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REPRODUCTIVE RIGHTS OF WOMEN IN INDIA: A NEW PERSPECTIVE

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"Women's rights are an essential part of the overall human rights agenda, trained on the equal dignity and ability to live in freedom all people should enjoy." – Ruth Bader Ginsburg

ABSTRACT:
A Patriarchal Society, family, or system is one in which the men have all or most of the power and importance. For the apparent reasons women becomes the victim in such society. Her rights, choices from education to reproduction become dormant, suppressed and dependant. Women's life circumstances, their ability to access and exercise their rights, their mental physical and emotional health, and their ability to shape and control their own lives and destiny, rely to a crucial extent on their reproductive freedom and wellbeing. Emancipation of women is incomplete without assuring them reproductive rights. It is only when women have control over their body they can exercise all other rights. Women will be physically and mentally free when they will be able to take decision regarding their body themselves. Various human rights of women can be acquired only when they can exercise their reproductive rights. Reproductive rights are essential to the realization of a wide range of human rights – rights to life, liberty and security, health, non-discrimination and equality, privacy, and freedom from torture and ill treatment. The right to reproductive choice means that women have right to choose whether she wants to reproduce or not, including the right to carry or terminate the unwanted pregnancy adding up their right to choose their preferred method of family planning and contraception. This paper highlights the human rights which comprise the legal framework of women's reproductive rights in a patriarchal society, and also discusses the judicial aspects of abortion rights and reproductive health of women in India.

KEYWORDS: Reproductive, Patriarchal, abortion, Women, rights

INTRODUCTION:
A series of human rights treaties and international conference agreements forged over several decades by governments increasingly influenced by a growing global movement for women's rights provides a legal foundation for ending gender discrimination and gender-based rights violations. These agreements affirm that women and men have equal rights, and oblige states to take action against discriminatory practices. The Vienna Declaration and Programme of Action, the Programme of Action of the International Conference on Population and Development (ICPD) and the Platform for Action adopted at the Fourth World Conference on Women (FWCW) are international consensus agreements that strongly support gender equality and women's empowerment. Thus the reproductive rights were established as a subset of the human rights at the United Nations 1968 international conference on human rights. As signatory of the ICPD Program Of Action India committed to the principle of informed free choice as essential to the long-term success of family-planning programmes where any form of coercion has no part to play.
The WHO defines reproductive rights as follows: "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."
The woman is a mother of Earth (Dharti Mata) who as a mother, is "Supreme Being and Guru" she plays a role of mother, sister and daughter she started human and social life. The women are mistresses of half of the country. They are life partners and co-travellers of man in the creation of life. The recognition of sexual and reproductive rights of women in the India still remains negligible there is no specific law deals with women's sexual and reproductive rights. Sphere of sexual and reproductive rights is very wide but in India these rights understood only in selective problems. The Supreme Court and High Courts many of past and current verdicts prioritize the women dignity and autonomy. The judicial activism, public interest litigations, special leave petitions play impressive role of bring sexual and reproductive rights of women for bringing attention on the table of Parliament. The components of sexual health and reproductive health are not the same. However, they often

overlap. Access to Education and Information, Prevention of HIV AIDS and ST's, Healthcare Services, Protection from Sexual Violence and Regulation of Sexual Autonomies and Awareness Programmes are the major components of the sexual health. Family Planning, Maternal Health, Prevention of Complication of Abortion, Prevention of Reproductive Tract Infections are the major components of the reproductive health.

REPRODUCTIVE RIGHTS IN INDIA: THE CURRENT SITUATION:

Although India was among the first countries in the world to develop legal and policy frameworks guaranteeing access to abortion and contraception, women and girls continue to experience significant barriers to full enjoyment of their reproductive rights, including poor quality of health services and denials of women's and girls' decision-making authority. Historically, reproductive health-related laws and policies in India have failed to take a women's rights based approach, instead focusing on demographic targets, such as population control, while also implicitly or explicitly undermining women's reproductive autonomy through discriminatory provisions such as spousal consent requirements for access to reproductive health services. Despite a national law penalizing marriages of girls below 18 years of age and policies and schemes guaranteeing women maternal healthcare, in practice India continues to account for the highest number of child marriages and 20% of all maternal deaths globally. Although India's National Population Policy guarantees women voluntary access to the full range of contraceptive methods, in practice state governments continue to introduce schemes promoting female sterilization, including through targets, leading to coercion, risky substandard sterilization procedures, and denial of access to non-permanent methods. In addition, although abortion is legal on multiple grounds until 20 weeks of gestation and throughout pregnancy where necessary to save the life of the pregnant woman under the Medical Termination of Pregnancy Act (MTP Act), 56% of the 6.4 million abortions estimated to occur in India annually are unsafe and result in 9% of all maternal deaths.

U.N. human rights experts and bodies have raised concerns to the Indian government about human rights violations arising from a range of reproductive rights issues, including maternal mortality and morbidity, unsafe abortion and poor quality of post-abortion care, lack of access to the full range of contraceptive methods and reliance on coercive and substandard female sterilization, child marriage, and lack of information and education on reproductive and sexual health. These experts and bodies have called for India to address these violations, as well as disparities in access to reproductive health care.8 Courts in India have an important role to play in ensuring women's reproductive rights as guaranteed by their constitutional and human rights.

SPOUSAL CONCENT FOR ABORTIOIN AND STERILIZATION:

The right to make free and informed decisions about health care and medical treatment, including decisions about one's own fertility and sexuality, is enshrined in Articles 12 and 16 of the Convention on the Elimination of all Forms of Discrimination Against Women (1978).

Autonomy, the right to informed consent and confidentiality are considered the fundamental ethical principles in providing reproductive health services. Autonomy would also mean that when a mentally competent adult seeks a health service, there is no need for an authorization from a third party. According to recent ethics guidelines in reproductive health research, even use of the term "consent" has been restricted only to the person who is directly concerned; in circumstances where partners are involved it is termed a "partner agreement" Contrary to this Supreme Court judgment when hearing an appeal in the Ghosh vs. Ghosh divorce case, the court ruled on March 26, 2007: "If a husband submits himself for an operation of sterilization without medical reasons and without the consent or knowledge of his wife and similarly if the wife undergoes vasectomy (read tubectomy) or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty." The court also ruled that a refusal to have sex with one's spouse and a unilateral decision to not have a child would also amount to mental cruelty. Considering the circumstances of the case, the court granted a divorce. The judgement has serious implications for reproductive health services in India, because it mandates spousal consent for induced abortion and sterilization.

The judgement conflicts with the existing guidelines for medical practice, and it is likely to confuse those who are seeking as well as offering these services. It implies that when a woman seeks abortion or sterilization on her own and if her husband is not informed or does not consent, the very act of the woman could be cited by her husband as mental cruelty and grounds to seek a divorce. The judgement thus hits at the very core of reproductive rights: taking a decision and seeking a service without fear of coercion or violence. It is likely to set a wrong precedent and put many providers on guard, because they would not want to be involved in legal tangles. Many clinics may start using this ruling to impose a requirement of spousal consent. Even providers in the public sector may insist on a spouse's signature to avoid legal problems. The highest judiciary in the nation has to demonstrate a better understanding and commitment to human rights, especially women's rights.

REASONS FOR THE SLOW GROWTH AND DEVELOPMENT OF REPRODUCTIVE RIGHTS:

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:-

Gender Discrimination:

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. 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.

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. 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. 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.

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. Women hardy have access to antenatal care, high risk cases go undetected, anemia is acute during pregnancy and nutritional knowledge of health and nutrition needs during pregnancy and post natal period are poorly understood. The modern health facilities are beyond the reach of common people.

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.

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.

LEGAL PROVISION IN INDIA

In 1971 the Indian parliament passed the Medical Termination of Pregnancy Act. The Act is based on the Abortion Act passed by the UK Parliament in 1967. Section 3 of the Act lays down the basic rules and conditions regarding abortion.

A. **PRE-1971 POSITION**: In India, the Indian Penal Code prohibits "miscarriage". Keeping in line with the Victorian mores, Macaulay's code prohibits all kinds of harm to an unborn child, unless the mother's life is in danger. Section 312 IPC - Under the Indian Penal Code (45 of 1860) inducing abortion or causing "a woman with a child to miscarry" is a criminal offense except when it is done in "good faith to save the life of the woman". Thus, causing an abortion has been legal in India since 1860 when the continuation of pregnancy poses a threat to the life of the mother and if it is considered essential to terminate the pregnancy to save the life of the mother. This was, and still is, a blanket provision for the therapeutic abortion without any stipulation as to who can do it, where it can be done or up to what stage of pregnancy it can be done. The only stipulation provided is that it has to be to "save the life of the woman". These missing stipulations are now provided under section 5 of the MTP Act.

B. **REPRODUCTIVE RIGHTS OF MENTALLY RETARDED WOMEN**: In India, a disabled girl-child is usually at the receiving end of a lot of contempt, neglect and has been consistently denied their rights. The 19 year old mentally challenged orphan girl at Nari Niketan, Chandigarh, a government institution for destitute women, was raped on March 2009 in the premises by the security guards. In May 2009, the pregnancy was detected. Four doctors Multi-Disciplinary Medical Board (MDMB) which included a psychiatrist recommended that woman "has the adequate physical capacity to bear and raise the child but that her mental health can be further affected by the stress of bearing and raising her child." Based on these recommendations, the Punjab and Haryana High Court ruling ordered medical termination of pregnancy. On this, the NGO appeal against the High court's order, the Supreme court of India gave a landmark decision allowing a 19-year-old mentally challenged orphan girl to carry on with a pregnancy resulting from a sexual assault. This case thus raised fundamental issues relating to consent and to the support required while assessing consent. This case was not about abortion per se, it was about whether the law of this country recognizes and protects the agency of a woman to make decisions for her life and body, especially all its nuances when the woman is a person with mental retardation or any other disability." Legally, MTP Act does not deal with access to abortion of women with mental retardation, and that it wrongly distinguishes between women with mental retardation and mental illness, leaving the former out totally. Also that the Act does not understand that both these kinds of women are more likely than not to be destitute, in which case guardianship is not that simple. This case indicates eloquently that the Indian legal framework has to be strengthened a great deal to bring it in line with international legislation. It also raises the question of whether our government institutions are safe enough to protect women and more so people with disabilities.

C. **TERMINATION OF PREGNANCY RESULTING FROM RAPE**: Due to stigma and personal risks, many victims of rape only come forward to request an abortion, either directly or through their parents, once their pregnancy is identified through medical testing or made public. Minors do not even realize they are pregnant until beyond the 20 week mark because of a lack of awareness of the possibility of

becoming pregnant from rape or the symptoms of pregnancy. Furthermore, delays in detecting pregnancy may be compounded where state authorities fail to properly respond to, and investigate charges of rape; fail to offer pregnancy testing kits to rape victims as required under national guidelines; or question petitioners' rape allegations. Several petitioners in cases seeking approval for abortion after 20 weeks have emphasized the psychological trauma and suffering, including suicidal thoughts, caused by being forced to continue their pregnancy. Indian courts have recognized the severe physical and mental health risks that pregnancy can cause women and girls.

Way Forward:

- Sexual and reproductive rights in India must include:
  - a concern with maternal deaths,
  - access to maternal care to safe abortions,
  - access to contraceptives,
  - recognition of adolescent sexuality,
  - prohibition of forced medical procedures such as forced sterilisations
  - removal of stigma and discrimination against women, girls and LGBTI persons on the basis of their gender, sexuality and access to treatment
- **The 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.**
- **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 responsibility also lies with civil society and development actors to bring up these issues for public debate and in demands.

CONCLUSION:

To conclude, we can say that the state time to time make legislation, framed policies to ensure gender justice, including justice related to sexual and reproductive rights for the welfare of the women. But mere framing or making of law is not sufficient; they also required proper implementation and change with advance society, because very old laws and policies cannot walk with advance technology and advance people in the era of advancement. It does not matter how many numbers of policies and legislation we have the question is that the available laws and policies are capable to benefited all woman irrespective of caste, religion, race and their financial status or not. In shadow of reproductive rights, their sexual right seems blurred and they can't enjoy properly their sexual rights. Both rights face infringement in every stair before or after marriage too. Reproductive rights signify basic right of women to decide freely number and spacing of their children, they have right to decide bear or not to bear baby and the right to achieve the main norms of sexual and reproductive health. It means they have right to make decisions related to reproduction which is free of discrimination violence and coercion so, policies and legislations that act as a hurdle to the availability, acceptability to quality of sexual and reproductive health facilities, are serious area of concerns and for the protection of woman there is a requirement of improvement and alteration. Reproductive rights are essential for gender equality, individual autonomy, and the well-being of women and their families. Ensuring that these rights are respected, protected, and fulfilled is a critical goal for achieving women's empowerment and human rights globally. Respecting women's autonomy and choices in reproductive decisions is fundamental to reproductive rights. Coercion, forced sterilization, and other violations should be prevented. To ensure quality reproductive health services, there is need for active community participation and involvement of men (spouse).

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