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Reproductive Rights of Women in India: With Special Reference to Rajasthan

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ABSTRACT

Reproductive rights are the legal rights associated with contraception, abortion, fertility treatment, reproductive health, and get right of entry to records about one's reproductive physique. Reproductive rights shield human beings' freedom to decide approximately their body's capabilities to reproduce.

Reproductive rights seek advice from the aggregate of human rights that cope with topics of sexual and reproductive fitness. Reproductive rights are sheltered through the application of human rights guidelines, countrywide legal guidelines, constitutions, and regional and worldwide treaties.

While reproductive rights are instrumental to accomplishing population, health, and improvement desires, they may be additionally critical in themselves as human rights predicted to defend the inherent dignity of the man or woman. Reproductive rights, in particular, consisted of rights to reproductive autonomy, rights to sexual and reproductive fitness offerings, records, education and rights to equality and non-discrimination.

This paper is an attempt to analyze the factors associated with reproductive rights in India as well as in the State of Rajasthan.

Keywords: *Reproductive Right, Human Right, Population, WHO, Abortion, Contraception, Gender, Globalization, Religious dogmatism, Reproduction, Sexuality, United Nations, Women's empowerment, Gender equality, Adolescent, Maternal mortality, Social, Economical, Political, ICPD, FWCW, High Court, Millennium Development Goal*

I. INTRODUCTION

The conserved patriarchy believed women a mere machines of reproduction, and the purpose of marriage was only to get a child, preferably a male child. It is generally observed that women are blamed on the birth of the female child; reproduction is always forced on women as the

only need for the marriage is to get Vansh-dharak.

The term reproductive rights refer to the freedom of people to manipulate choices concerning contraception, abortion, sterilization, and delivery. Reproductive rights are the rights of people to determine whether to imitate and have

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reproductive fitness. This may additionally encompass a man or woman's proper to plot a family, terminate a pregnancy, use contraceptives, learn about sex education in an educational institution, and gain admittance to RCH services.

Reproductive rights had been established as a division of human rights. The Declaration of Teheran was the first worldwide manuscript to understand one of these rights while it stated that parents have a fundamental human right to regulate freely and responsibly the figure and the spacing between their kids.

Issues about reproductive rights are influentially questioned, irrespective of the population's socio-economic level, religion or lifestyle.

A collection of human rights treaties and worldwide convention agreements counterfeit over numerous years with the support of governments increasingly encouraged through a developing international motion for women's rights presents a legal foundation for the culmination of gender discrimination and gender-based rights violations. These agreements encourage that women and men have equivalent rights and indulge states in doing so towards discriminatory practices.

The Vienna Declaration and Programme of Action, the Programme of Action of the ICPD and the Platform for movement adopted at the Fourth World Conference on Women are worldwide consent agreements that strongly guide gender equality and women's empowerment. Particularly, these documents, drawing on human rights agreements, truly articulate the concepts of sexual and reproductive rights. Thus reproductive rights have been

mounted as a division of human rights on the United Nations global convention on human rights in 1968.

According to World Health Organization, reproductive rights repose on the recognition of the fundamental right of all couples and people to decide freely and responsibly the number, spacing and timing of their kids and to have information to accomplish that, and the right to obtain the highest standard of sexual and reproductive fitness. They additionally encompass the right of all to make selections regarding reproduction free from discrimination, compulsion and ferocity.

It is a matter of subject that each day, nearly eight hundred women die due to being pregnant and childbirth-related difficulties. More than two hundred million women in the developing nation try to save her being pregnant but due to the non-use of a modern technique of contraception suing in eighty million unplanned pregnancies and twenty million risky abortions, with life-threatening concerns.

One in every third of girls below the age of 18 years is married without their consent in low and middle-income countries. Every year, over sixteen million adolescent women reproduce. Meanwhile, Maternal Mortality (MM) is the main reason for mortality for this age group in the developing world. Seventy per cent of the women have been involved in physical and/or sexual violence during their entire lifetimes.

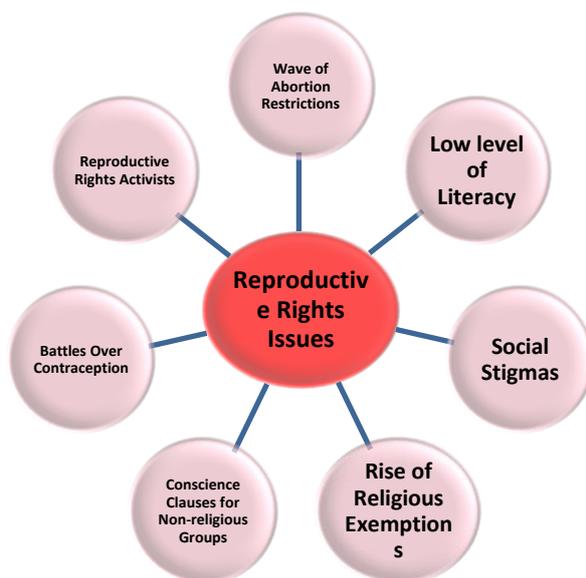
The right to sexual and reproductive health shows that humans are capable of enjoying a mutually satisfying and safe relationship, free from compulsion or violence and without fear of

contamination or pregnancy and that they're capable of adjusting their fertility without detrimental or risky results. Sexual and reproductive rights provide the framework within which sexual and reproductive properly-being may be executed.

India has ratified the convention on the elimination of all sorts of discrimination against women since 1979, which protects the right of women to make their own decisions about their fertility and sexuality. But as a nation, we have failed to provide basic reproductive rights to women.

II. REPRODUCTIVE RIGHTS ISSUES IN RAJASTHAN

In Rajasthan, the situation is also not so pretty. There are so many issues associated with reproductive rights implementation in the State.



III. REPRODUCTIVE RIGHTS AND MATERNAL MORTALITY

Reproductive rights, as internationally recognized, are also not yet clearly assured in India and Rajasthan. While some inland legislative guards have been put in place, reproductive rights are legally merged within the Fundamental Right to Life guaranteed by the Constitution and in the right to health legislation. Throughout the country, various reproductive rights have been sustained. The High Court of Delhi was the first Court in the world to ascertain the right to survive pregnancy and childbirth as a fundamental right.³

IV. REPRODUCTIVE RIGHTS AS HUMAN RIGHTS

Most of the existing legally binding international human rights instruments do not unambiguously mention sexual and reproductive rights. A broad coalition of NGOs etc., have been promoting a re-interpretation of these instruments to associate the realization of the already internationally recognized human rights with the realization of reproductive rights.⁴

Reproductive rights embrace definite human rights that are already recognized in Indian laws, international human rights documents and other relevant UN documents. These rights repose on the recognition of the fundamental right to every couple and individuals to decide freely and responsibly the number, spacing and effectiveness of their children and the right to

³Laxmi Mandal v. Deen Dayal Hari Nagar Hospital, W.P. No. 8853/2008 of 2010, High Court of Delhi

⁴ Human Rights in India, Status Report 2012, UN

Universal Periodic Review Recommendations, Working group on human right in India and the UN, New Delhi

attain the highest standard of sexual and reproductive health.

It also includes the right of all to make decisions concerning reproduction free of discrimination, coercion and violence as uttered in human rights documents. In the exercise of this right, they should take into account the needs of their living and future children and their responsibilities towards the community.

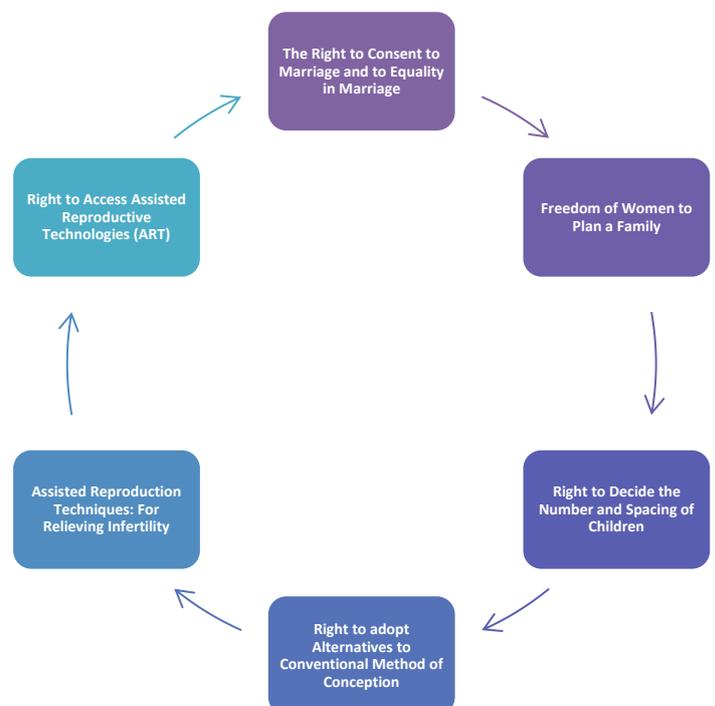
With the adoption of the UN Millennium Development Goals (MDGs) in the year 2000, governments have agreed that addressing women's reproductive health is the key to promoting development. In the document produced at the 2005 World Summit, leaders from all around the world made an unambiguous commitment to achieving universal access to reproductive health by 2015.⁵

Similarly, Amnesty International has also argued that the realization of reproductive rights is linked to the realization of a succession of recognized human rights, including the right to health, the right to freedom from discrimination, the right to privacy, and the right not to be subjected to torture or ill-treatment.

V. HUMAN RIGHTS KEY TO REPRODUCTIVE RIGHTS

- 1) Right to Life
- 2) Right to privacy
- 3) Right to equality and non-discrimination
- 4) Right to Liberty and security of person

- 5) Right to health, including sexual and Reproductive health
- 6) Right to be Free from sexual and gender-Based violence
- 7) Right to decide the number and spacing of children
- 8) Right to consent to marriage and to equality in marriage
- 9) Right to be Free from practices that harm women and girls
- 10) Right to not be subjected to torture or other cruel, inhuman, or degrading treatment or punishment
- 11) Right to access sexual and Reproductive health education and Family planning information
- 12) Right to enjoy the benefits of scientific progress



⁵ United Nations General Assembly, 2005 World Summit Outcome, U.N. Doc A/Res/60/1 (2005)

VI. NATIONAL/STATE PERSPECTIVES

The national as well as the state-level perspective of reproductive rights, has had taken account of several other inequalities and contradictions in the Indian society. In a situation where women have no 'right' to basic facilities, where the State believe they have the 'right' to determine how many children women have to bear when they get themselves sterilized and what method of contraception women must opt for. It is apparent that the struggle for Indian women's reproductive rights needs to go further than reproductive freedom.

Though India is a signatory to the CEDAW and has committed to ethical and professional standards in family planning services, including the right to personal reproductive autonomy and collective gender equality.

The National Population Policy, 2000, confirms the right to voluntary and informed choice in matters related to contraception. Under the Constitution of India, Reproductive Rights can be dealt with under Article 14, Article 15, Article 21, Article 38, Article 39 as well, as Article 42.

Many cases have also validated the reproductive right of women through various court decisions in the country as well as in the State of Rajasthan.

VII. JUDICIAL RECOGNITION OF REPRODUCTIVE RIGHTS IN INDIA/ RAJASTHAN

The Supreme Court of India has made important

strides in recognizing the denial of reproductive rights as a violation of women's fundamental and human rights.

Delhi High Court, in the year 2011, issued a decision⁶ in the cases of *Laxmi Mandal v. Deen Dayal Harinagar Hospital & Others* and *Jaitun v. Maternity Home, MCD, Jangpura & Other*, concerning denials of maternal health care to two women living below the poverty line.

The High Court stated that these petitions focus on two inalienable survival rights that form part of the right to life: the right to health, which would include the right to access and receive a minimum standard of treatment and care in public health facilities and in particular the reproductive rights of the mother. According to this decision, "no woman should be denied the facility of treatment at any stage irrespective of her social and economic background. This is where the inalienable right to health which is so inherent in the right to life, gets enforced.

High Court of Rajasthan's judgment in *State of Rajasthan v S. (Name Withdrawn)*⁷ on May 1st 2020, in the case where the minor respondent writ petitioner was sexually assaulted whereby, she unfortunately conceived. The minor moved an application through her mother seeking permission for termination of her pregnancy before the Special Judge, SC/ST Act Cases, district Churu who, vide order dated 16.09.2019, directed the Chief Medical & Health Officer, Ratangarh, district Churu to get a medical

⁶ Consolidated Decision, *Laxmi Mandal v. Deen Dayal Harinagar Hospital & Others*, W.P. (C) No. 8853/2008; *Jaitun v. Maternity Home MCD, Jangpura & Others*, W.P. (C) 8853/2008 &

10700/2009, Delhi High Court (2010).

⁷ *State Of Rajasthan vs S on 1 May, 2020*, D.B. Spl. Appl. Writ No. 1344/2019

examination of the girl conducted so as to ascertain her physical and mental status and so also that of the foetus. The Court also indicated in its order that an assessment is made as to whether, looking at the physical condition of the minor victim, she was capable of safe childbirth or not, direct state government that the identity of the victim shall not be disclosed at any stage during this process.

The Court is further direct that the child born to the respondent victim shall be provided with all remedial measures as per the Juvenile Justice (Care and Protection of Children) Act, 2015 by the respondent NGO as well as by the State Government. The Collector, Jodhpur district shall confirm that the child is brought up with strict adherence to the salutary process of the Juvenile Justice Act, 2015. In case the child is not adopted, upon attaining the suitable age, he/she shall be got admitted into a good school as per the Right of Children to Free and Compulsory Education Act, 2009.

High Court of Madhya Pradesh, in the year 2012, rebounded the Delhi High Court's judgment in *Sandesh Bansal v. Union of India*⁸, a PIL seeking accountability for maternal deaths, recognizing that the inability of women to survive pregnancy and childbirth violates her fundamental right to life as guaranteed under Article 21 of the Constitution of India and it is the prime duty of

the state government to ensure that every woman survives pregnancy and childbirth.

Significantly, the Bansal judgment specifically excluded financial constraints as a justification for reproductive rights violations and established that government obligations under Article 21 require immediate implementation of maternal health guarantees in the National Rural Health Mission (NRHM), including basic infrastructure.

In the year 2016, the Supreme Court issued a judgment in the case of *Devika Biswas v. Union of India & Others*⁹ that moved beyond the reproductive health framework to also distinguish women's autonomy and gender equality as core elements of women's reproductive rights.

In the year 2011, the High Court of Punjab and Haryana¹⁰ restated women's rights to reproductive autonomy by dismissing a writ filed by her husband against a doctor who had performed an abortion without the husband's consent, saying that it is a personal right of a woman to give birth to a child. Nobody can interfere in the personal decision of the wife to carry on or abort her pregnancy.

In the year 2016, Bombay High Court, in its *Own Motion v. the State of Maharashtra*¹¹, ruled to improve women prisoners' access to abortion and strongly affirmed women's rights to abortion as an aspect of the fundamental right to live with

⁸*Sandesh Bansal v. Union of India W.P. (C) 9061/2008 case*

⁹*Devika Biswas v. Union of India & Others, W.P. (C) 81/2012 case*

¹⁰*Dr. Mangla Dogra & Others v. Anil Kumar Malhotra & Others, C.R. 6337/2011; Ajay Kumar Pasricha & Others. v. Anil Kumar Mahotra & Others, C.R.*

6017/2011; H.C. Punjab and Haryana at Chandigarh (2011)

¹¹*High Court on its own Motion v. The State of Maharashtra, W.P. (CRL) No. 1/2016, Maharashtra H.C.; Court on Its Own Motion Lajja Devi v. State, W.P. (CRL) No. 338 (2008) (High Court of Delhi)*

dignity under Article 21. The judgment recognizes that unwanted pregnancies are the disproportionate liability of women and states that forcing a woman to continue a pregnancy represents a violation of the woman's biological integrity and aggravates her mental trauma, which would be deleterious to her mental health.

VIII. REVIEW OF LITERATURE

The reviews of related literature are as under;

According to Nowrojee (1994)¹², the term reproductive right is of relatively recent origin. Its impact remained limited to state actions in support of women's reproductive well-being.

As per Hartmann (1987)¹³, the current theoretical perspectives on reproductive rights place a strong emphasis on social structural associates. Several feminist scholars have pointed out that at low levels of social development, women's low socio-economic status leaves them with few choices for decision making with respect to several aspects of the reproductive process: intercourse, contraception, and gestation.

Eager (2004)¹⁴, in their article, specified that unequal distribution of power across the gender resulting in gender inequality and unwanted constraints over social and economic opportunities influence the level of reproductive

rights. Both gender equality and social development are seen as important structural associates of reproductive rights.

Wang and Pillai (2001)¹⁵, in their article, specified that the reproductive rights dimension consists of two sub-dimensions, social rights related to reproduction and abortion rights. Factors influencing social rights appear to be significantly different from the determinants of the level of abortion rights.

Freeland (2004)¹⁶, in his paper, presented that Social development plays a prominent role in promoting reproductive rights. At a theoretical level, discussion on the structural determinants of reproductive rights has focused on the influence of political and economic development

IX. CONCLUSION

It is concluded that still, Indian states have no longer been capable of promoting the reproductive rights of women and lacks tangible efforts and law for the safety of the women. Human rights contain sexual and reproductive rights are now an inseparable part of a woman's life.

There is an urgent need to initiate and support public education campaigns and community mobilization on reproductive rights in Rajasthan

¹²Germain A, Nowrojee S, Pyne H. Setting a new agenda: sexual and reproductive health and rights. In: Seng, Germain A, Chen LC., editors. *Population policies reconsidered: health, empowerment, and rights*. Boston, MA: Harvard University Press; 1994. pp. 27–46.

¹³Hartmann B. *Reproductive rights and wrongs: the global politics of population control and contraceptive choice*. New York, NY: Harper & Row; 1987

¹⁴Eager PW. From population control to reproductive

rights: understanding normative change in global population policy (1965–1994) *Global Soc.* 2004;18: pp 145–173

¹⁵Wang GZ, Pillai VK. Women's reproductive health: a gender sensitive human rights approach. *Acta Sociologica.* 2001;44: pp 231–242

¹⁶New Freeland L. The status of reproductive rights and related research and the impact on dialogue. Paper presented at the Oxford Roundtable; Oxford, England. 2004

and laws related to sexual and human rights to foster understanding of human sexuality as a positive aspect of life; create cultures of acceptance, respect, non-discrimination and non-violence; eliminate gender discrimination and violence against women and girls. Now there is a need to engage men, policy-makers and law enforcers, parliamentarians, educators and health providers, employers, the private sector and journalists in creating an enabling environment for the equal enjoyment of reproductive rights in Rajasthan.

It is also imperative to amend the existing laws and policies that respect and protect sexual and reproductive rights and enable all individuals to exercise them without discrimination on any grounds, regardless of age, sex, race, ethnicity, class, caste, religious affiliation, marital status, occupation and other factors.

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