impact men and women, policymakers also need to consider how gender norms either facilitate or hinder attempts to promote gender equality. The following elements must be included in reproductive health care:

Family planning: Strong government backing is necessary, as are knowledgeable, caring, kind, and amiable service providers coupled with a range of birth control options, affordable services are provided, coupled with discreet counselling to provide informed consent in the choice of contraception, hygienic, friendly facilities, and timely service.

As part of any safe motherhood campaign:It should be simple to get treatment for issues including bleeding, infection, hypertension, and obstructed labour. Promoting hospital visits, creating a network of local organisations to assist patients in getting to hospitals promptly, and offering counselling on issues like breastfeeding, caring for newborns, hygiene, vaccinations, family planning, staying healthy, and identifying and treating postpartum disorders are all interventions that may save lives.

Abortion and Post-abortion Care:Abortion is a major topic in the field of public health. Abortions are avoided and unintended pregnancies are reduced as a result of family planning initiatives. Safe abortion practices and high-quality post-abortion care will dramatically lower maternal

death rates in countries where abortion is permitted.

Prevention and treatment of STDs and HIV/AIDS: Women are more likely than men to get sexually transmitted illnesses due to biological and social factors. Reproductive health services that combine family planning and STD/HIV/AIDS services may reduce the prevalence of HIV/AIDS and other STDs. The delivery of male and female condoms, the diagnosis and treatment of sexually transmitted diseases, the development of contact tracing and 11926 prevention strategies, and the distribution of condoms could all help achieve this.

Men's Participation in Reproductive Health Program: A common focus is the family's overall pleasure. Men can promote gender equality and improve their homes by caring for their spouses' health and helping them make life decisions. As an example, think about using male-preferred methods of contraception, having candid conversations about reproductive health issues, and working together to find answers. Women will benefit from understanding potential threats to reproductive health, including sexually transmitted diseases (STDs), infertility, erectile dysfunction, aggressive or abusive behaviour, abstaining from violence against women, and being a good parent. Health and education initiatives will also be helpful.

Conclusion

It can be challenging to adjust to societal change in general, but it can be especially challenging when it challenges traditional gender roles in the home and community. It is becoming increasingly clear that the laws that control how men and women operate, interact in society, and access resources could make or break opportunities for rapid growth and equity. Finding regional solutions that are based on a common vision of justice and that are acceptable to local realities and cultures is essential in the era of globalisation and

urbanisation. Reproductive health and access to reproductive health care are social and health issues that affect everyone in society, not just women. The welfare of the individual and the family is the ultimate goal of the right to procreate. In addition to protecting individuals' right to choose how they wish to have children, governments have an obligation to provide their citizens with access to high-quality reproductive health care while also taking into consideration cultural and local norms and preferences. Protecting the reproductive rights of those with disabilities, particularly those suffering from mental illness or retardation, requires greater attention from the political and legal systems. Furthermore, the requirement for the legal system to be aware of the abortion consent procedure is growing. In order to provide the greatest reproductive health care possible, male participation and active community involvement is required.

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