

Reproductive rights of Women is Right to Privacy: A Human Right Perspective

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Abstract

Reproduction is such a gift which is bestowed to the Women by Almighty. Women and Reproductive rights are coherent with each other, no one can make it separate. But there are many instances in our Society where we can see that, the reproductive rights are violated by the family members, mainly by Husband himself. The Constitutional provisions are there which said about equality but most of the time it is on paper only when we talked about Women's right to equality.

Indian Penal Code also provides some substantive provisions for punishing them who violates the rights particularly Reproductive rights of a Woman. Universal Declaration of Human Rights, 1948 also providing some special rights of Women. The Woman cannot be treated as Second class citizen then only such all rights of Women, especially Reproductive rights can be secured. Otherwise, no equality will be prevailed between men and women.

The Government of India declared many programs regarding the rights for Woman pregnancy and that is till the delivering of child but in reality, it is as per the wish and will of the Family only.

KEYWORDS: - Constitutional Law, Indian Penal Code, Universal Declaration of Human Rights, Reproduction.

Introduction:

"The True republic: men, their rights and nothing more,

Women, their rights, and nothing less." By Susan B. Anthony¹

Equality is the base and motto of our democracy. The Law of the land of our country is based on the equality only. The Constitutional provisions are for equality between all gender and not for discrimination. The Constitution of India declared through its provision that, a woman is weaker section of our society and the state can make some special laws for their progress and development.² The democratic principle is based on the equal treatment by the law and equal protection by law, but in actual sense the legislations are always given some different impression when they came for implementation. The government of our India also enacted many legislations for the empowerment of women.

The women nowadays have the equal participation in all sphere of society. The days after Independence was totally different than today. There are ample examples

¹ . Susan Brownell Anthony was a notorious American social reformer and women's rights activist who played a pivotal role in the women's suffrage movement.

² . Art. 15(3), Constitution of India.

presents in our society where we can say about the equal participation of women in all kinds of work. Their participation always boosts for the economy of our country. Women are very much strong by politically, economically and socially. After all such achievements this particular section of our society still struggling for getting their valuable rights from the dominance of men. The male dominating nature is always a question before the progressive society in our country.

Justice Chagla Said, “It is impossible to argue that the, constitution did not permit laws to have special provisions for women if the laws were passed before the constitution came in to force but permitted the legislature to pass laws in favour to women after the constitution was enacted. If a law discriminating in favour of women is opposed to the fundamental rights of citizens, there is no reason whys such law should continue to remain in statue book.... But the exception made to article 15 (1) by article 15 (3) is an exception which applies both to existing laws and to laws which the state makes in future.”³

Though after Independence status of women is somehow better but still many questions are unanswered. This particular section of our society is waiting for the good substantive law, which gives them freedom to choose, freedom to conceive as per their wish, where to conceive, when conceive the child. But in reality, it is totally a dream because it is hardly impossible in our patriarchal dominated society.

“All history attests that man has subjugated woman to his will, used her as a means to promote his selfish gratification, to minister to his sensual pleasures, to be instrumental in promoting his comfort; but never has he desired to elevates her to that rank she was created to fill. He has done all he could to debase and enslave her mind; and now looks triumphantly on the ruin he has wrought, and says the being he has thus deeply injured is his inferio.⁴ The Women always been a subject for the men and never been treated as equal with him, it is eternal truth.

‘*MATRU Eva Bhava*’ is saying in Sanskrit which equates the mother with the Gods. It represents the Indian sentiment which places the mother above everyone, however it has only been a lip service. In reality it exists in books only. In the changing society the women are no more playing her age-old traditional role of being confined at home. She plays multiple roles ranging from child bearing, child rearing, doing domestic works, a woman of the house and also a bread winner to her family.⁵ Maternal mortality is unacceptably high. About 295 000 women died during and following pregnancy and childbirth in 2017. The vast majority of these deaths (94%) occurred in low-resource settings, and most could have been prevented.⁶

The World Health organisation defines about Reproductive rights,⁷

³ . *Dattatraya Motiram More Vs. State of Bombay*, AIR 1953, Bom. 311 (314).

⁴ . Agrwal, Sushila, *Status of Women*, Printwell Publishers, Jaipur (India), 1988. Page.no. 101.

⁵ . Sapru, R.K., *Women and Development*, Ashish Publishing House, 8/81, Punjabi Bagh, New Delhi- 110026, Page. No. 15.

⁶ . <https://www.who.int/news-room/fact-sheets/detail/maternal-mortality>, visited on 10/05/2020 at 1:03 PM.

⁷ . Gender and Reproductive rights home page. Availableat: <http://who.int/reproductive-health/gender/index.html>. Accessed on 26th May 2020.

“Reproductive rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have information to do so, and right to attain the highest standard of sexual and reproductive health. They also include the right of all to make decisions concerning reproduction free of discrimination, coercion and violence.”

Reproductive rights include some or all of the following rights:

1. Right to legal or safe abortion.
2. Right to control one's reproductive functions.
3. Right to access in order to make reproductive choices free of coercion, discrimination and violence.
4. Right to access education about contraception and sexually transmitted diseases and freedom from coerced sterilization and contraception.
5. Right to protect from gender-based practices such as female genital cutting and male genital mutilation.⁸

The health of the women is also a subject of discourse. Conceiving child in under age is the best example of violation of Reproductive rights of a women in India. Though, Child Marriage is prohibited but it is happening in remote areas of the Indian states. Somewhere, the administration itself is in favour of all such incidents, because they think that it is traditional and no one can make any interference in it. Malnutrition in Child and Women is also an area where our government failed to make any effective provision through legislation or by any schemes. Maternal malnutrition also influences reproductive performance affecting pelvic size, birth weight of child, lactation and breast feeding.⁹ The reports of the second WHO consultation on “Women as Providers of Health Care” states that, “While countries are busy in establishing modern schools and post for highly paid health professionals, there were little talks about the need for women. With the advent of primary health care, on the other hand women are the ones on whom countries appear to be depending for the performance of miracles in national health development.”¹⁰

Substantive Legislation in India on Reproductive rights:

Many substantive legislations are in India which protects the rights of the Women. Those laws directly or Indirectly protecting the reproductive rights of women in India. i.e.

- i) PCPNDT Act, 2003
- ii) Maternity Benefit Act
- iii) Medical Termination of Pregnancy Act, 1971
- iv) Indian Penal Code, 1860.

⁸ . Supra note no. 6.

⁹ . Supra note no. 4.

¹⁰ . Ibid.

It is also evident that, specifically the reproductive rights not been secured by any special law.

The Law which provides security to the Reproductive rights through its provisions i.e. The Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, 2003,¹¹ banned prenatal sex determination. The main purpose of enacting this act is to ban the use of sex selection techniques after conception and prevent the misuse of prenatal diagnostic technique for sex selective abortions. Offences and Penalties also provided in this Act, which provides various punishments with fine.¹² The section of PCPNDT Act says that, Prohibition of advertisement relating to pre-conception and pre-natal determination of sex and punishment for contravention-

(1) No person, organisation, Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, including Clinic, Laboratory or Centre having ultrasound machine or imaging machine or scanner or any other technology capable of undertaking determination of sex of fetus or sex selection shall issue, publish, distribute, communicate or cause to be issued, published, distributed or communicated any advertisement, in any form, including internet, regarding facilities of pre-natal determination of sex or sex selection before conception available at such Centre, Laboratory, Clinic or at any other place.

(2) No person or organisation including Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic shall issue, publish, distribute, communicate or cause to be issued, published, distributed or communicated any advertisement in any manner regarding pre-natal determination or pre-conception selection of sex by any means whatsoever, scientific or otherwise.

(3) Any person who contravenes the provisions of sub-section (1) or sub-section (2) shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees.

The Silent features of this Act is, Offences under this act include conducting or helping in the conduct of prenatal diagnostic technique in the unregistered units. Sex selection on a man or woman, conducting PNDT test for any purpose other than the one mentioned in the act. Sale, distribution, supply, renting etc. of any ultrasound machine or any other equipment capable of detecting sex of the foetus.

Another Act which is also substantive in nature i.e. *The Medical Termination of Pregnancy Act, 1971* (MTP Act) needs to be reformed comprehensively so, that it can be more inclusive and sensitive towards the plight of married women who are forced to conceive and carry a pregnancy to term against their will. It should also include the economic burden a woman has to undertake in raising a child.

Whose consent is required for termination of pregnancy?

As per the provisions of the MTP Act, only the consent of woman whose pregnancy is being terminated is required. However, in case of a minor i.e. below the

¹¹ . Enacted in 1994, amended in 2003.

¹² . Sec. 22-26 PCPNDT Act, 2003.

age of 18 years, or a mentally ill woman, consent of guardian (MTP Act defines guardian as someone who has the care of the minor. This does not imply that only parent/s are required to consent.) is required for termination. The MTP Rules, 2003 prescribe that consent needs to be documented on Form C as detailed below:

Form C [Rule 9] Consent Form: This form is used to document consent of the woman seeking termination. Pregnancy of a woman who is above 18 years of age can be terminated with only her consent. If she is below 18 years of age or mentally ill, written consent of the guardian is required.

Free access to legal and safe abortion is an integral dimension of sexual and reproductive equality, a public health issue, and must be seen as a crucial element in the contemporary debates on democracy that seeks to provide the just society that abhors all sort of discrimination.

The Indian Penal Code, which is Punitive and Substantive law also protects the rights of the women if she has been compelled by her relatives to abort the child u/s 312.¹³ Under this section of IPC, “*Whoever voluntarily causes a woman with child to miscarry, shall if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.*”

So, in all these legislations the reproductive rights have been secured and also provide punishments for such act which is violating the rights of Women

Reproductive rights and Social Effect:

In India, as in the majority of countries, women are socially expected to become mothers and to ensure the descendance of the family. Building healthy communities and generations is at the very foundation of developing healthy societies. There are interrelationships between social development and reproductive health in developing countries. Growth in social development is expected to improve reproductive health over time. In addition, improvements in social development are anticipated from increases in reproductive health. Though the health of both men and women is of concern, women's health is far more vulnerable than men's owing to gender imbalances in decision-making power in almost all developing countries.¹⁴ The reproductive health gap between countries which are developed and developing leftovers painfully high. Social development is defined as a process of improving the capacity of social systems, social structure institutions to enhance the standard of living and quality of life through accepted social values of individuals and communities.¹⁵ The associations between social development and reproductive health are likely to be reciprocal in nature. In the absence of adequate social services such as prenatal care, family planning and

¹³ . Sec. 312 of Indian Penal Code, 1860.

¹⁴ . Vijayan K. Pillai, Arati Maleku, Reproductive Health and Social Development in Developing Countries: Changes and Interrelationships, *The British Journal of Social Work*, Volume 45, Issue 3, April 2015, Pages 842–860, <https://doi.org/10.1093/bjsw/bct168>.

¹⁵ . Beverly S. G., Sherraden M. (1997) ‘Investment in human development as a social development strategy’, *Social Development Issues*, 19, pp. 1–18.

counselling, women's reproductive health is likely to suffer. Threats to women's reproductive health are not only likely to constrain women's participation in developmental efforts but also to weaken the health of successive generations.¹⁶

The social obligation on women for conceiving child is making a great social effect on her, as she indebted to do this. It shall be her own decision as when and why she should go for conceiving child. But here no matter whatever her own decision, only the family pressure to have a pregnancy for the family prosperous is valuable. In many cases she keeps it continue only for having a Son, as he is only who can maintain family Clan. In keeping continuation for bearing child she presumes herself as socially obligated to have a child.

In Indian society it is very much important to have son than daughter, otherwise socially that particular family always been subject to embarrassment. Under such guise the rights of the women over her body is neglected and no such rights she can observe because it is socially approved and expected from her by the society at large.

Reproductive rights and Economical Effect:

Specifically, health of women's is related to the economic status of country. Despite all kinds of progress made but years of evidence shows a surprising fact, which still remains without any substantive change. Nowhere in the world do women have full control over their health because of the limitations and barriers to effective, open sexual and reproductive health care.

A new report by the United Nations Population Fund, "The Power of Choice" finds that throughout the world, cultural, social, and political biases and barriers still make it impossible for some women to choose whether and when to have children, and how many to have. The end result of this outright discrimination is that in some countries, one woman dies every two minutes from a complication of pregnancy or childbirth.¹⁷

A women's health not individually affecting alone on her but it is affected on the family at large, her household, community, and country. When women are used as a tool, the men's always want to control whether, when, and how often to have children, it is also affecting families by economically. It is pertinent to note that, the women expend more on family than men. So, ultimately this expenditure is on children and other health related problems. As a woman and a mother, she has access to family planning. It may not only save her life but also secure her future and that of those around her. However, at a time when women's dignity and rights are under daily assault, we have many debates on these issues. If there is often pregnancy to the women then for care of them the Government's policies and schemes for the health and care of the pregnant women is framed, and it would be subject to allotment of financial aid, which alternately extra burden on the financial condition of India. So, right for having child shall be on the wish and will of the women which will secure every angle of economy.

¹⁶. Gill K., Pande R., Malhotra A. (2007) 'Women deliver for development', *The Lancet*, 370(9595), pp. 1347-57.

¹⁷. Kerry Vanessa, Opinion: The economic case for reproductive rights, on <https://www.devex.com/news/opinion-the-economic-case-for-reproductive-rights-93851>, accessed on 12th May 12, 2020.

Conclusion:

The rights of the women are always been debated by the renowned feminist, but no one talked about this particular rights. This is also a reason that, due to insufficiency of the feminist this important right to choose is been neglected by the government. It is very particular here to say that, the right to decision is the part and parcel of the Right to life and liberty but never been allowed by the patriarchal family.

The choice to have a child, when it should be, what it should be is the exclusive rights of the women but always been dominated by the in laws and husband. Substantive laws are there but it is on paper only not actually working for the betterment of the women and their rights.

Some, judicial pronouncement given boost to this movement but still it is go ahead for a long period.