REPRODUCTIVE RIGHTS OF WOMEN

Udit aditya Mishra, student BBA LL.B (H)- V1

Dr. Arvind kumar singh, assistant professor,

Amity university Uttar Pradesh, Lucknow

Abstract:

The quest for reproductive rights has been a longstanding battle, deeply rooted in the fundamental relations between women and men within families and societies. Across civilizations, women have faced systematic oppression, relegated to their roles as bearers of children without regard for their autonomy or consent. This patriarchal paradigm, pervasive throughout history, has perpetuated gender discrimination, constraining women to predefined societal roles and denying them agency over their bodies and lives.

Amidst the currents of globalization and urbanization, societies grapple with the imperative to redefine gender dynamics and uphold principles of justice and equality. Central to this discourse are reproductive rights, encompassing unrestricted access to birth control, abortion, and family planning. However, these rights have been mired in ethical, moral, and religious debates, underscoring the complexity of addressing women's autonomy within societal frameworks.

The United Nations Population Fund (UNFPA) and the World Health Organization (WHO) have emerged as leading advocates for reproductive rights, emphasizing women's empowerment and health as cornerstones of development. Their initiatives span from access to family planning services to addressing socioeconomic disparities that impede women's reproductive choices.

The concept of reproductive justice has emerged to encapsulate the multifaceted social and economic factors influencing women's ability to exercise their reproductive rights. While legal frameworks may exist, disparities in access and affordability persist, particularly affecting marginalized communities.

Historically, women have been marginalized within societal structures, relegated to gendered roles and denied participation in male-dominated institutions. Laws and cultural norms have perpetuated discrimination, shaping reproductive policies and limiting women's autonomy in matters such as abortion and contraception.

In contemporary discourse, reproductive freedom is framed as a fundamental human right, essential for women's empowerment and societal progress. However, entrenched gender biases continue to undermine efforts towards gender equality, highlighting the ongoing struggle for women's reproductive autonomy and social justice. Efforts towards societal transformation must reckon with historical legacies of discrimination while advancing inclusive policies that uphold the rights and dignity of all individuals, irrespective of gender.

Keywords- *Reproductive rights ,Gender discrimination Patriarchal paradig Societal transformation, Gender equality ,Reproductive justice ,Women's empowerment ,*

Historical perspective.

Objectives-

1. Analyze the historical roots and societal implications of the struggle for reproductive rights, focusing on the dynamics between women and men within families and societies.
2. Explore the role of patriarchal paradigms in perpetuating gender discrimination and constraining women to predefined societal roles, particularly in matters concerning reproductive autonomy.
3. Examine the initiatives and advocacy efforts led by organizations such as the United Nations Population Fund (UNFPA) and the World Health Organization (WHO) in promoting women's empowerment and addressing socioeconomic

disparities affecting reproductive choices, with a focus on advancing principles of justice and equality.

Introduction

Social change has always been difficult, predominantly when the elemental relations between women and men in families and society are concerned. There has been a continuous growth in recognition of how the rules governing men and women's prospects, social endowments and conducts affect the prospect for accelerated development and justice. In the era of globalization and urbanization, societies need their own solutions, justified to a vision of justice and gender equality and in accordance with their cultures and conditions, to provide a far better way of life for both women and men.

The struggle for reproductive rights is a struggle that women have been battling with for centuries. Women's reproductive rights are specifically the rights of unrestricted access to birth control, abortion and family planning. These rights, historically, are an especially contentious matter due to moral, ethical and religious considerations.

The United Nations Population Fund (UNFPA) and the World Health Organisation (WHO) have been primary advocates for the reproductive rights with a prominence on women's rights. In this respect, the UN and WHO focus on a range of concerns from access to family planning services, sex education, menopause and the reduction of obstetric fistula, to the connexion between reproductive health and socioeconomic status.

The reproductive rights of females are advanced under the perspective of the right to liberty from discrimination and the social and economic status of women. The welfare group named Development Alternatives with Women for a New Era (DAWN) explained the nexus with help of the following statement:

"Control over reproduction is a basic need and a basic right for all women. Linked as it is to the women's health and social status, as well as the powerful social structures of religion, state control and administrative inertia, and private profit, it is from the perspective of poor women that this right can best be understood and affirmed. Women know that childbearing is a very social, not a purely personal, phenomenon; nor can we deny that world population trends are likely to exert considerable pressure on resources and institutions by the end of this century. But their bodies have become a pawn in the struggles among states, religion, male heads of households and private corporations. Programs that do not take the interests of women into account are unlikely to succeed."

Efforts have been made to explore the socioeconomic conditions that affect, or put in jeopardy, the recognition of a woman's reproductive rights. The term "reproductive justice" has been coined to describe these extensive social and economic concerns. Advocates of reproductive justice argue that while the right to safe and legal abortion and contraception practices pertains to everyone, these choices are only profound to those with resources, and also infers that there is a budding disparity between access and affordability.

Literature review

The quest for reproductive rights has been a longstanding battle, deeply rooted in the fundamental relations between women and men within families and societies. Across civilizations, women have faced systematic oppression, relegated to their roles as bearers of children without regard for their autonomy or consent. This patriarchal paradigm, pervasive throughout history, has perpetuated gender discrimination, constraining women to predefined societal roles and denying them agency over their bodies and lives.

Amidst the currents of globalization and urbanization, societies grapple with the imperative to redefine gender dynamics and uphold principles of justice and equality. Central to this discourse are reproductive rights, encompassing unrestricted access to birth control, abortion, and family planning. However, these rights have been mired

in ethical, moral, and religious debates, underscoring the complexity of addressing women's autonomy within societal frameworks.

The United Nations Population Fund (UNFPA) and the World Health Organization (WHO) have emerged as leading advocates for reproductive rights, emphasizing women's empowerment and health as cornerstones of development. Their initiatives span from access to family planning services to addressing socioeconomic disparities that impede women's reproductive choices.

The concept of reproductive justice has emerged to encapsulate the multifaceted social and economic factors influencing women's ability to exercise their reproductive rights. While legal frameworks may exist, disparities in access and affordability persist, particularly affecting marginalized communities.

Historically, women have been marginalized within societal structures, relegated to gendered roles and denied participation in male-dominated institutions. Laws and cultural norms have perpetuated discrimination, shaping reproductive policies and limiting women's autonomy in matters such as abortion and contraception.

In contemporary discourse, reproductive freedom is framed as a fundamental human right, essential for women's empowerment and societal progress. However, entrenched gender biases continue to undermine efforts towards gender equality, highlighting the ongoing struggle for women's reproductive autonomy and social justice. Efforts towards societal transformation must reckon with historical legacies of discrimination while advancing inclusive policies that uphold the rights and dignity of all individuals, irrespective of gender.

The quest for reproductive rights has been a longstanding battle, deeply rooted in the fundamental relations between women and men within families and societies. Across civilizations, women have faced systematic oppression, relegated to their roles as bearers of children without regard for their autonomy or consent. This patriarchal

paradigm, pervasive throughout history, has perpetuated gender discrimination, constraining women to predefined societal roles and denying them agency over their bodies and lives.

Amidst the currents of globalization and urbanization, societies grapple with the imperative to redefine gender dynamics and uphold principles of justice and equality. Central to this discourse are reproductive rights, encompassing unrestricted access to birth control, abortion, and family planning. However, these rights have been mired in ethical, moral, and religious debates, underscoring the complexity of addressing women's autonomy within societal frameworks.

The United Nations Population Fund (UNFPA) and the World Health Organization (WHO) have emerged as leading advocates for reproductive rights, emphasizing women's empowerment and health as cornerstones of development. Their initiatives span from access to family planning services to addressing socioeconomic disparities that impede women's reproductive choices.

The concept of reproductive justice has emerged to encapsulate the multifaceted social and economic factors influencing women's ability to exercise their reproductive rights. While legal frameworks may exist, disparities in access and affordability persist, particularly affecting marginalized communities.

Historically, women have been marginalized within societal structures, relegated to gendered roles and denied participation in male-dominated institutions. Laws and cultural norms have perpetuated discrimination, shaping reproductive policies and limiting women's autonomy in matters such as abortion and contraception.

In contemporary discourse, reproductive freedom is framed as a fundamental human right, essential for women's empowerment and societal progress. However, entrenched gender biases continue to undermine efforts towards gender equality,

highlighting the ongoing struggle for women's reproductive autonomy and social justice. Efforts towards societal transformation must reckon with historical legacies of discrimination while advancing inclusive policies that uphold the rights and dignity of all individuals, irrespective of gender.

Methodology

To understand the complex issues surrounding reproductive rights and gender dynamics, we conducted a thorough review of existing literature. We searched through academic databases and other sources to find relevant articles, reports, and policy documents discussing topics like reproductive rights, gender discrimination, and women's autonomy.

We set specific criteria for including sources in our review, focusing on materials that shed light on historical contexts, current challenges, and efforts to promote reproductive rights and gender equality. By using keywords like "reproductive rights" and "gender discrimination," we aimed to gather a wide range of perspectives on the subject.

After collecting relevant information, we carefully analyzed and synthesized the data to identify common themes and trends. We organized our findings to align with the key points outlined in the abstract, including discussions on historical influences, current initiatives by organizations like the UNFPA and WHO, and the concept of reproductive justice.

Our analysis was guided by theories from feminist studies and public health, helping us interpret the findings in a meaningful way. We also assessed the quality of the literature to ensure that our conclusions were based on reliable and credible sources.

Throughout the research process, we remained mindful of ethical considerations, especially regarding the sensitive nature of the topic. We respected diverse perspectives and maintained confidentiality in our analysis.

While our methodology provided valuable insights, it's essential to acknowledge its limitations. For instance, our reliance on existing literature may not capture all perspectives, and our analysis may be influenced by our own biases. Nonetheless, we strived to conduct a thorough and objective review to contribute to the understanding of reproductive rights and gender dynamics.

(A) REPRODUCTIVE RIGHTS OF WOMEN

"Reproductive freedom is critical to a whole range of issues. If we can't take charge of this most personal aspect of our lives, we can't take care of anything. It should not be seen as a privilege or as a benefit, but a fundamental human right."

- Faye Wattleton, (Reproductive Rights Activist)

Historical view

In the long history of civilisation of humankind, women have been an integral part of the society along with its development and growth. However, in this long history, women have always been looked down upon by men and other women and has been restricted to their basic sexual and reproductive role without even taking their consent and views into consideration. The world and society have continued with a patriarchal view and male domination has been a basic function of it for the most part.

In the records of history, there has been lucid proof of the skewed approach towards women. At all stages of life, women have been prescribed their basic functions restricted to personal and familial level by men and women alike. These basic roles are confined to a daughter, sister, wife, and mother. This has confined the functions to sexual, reproductive, economic, and educational level.[1]

[1] Ibid., p. 22.

Women has always been treated by the society as an instrument of reproduction and their basic function has always been restricted to appeasement of men's sexual needs and birth their child, without any regards to their views, consent, or autonomy. They were given the joy of full autonomy over their body and mind. Even in sub-urban and urban areas, where women rights are well recognised, their autonomy has always been influenced by their spouses and other family members.

Women suffer discrimination on both sex and gender grounds. Sex is determined as a matter of biology, but gender is a product of social construction, culture and psychology. Many languages ascribe gender to objects, recognizing them to have a masculine or a feminine character, while some use term gender in neutral form. Beyond language its characteristics and activities can be classified as essentially masculine or feminine. Masculine activities are associated with strength, firmness of will, consistency, and, for instance, courage. Activities of law-making, politics, warfare, trade, and decision making, including medical decision making, are seen as masculine, and women who are engaged in these activities appear to act unnaturally. Naturally feminine behavior is artistic, emotional, fickle, and indecisive, but also sensitive, nurturing, and caring.

Historically, laws were used to exclude women from membership in such male-gendered institutions as universities and medical schools, and to prevent them from joining the legal, military, and clerical professions. Women accordingly suffered explicit discrimination based on sex and implicit discrimination based on gender. In the context of modern reproductive rights also, women continue to suffer, both sex and gender discrimination. Women are considered incapable of prudent decision-making concerning abortion, access to which remains widely governed by legislation shaped by male values, and women's resort to sterilization and contraception is frequently dependent on a husband's authorization.

These grave issues and stereotypes of women, gives rise to the need of recognising, establishing, encouraging, and enforcing of human rights of women with special reference to their sexual and reproductive rights as basic human rights[2]. This recognition of human rights of women as basic human rights is necessary for the elimination of discrimination against women and to establish complete gender equality, especially sexual and reproductive. It is also necessary to recognise these rights as the States have always been hesitant to interfere in such matters and have of the view that, sexuality and sexual autonomy comes under private sphere and hence do not share relevance to public or political sphere.

Path to Recognition of Rights

The rights of women have gained popularity and recognition after major international movements by pro-feminists and activists which persuaded the international agencies to give legal definitions and enforcement of women rights at global level to end and eliminate gender-based discrimination and gender-based human rights violation. These movements led to a series of human rights treaties and international conferences agreements formulated over several decades giving a legal foundation to the enforcement of women rights as basic human rights and eliminating gender-based discriminations and violations.[3]

Women are fighting their struggle for reproductive rights for centuries. The basic reproductive rights are unrestricted access to birth control, abortion, family planning and complete sexual autonomy over their body and its birthing capacity. These rights are of great significance because of their considerations in the arena of ethics, moral and religion. The growth and development of society depends heavily on recognition and protection of such rights of women as basic human rights.[4]

[2] R.J. Cook, M.I. Plata, International Journal of Gynaecology and Obstetrics 46 (1994)
[3] Margaret Thorton Public and Private Feminist Legal Debates, Oxford Uni. Press., Melbourne, 1996.
[4] Archana Yadav, Reproductive problems and rights of women, http://hdl.handle.net/10603/288016

Reproductive rights have many branches swindled and intertwined with each other all forming a cardinal part of rights of women. These include right to sexual autonomy, birth control and family planning. Right to sexual autonomy, in very clear and basic definition, is a woman's right to control her sexuality and her sex life with complete autonomy without any interference of her spouse, family, society or the State. The recognition of women's right to sexual autonomy will be the base for their reproductive rights. Right to birth control is the right to unrestricted access to birth control methods and contraceptives (primarily temporary) and also include the right to education of different contraceptive and birth control measures along with easy access to such measures. The burden of protection of such rights falls directly to the State. The State is duty-bound to ensure such facilities and service to each and every woman within its jurisdiction, especially in rural areas which lacks basic education and medical facilities. Women should also be an integral part in the process of family planning. They should be able to express their views freely and should have equal vote in decision making.

The term "women's human rights" and the set of practices that complements its use are constantly evolving made from global motion to improve the popularity of girls. During 1980s -1990s, women's movements around the world shaped networks and coalitions to give greater visibility each to the problems that girls look every day and to the centrality of girl's reviews in financial, social, political and environmental issues in the evolution of what is becoming a worldwide ladies motion, the term "women's human rights" has served as a locus for parties, that is, for the development of political techniques fashioned by means of the interplay between analytical insights and concrete political practices.

Further, the necessary instrumentations, the cooperative policy, and the wide-primarily based worldwide networks which have matured round moves for women's human rights have become a scar for women to extend the political skills essential for the 21st century.

The idea of women's human rights owes its fulfillment and the proliferation of its use to the veracity that it is in tandem plain and modern. The integration of women's outlooks and lives into human rights needs and practice forces popularity of the miserable failure of countries across the globe to accord women the human poise and esteem that they deserve without a doubt as humans. A woman's human rights framework endows women with means to stipulate, analyze, and articulate their studies of violence, degradation, and eccentricity.

Such rights can only be established by ending the gender-based discrimination and rights violation. A legal foundation was provided to such concern by a progression of international human rights treaties and international conference agreements fashioned over a course of several decades by the governments, heavily prejudiced by the rising international movements for rights of women. Such agreements affirms that both men and women have equal rights and bounds States to take strict actions against any discriminatory practices.

Human rights for women, as for all individuals are protected in the tenets of international law and the international conventions provide the opportunity for government to make or repeat declarations of commitment. But tragically, women are most often the ones whose human rights are violated, and they will never gain full dignity until their human rights are truly respected and protected. The causes and aftereffects may differ from country to country, but bigotries and discrimination against women continue to be widespread and involve the complete range of human rights violations known to the modern world.

International Movements

Women's sexual and reproductive health is linked to a variety of human rights, including the right to life, the right to health, the right to education, the right to privacy, the right to protection from torture and discrimination. The Committee on Economic, Social and Cultural Rights and also the Committee on the Elimination of Discrimination against Women (CEDAW) have each clearly implied that women's

right to health includes their sexual and reproductive health. This suggests that States have obligations to respect, shield and fulfil all the rights associated with women's sexual and reproductive health. The Special Rapporteur on the right of everybody to the enjoyment of the highest attainable standard of physical and mental health maintains that women are entitled to reproductive health care services, products and facilities that are:

(a) on the market in adequate numbers.

(b) accessible physically and economically.

(c) accessible free from discrimination; and

(d) of superior quality.

International human rights law forbids discrimination against women in their enjoyment of all human rights and fundamental freedoms. While non-discrimination is an elemental component to the recognition of women's rights, its proportional approach measures women's equality against men's enjoyment of rights, reinforcing the machismo of the universal subject of human rights law, whose rights are fully promoted and explicitly protectively. It is to the extent that violations experienced exclusively or primarily by women, not even are expressly recognized in the founding of the human rights instruments. Where they are treated as sub-category of the universal and formulated as 'protective' measures rather than as human rights. There have been efforts to address the resulting marginalization of women's rights, including the adoption of the Convention on the Elimination of All Forms of Discrimination against Women and the mainstreaming of women's human rights. While these efforts have been successful in many respects, there have been continuing conceptual and practical problems, including, not only the limitations of anti-discrimination law, but also the danger that specific realization of women's rights violations may simply reproduce women's secondary status.

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 developed at the Fourth World Conference on Women (FWCW) are major international accord agreements in support of gender equality and women empowerment. The ICPD and FWCW documents, especially, drawing on human rights agreements, clearly articulate the notions and scope of sexual and reproductive rights.[5]

The WHO defines reproductive rights as follow:

"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 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."[6]

The outline of reproductive rights of women includes the following rights:

- Right to legal and safe abortion
- Right to take charge of one's reproductive function
- Right to access to information so as to make reproductive preferences free from coercion, discrimination, and violence
- Right to access to education concerning family planning and sexually transmitted diseases and freedom from forced sterilization and contraception.
- Right to protection from gender-based practices such as female venereal cutting and male venereal mutilation.

Reproductive Rights in India

The reputation of women in India considering a long faction of history has been with pity in all aspects of her existence and her subjugation to society, always at the mercy of people in her circle including family, relative and society. In ancient India, almost

[5] Proclamation of Tehran, Final Act of the International Conference on Human Rights.
[6] Gender and Reproductive rights home page. Available at: http://who.int/reproductive-health/gender/index.html.

all Hindu scriptures considered women as an idol worthy to be worshipped. Women were given the title of *'Devi'* and regarded in high terms. In today's scenario, much has not changed. Women are still called idols and jewel of the household. Many Hindu deities are female and are called *'Mata'*. But these notions and ideas have been stuck behind the walls of temples and has not yet reached the common place of humans and society.

The current state of affairs throughout India was among the primary countries in the world to develop legal and policy frameworks guaranteeing access to safe abortion and contraceptive methods, women and girls continue to experience considerable hurdles to most enjoyment of their reproductive rights, including scant quality of health services and rebuttals of women's and girls' decision-making power. Ironically, reproductive rights and health associated laws and policies in India have neglected to take a women's rights-based approach, instead converging on demographic targets, like population control through promoting permanent sterilization rather than safe and temporary contraceptive solutions, whereas additionally implicitly or explicitly disheartening women's reproductive autonomy through discriminatory stipulations like spousal consent necessity for access to reproductive health services.

Violations of women's sexual and reproductive health rights are typically deeply rooted in society dictated values relating to women's sexuality and autonomy. Patriarchal ideas of women's roles inside the family mean that women are often valued in view of their ability to give birth and nurture children and family. Early marriage and pregnancy, or repeated pregnancies spaced too closely along, typically because of efforts to supply male offspring due to the preference for sons over daughters, features a devastating impact on women's overall health with at times fatal consequences. Women are also often condemned for infertility, inability to produce male offspring, suffering ostracism and being subject to countless human rights infringements as a result.

The Constitution of India is the fundamental regulation in India, which got here into force on 26th January 1950. The Indian constitution was drafted across the identical time while the landmark regular announcement of human rights became drafted and is robustly encouraged by using the latter. The standards governing gender justice are firmly established within the constitution of India. In India apart from the Constitution, the Indian Penal Code, 1860, the Code of Criminal procedure, 1973, the Indian Evidence Act, 1872 there are nearly 45 legislations, which have made various provisions for safeguarding the women's rights.

Despite a national law penalizing marriage of minor girls i.e., below 18 years of age and policies and schemes guaranteeing women maternal healthcare and wellbeing, in practice, India continues to account for the highest number of child marriages, female infanticides and 20% of all maternal deaths globally. Although India's National Population Policy guarantees women voluntary access to the full range of contraceptive methods and prenatal and postnatal healthcare, 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 temporary contraceptive and birth control methods. In addition, although abortion is legal on multiple grounds until 20 weeks of gestation and throughout pregnancy where it is necessary to save the life of the pregnant woman under the Medical Termination of Pregnancy Act (MTP Act), 56% of the 6.4 million worldwide abortions estimated to occur in India annually most of which are illegal, unsafe and result in 9% of all maternal deaths.

India, as a signatory to the International Conference on Population and Development, 1994, has pledged itself to ethical and professional standards in family planning and birth control services, including the right to personal reproductive autonomy and collective gender equality[7]. Indian policies and laws, so far, seem to reflect this

[7] United Nations International Conference on Population and Development (ICPD), 5-13 September 1994 Cairo, Egypt. Available at http://www.iisd.ca/cairo.html.

understanding, on paper at least. The National Population Policy, 2000, affirms the right to voluntary and informed choice in matters associated with contraception[8].

The issue of right to reproductive health especially abortion, takes on special significance within the Indian context as various national and international stakeholders strive to bring meaning to the important concepts of women empowerment, rights and choices as articulated under the Cairo Agenda at the 1994 international conference on population and development (ICPD).

The Indian setting combines a variety of apparent contradictions in how family planning, birth control and abortion policy is set; how services are delivered; how demographic trends and desires about family size and composition shape the demand for contraception and abortion; and therefore, the social context defines the pressures, constraints and options for women's reproductive behaviour.[9]

U.N. human rights experts and bodies have raised concerns to the Indian government about various human rights violations arising from a range of reproductive rights issues, including maternal mortality and morbidity, unsafe and illegal abortion practices and poor quality of post-abortion care, lack of access to the full range of contraceptive techniques and reliance on pressurized, coercive and substandard female sterilization, child marriage, and lack of information and education on reproductive and sexual health (especially in rural India). These experts and international human rights bodies have asked India to address these infringements, as well as incongruences in access to reproductive health care.

(B) THE MEDICO-LEGAL STUDY

[8] National Commission on Population, government of India: National Population Policy, 2000. Available at http://mohfw.nic.in/natpp.pdf.

[9] Reproductive Rights and choice: The role of abortion in India. Published by International center for research on women (ICRW).

Medico-legal is the term, which incorporates the basics of two sister professions i.e., Medicine and Law. Everybody talks about the law but only a handful, aside from lawyers, judges and law teachers, have more than the vaguest notion of what constitutes law. The average layman often has about as much accurate information about the law as he has about medicine or life in outer space. And, unfortunately, two professional groups suffer from more ignorance of law and medicine than is good for them.

Those researchers, who do not perpetually deal with medical problems in their legal practice, apprehend very little concerning the medical profession and its problems; physicians oft comprehend too little about the law and the way it affects them within the observance of their profession. Medico-legal specialists can offer a nexus between these 2 professions for their swish and effective functioning in a methodical manner. The medical practitioner encounters the law and its application at every corner. He confronts it when, as a health care provider, he is summoned as a witness in a lawsuit; he meets it when his aid is sought-after as a professional in reference to a claim that another member of his line of work has been negligent and when he comes across in his office or clinic a narcotic addict, a person with a bullet wound, or a young couple seeking a biopsy. He is face-to-face with the law when he is needed to render an aggravating array of governmental reports or to safeguard physical evidence for the advantage of a law enforcement agency. The practitioner, in fact, finds a significant deal of the law intensely exasperating, often because he is ambiguously clear as to its purpose.

MEDICAL ASPECT

There has been neglect on the reproductive health and the consequences of this neglect have been unreversible mainly for females. There is a necessity for a change in contemporary health policies, programmes and laws in India. The health plans and programs need to be shifted from demographic targets to much wider aspect of health concerning reproductive health requisites of women and the services they require for the same. Taking into consideration, the present socio-cultural restraint that women

and adolescent girls are facing in acquiring health services, there is an urgent need for the government to take necessary steps.

There are health programs such as National Family Welfare program, National Family Health Survey etc. that has been propelled to deliver health care measures. But these programs fall flat to focus on the health of women especially reproductive health. What are the inadequacies in women's reproductive health and what are the priorities for reshaping the health programmes to respond to the present reproductive health needs of women?

As reproductive health means that people have the capacity to reproduce and to regulate their fertility. It, moreover, implies that women have right to undergo pregnancy and childbirth 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 condition where every individual can enjoy sexual relations free from the fear of disease.[10]

The most common direct medical causes of maternal death around the world are Haemorrhage, obstructed labor, sepsis and hypertensive disorders related to pregnancy, such as eclampsia. These conditions are largely preventable and once detected, can be treated. Complications from unsafe and reckless abortion is another common and preventable direct cause of maternal mortality in India.

In India as well as around the globe, a significant number of maternal deaths are attributed to *indirect causes*. Indirect causes are those conditions or problems that can lead to complications in pregnancy, or which is aggravated by pregnancy. In India, common indirect causes include anaemia, malaria, HIV/AIDS. Many of these direct causes of death are themselves symptoms or effects of an underlying indirect cause.

[10] Shireen J. Jejeeboy "Addressing women's reproductive Health Needs" March Economic and Political Weekly 475 (1997).

Complications from Unsafe Abortions

Complications from unsafe abortion accounts for a significant ratio of maternal deaths in India. Medical experts put the figure of maternal deaths due to unsafe abortion practices at almost 18% higher than the global average of 13%. Although termination of pregnancy is legally permitted on certain medical and ethical grounds, approximately 6.7 million of abortions takes place outside the government's knowledge and government-recognized health centres, under unhygienic conditions and unskilled medical workers. This concern disproportionately affects adolescents as unsafe termination of pregnancy accounts for half of all maternal deaths of girls aged between 15 to 19 years. Most women in India do not have easy access to legal and safe abortion services. Other problems are inconsistent and prohibitive costs, shortage of well-skilled practitioners and adequate medical equipment, lack of confidentiality and informal necessity of spousal consent, lack of access of healthcare facilities and scarcity of knowledge as regards the risks and legality of abortions.

Lack of Health Services

Critical reproductive healthcare services are not accessible to the greater part of women in India. The National Human Rights Commission (NHRC) report concludes that about a quarter of the total women population in the country accesses services through public healthcare system. The paucity of basic reproductive healthcare services incorporating contraceptives, prenatal and postnatal care and emergency obstetric care as well as delays in getting institutional care and the inferior quality of care provided in government hospitals and healthcare systems, have aided significantly to maternal deaths.

Lack of Access to Family Planning Methods and Information

High maternal mortality and morbidity rate is in very much consonance with scarce access to contraceptives, methods and services. Unwanted pregnancy puts women to significant hazards in terms of their maternal health which includes hitches from

unsafe termination of pregnancies and high-stake pregnancies. Several studies support that women with unwanted pregnancies are much more likely to seek persuaded abortion, illegal and unsafe and has a very less chances of receiving enough prenatal care.

As per the UNFPA estimation, 1 out of 3 deaths concerned with pregnancy and childbirth could be evaded if all women had easy access to safe contraceptive information and services. This infers that around 1,75,000 or much more of maternal deaths could be avoided around the globe annually just by providing easy access to contraceptives to all women. Women with lowest degree access to contraceptive services, especially young and poor from rural and remote areas, have in particular higher rates of maternal mortality.

A regional study by WHO states that women in India significantly lacks access to a wide range of contraceptives, modern and non-permanent in particular, leading to unwanted pregnancies that puts women's health at staking risk due to lack of quality prenatal care or subject to unsafe and illegal termination of pregnancy. The inadequacy in use of contraceptives is revealed by the NHFS-3 which shows that in India around 21% of all pregnancies that resulted in live births were due to unplanned and unwanted pregnancies. Around only 65% of women in India use any method of contraceptives and 49% which is even lesser use modern contraception forms[11].

Lack of Care

Even the most basic of maternal healthcare services lie far beyond the reach of a majority of women in India. Less than 50% of women give birth under the assistance of a trained birth attendant and only 40% of the deliveries occur in an institutional setting. Less than 1/3rd of women in India receives any antenatal health examination despite the WHO recommendation that women should receive antenatal check-ups during pregnancy and Indian government promise to ensure that women will get four

[11] Cook, Rebecca J., Mahmoud F. Fathalla; International Family Planning Perspectives (Vol. 22).

check-ups through NRHM. This shows grave leniency of the government towards reproductive and maternal healthcare of women.

Poor quality of care is a major concern not only because it is considerate cause of maternal deaths and complications but also because it can lead to underutilisation of maternal healthcare services among pregnant women, especially antenatal care. Studies support the contentions that pregnant women deter from utilising health services due to poor quality of clinical care or interpersonal quality of care. Clinical care is measured in terms of availability of appropriate physical examinations and tests and information about the alarming signs of pregnancy and delivery. Interpersonal quality of care corresponds to the behaviour of a health service provider towards the client such as amount of time and attention spent on client, demeanour and respect for privacy.

Public health facilities and service providers have a reputation of offering significantly poor services in comparison with private practitioners. The situation of public clinics and healthcare centres have been defined by the experts as disastrous, in so far as healthcare providers do not spend enough time in company of their patients and in quite some public clinics, barely interact with their patients and if they do at all, they do it in a very rude and inconsiderate manner.

Three Delays critical to Maternal Care

Most of the maternal deaths are attributable to *three basic delays*:

i. Delay in determining to seek care,
ii. Delay in progressing to a suitable healthcare facility, and
iii. Delay in receiving quality care upon reaching the aforementioned facility.

The 1st delay, delay in determining to seek care, occurs due to imperfect resources, lack of access to top quality health care and lack of awareness at personal and domestic level of the essence of maternal healthcare. One more reason may well be the woman's

inability of decision-making authority within the family. In such cases, once a woman decides to seek care, she has to seek permission from the head members of the family where rests the decision-making authority, which causes inordinate delays to come by.

The 2nd delay establishes the lack of access to obstetric care. Lack of access here could refer to the nonexistence or physical inaccessibility of appropriate facilities within the reach of the patient or to the financial, socio-cultural or infrastructural impediments like unnavigable roads or non-availability of transportation. Such limitations restrict women from accessing an established and existing facility.

The 3rd delay usually results from ill-timed diagnosis and treatment, unskilled and primitive care givers, persistent waiting time at the facility, scarcity of equipment and necessary contingencies, consecutive referrals to other health facilities and shortage of water and electricity supply. Other relevant factors leading to 3rd delay includes the dismissive approach of some providers and a financial set-up that puts essential medications and lifesaving equipment on the far side of the economic reach of most hospitals and patients.

Reproductive health care should include following components:

- **Family planning** that involves sturdy government support, service providers who are well-trained, sensitive to cultural settings, listen to clients' needs, and are friendly and sympathetic, Services are reasonable and an alternative of contraceptive methods is obtainable, Counselling guaranteeing informed consent in contraceptive alternative, ensuring privacy and confidentiality, comfortable and clean facilities and prompt service.[12]
- **Safe motherhood programme** ought to offer access to emergency obstetric care, comprising treatment of haemorrhage, infection, high blood pressure and plugged labour. Life-saving interventions, like referring to medical centres. A

[12] Deirdre W, Susheela Singh. Hopes and realities: Closing the gap between women's aspirations and their reproductive experiences. Published by The Alan Guttmacher Institute. New York, 1995. ISBN 0939253380.

community-based system that ensures swift transport to an operational medical facility. Training Community health workers to identify and treat postpartum predicaments, furthermore to counsel on breastfeeding, child-care, hygiene, immunizations, birth control, and maintaining healthiness.[13]

- **Abortion and Post-abortion Care;** Abortion is a vital public health issue. Birth control services guarantee diminution in unwanted pregnancies and avert abortions. In circumstances where termination of pregnancy isn't against the law, quality health services ought to guarantee safe abortion practices and efficient post-abortion care would considerably diminish maternal mortality rates.[14]
- **Prevention and treatment of sexually transmitted diseases (STDs and HIV/AIDS);** As a result of culture as well as biology, women are much more susceptible to STDs than men.[15] The assimilation of birth control and STD/HIV/AIDS services within reproductive health services can cut back levels of STDs, along with HIV/AIDS, by providing information and counselling on crucial concerns such as sexuality, gender roles, power imbalances between females and males, gender-based violence and its link to HIV transmission, and mother-to-child transmission of HIV; distributing female and male condoms; diagnosing and treating STDs; developing tactics for contact tracing; and referring people infected with HIV for additional services.[16]

LEGAL ASPECTS

[13] Stars A. The safe motherhood action and agenda; priorities for the next decade. Family Care International. New York 1998.
[14] Programme of Action adopted at the International Conference on Population and Development, Cairo 5- 13 Sep1994. A/CONF.171/13: Report of the ICPD (94/10/18) Chapter VIII published by United Nations Population Information Network (POPIN) Gopher of the Population Division, Department for Economic and Social Information and Policy Analysis. Available at http://www.un.org/popin/icpd/conference/offeng/poa.html.
[15] Murray CJL, Lopez AD. Editors. The Global Burden of Sexually Transmitted Diseases, HIV, Maternal Conditions, Prenatal Disorders, and Congenital Abnormalities. Global Burden of Disease Series Vol. III 1998 Boston, Massachusetts: Harvard University Press.
[16] Miller K et al. Editors. Integrating STI and HIV/AIDS Services at MCH/Family Planning Clinics." In: Clinic-Based Family Planning and Reproductive Health Services in Africa: Findings from Situation Analysis Studies, Askew, Ian, Golgi Fassihian, and Ndugga Maggwa. The Population Council. 1998.
Dehne K, Snow R. Integrating STD Management into Family Planning Services: What Are the Benefits? Published by Department of Tropical Hygiene and Public Health, University of Heidelberg, Germany 1998.

The Constitution of India inscribes justice to be the first promise of the Republic, which suggests that state power will achieve the pledge of justice in favor of millions who are the Republic.[17] It is assumed that the philosophy of social justice is a myth without reproductive justice as it covers some basic aspects of life. Nothing would advance a woman's welfare quite so recognizing their reproductive and sexual autonomy. Such autonomy must embrace and shield the personal seclusions of marriage, motherhood, procreation and kid tending.[18] This autonomy is an important component for development of one's temperament and in such areas, a person needs to be at liberty to do as he likes.[19] This autonomy is also extensive enough to comprehend a woman's decision relating to termination of her pregnancy.[20]

The expression 'Reproductive Justice' - prima facie appears as an alien concept for Indian soil. However, the fertility of the preambular goals and philosophy cultivated with the efforts of judiciary as a guardian, has ingrained it over Indian land explicitly. By virtue of Article 253 of the Constitution of India, International human rights norms as contained in the Conventions are binding on India. Therefore, the Protection of Human Rights Act, 1993 recognizes that the above Conventions are now part of the Indian human rights law. According to Article 253 of Constitution of India, our legislators can give effect to any Convention in the form of law for the betterment of society. On the basis of International Conventions, Hon'ble Supreme Court recognized this right to privacy in various pronouncements.[21] Being a signatory to various international instruments of Human Rights, India has assumed the responsibility to provide and protect rights of the women and therefore, it confers a catena of rights upon women. It guarantees not only the equality before law and equal protection of law to women but also confers certain affirmative rights. Article 14 of the Constitution of India certainly ensures equality before law and equal protection of laws.[22] Article

[17] Krishna Iyer J., Social Justice-Sunset or Dawn 17 (Eastern Book Company, Lucknow, 1993).
[18] Gobind v. State of Madhya Pradesh and Anr, AIR 1975 SC 1378.
[19] Varsha Jalan and Vivek Bajoria, "The Medical Termination of Pregnancy Act, 1971: A Doctrinal Anachronism Discounted by Society" 96 AIR 129 (2009).
[20] Roe et al. v. Wade, District Attorney of Dallas County (1973) 410 U.S.113.
[21] Amit Ludri, "Recognition of Right to Privacy through Convention Jurisprudence with Special Reference to U.K. and India" 28(1) IBR 119-120 (2001).
[22] Article 14 of the Constitution of India provides "The State shall not deny to any person equality before the law or equal protection of laws within the territory of India."

15 prohibits discrimination by state of any citizens on the basis of sex etc. only. Article 15(3) empowers the state to make special provisions for the women and children.

JUDICIAL RECOGNITION OF REPRODUCTIVE RIGHTS AS FUNDAMENTAL AND HUMAN RIGHTS

The Supreme Court of India, which is highest form of judiciary in the country and several state High Courts have made imperative strides in recognizing the repudiation of reproductive rights as violations of women's and girls' fundamental and human rights. This section emphasis on landmark decisions that have broken ground in unambiguously establishing that women's and girl's legal rights to reproductive healthcare and autonomy give rise to a wide range of obligations on the State, including providing affordable, timely, and quality maternal health care; guaranteeing access to the full range of contraceptive methods in a non-coercive, quality, and target free manner; preventing child marriage; and ensuring freedom from forced pregnancy through access to safe and legal abortions, petitions in high courts throughout India seeking accountability for pregnancy-related deaths and injuries, resulting in groundbreaking judicial recognition of women's rights to survive pregnancy and childbirth as a fundamental right.

In a recently decided case it has been made clear by the Supreme Court that "the respects the personal autonomy of mentally retarded persons who are above the age of majority" and that "persons who are found to be in a condition of borderline, mild or moderate mental retardation are capable of being good parents". Taking cognizance of reproductive rights, it ruled that a woman's right to reproductive decision-making is a dimension of the fundamental right to liberty under Article 21 of the Constitution. This Supreme Court ruling is path breaking as it unequivocally endorses respecting the autonomy of mentally retarded persons in the area of reproductive choice.

The Court in ***Suchita Srivastava case*** observed that:

"30. … the State must respect the personal autonomy of a mentally retarded woman with regard to decisions about terminating a pregnancy. It can also be reasoned that while the explicit consent of the woman in question is not a

necessary condition for continuing the pregnancy, the MTP Act clearly lays down that obtaining the consent of the pregnant woman is indeed an essential condition for proceeding with the termination of a pregnancy."

The Court also quoted with approval the United Nations Declaration on the Rights of Mentally Retarded Persons, 1971 which declares that:
(1) the mentally retarded person has, to the maximum degree of feasibility, the same rights as other human beings.
(2) The mentally retarded person has a right to quality medical care and physical therapy and to such education, training, rehabilitation and guidance that will enable them to develop their ability and maximum potential.

The Court also said that persons who are found to be in a condition of borderline, mild or moderate mental retardation are capable of being good parents. The decision of the Court amply proves that women's right to reproductive health is a part of her human right and part of fundamental rights enshrined in Chapter III of the Constitution.

The Delhi High Court has in unequivocal terms declared that right to reproductive health is basic human right of women. The Hon'ble High Court of Delhi stated that: *"No pregnant women be denied access to medical treatment regardless of her social economic status."* The Court found that the petitions focused on two inalienable survival rights that form part of the right to life: the right to health and in particular the reproductive rights of the mother and the other is the right to food. The Court gave a ground-breaking decision that establishes the right to maternal health care, particularly the reproductive rights of the mother as a constitutionally protected right under Article 21 in June 2010.

These cases— two of which are discussed below— have been cited globally, including in a recent case in Kenya, to uphold women's rights to maternal health care with dignity.

In 2011, the Delhi High Court issued a landmark joint decision in the cases of ***Laxmi Mandal v. Deen Dayal Harinagar Hospital & Ors.*** **and** ***Jaitun v. Maternity Home,***

MCD, Jangpura & Ors.[23] Concerning denials of maternal health care to two women living below the poverty line. The 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."* Citing CEDAW and ICESCR, the decision held that, *"no woman, more so a pregnant 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."*

In 2012, the High Court of Madhya Pradesh echoed the Delhi High Court's judgment in ***Sandesh Bansal v. Union of India***[24], a public interest litigation seeking accountability for maternal deaths, recognizing that *"the inability of women to survive pregnancy and child birth violates her fundamental right to live as guaranteed under Article 21 of the Constitution of India"* and *"it is the primary duty of the government to ensure that every woman survives pregnancy and childbirth."* Notably, the Bansal judgement explicitly rejected financial constraints as a reasoning for reproductive rights violations and established that government obligations under Article 21 require immediate implementation of maternal health sureties in the National Rural Health Mission, including basic infrastructure.

Abortion and Forced Pregnancy

Recent jurisprudence concerning abortion in India also reflects progressive evolution in the judiciary's articulation of reproductive rights. Although a 2004 Supreme Court ruling undermined women's reproductive autonomy by holding that a woman's decision to undergo abortion or sterilization without her husband's consent could constitute mental cruelty, subsequent judicial decisions have moved toward greater constitutional protection of this right. In 2009, the Supreme Court recognized women's reproductive autonomy as a fundamental right, stating that "There is no

[23] 2010 (172) DLT 9
[24] Sandesh Bansal v. Union of India, (2012) Writ Petition 9061/2008 (Mad.)

doubt that a woman's right to make reproductive choices is also a dimension of 'personal liberty' as understood under Article 21."

In 2011, the High Court of Punjab and Haryana reiterated women's rights to reproductive autonomy by dismissing a suit filed by a husband against a doctor who had performed an abortion without the husband's consent saying that "[i]t is a personal right of a woman to give birth to a child…No body [sic] can interfere in the personal decision of the wife to carry on or terminate her pregnancy…unwanted pregnancy would naturally affect the mental health of the pregnant women [sic]."

Further, in the 2013 case of ***Hallo Bi v. State of Madhya Pradesh and Others***[25]**,** the High Court of Madhya Pradesh affirmed the importance of providing victims of rape access to abortion without requiring judicial authorization, stating "we cannot force a victim of violent rape/forced sex to give birth to a child of a rapist. The anguish and the humiliation which the petitioner is suffering daily, will certainly cause a grave injury to her mental health." Since 2008, cases have been filed nationwide seeking interpretation of Section 5 of the MTP Act, which explicitly allows abortion to save the life of a pregnant woman, to also permit abortion past 20 weeks on health grounds in cases of rape or fetal impairment. While the Supreme Court still has two cases pending seeking recognition that the Constitution requires access to abortion past 20 weeks on broader grounds, since 2015 the Supreme Court has ruled three times to permit abortion in individual cases past 20 weeks where medical panels found that forcing the women to continue the pregnancy would pose risks to their mental and physical health.

In 2017, the Supreme Court clarified that abortion at 24 weeks is legal in the case of anencephaly, which is a fatal fetal impairment that also endangers the pregnant woman's life, stating that her rights to physical integrity and reproductive autonomy permit her to "preserve her own life against the avoidable danger to it."

Although State High Courts have had varied judgements, 2 recent cases in Gujarat and Chhattisgarh have also progressively elucidated the MTP Act to allow termination of

[25] 2013 CriLJ 2868 (MP)

pregnancy past 20 weeks in cases of sexual assault. Significantly, these rulings acknowledge the importance of access to 2nd trimester abortions for women's mental and physical well-being. In the case of ***High Court on its Own Motion v. State of Maharashtra***[26] of 2016, the Bombay High Court pronounced to boost women prisoners' access to abortion and strongly affirmed women's right to abortion as a facet of the fundamental right to life with dignity under Article 21. The judgment acknowledges that unwanted pregnancies disproportionately burden women and states that compelling a woman to continue a pregnancy "represents a violation of the woman's bodily integrity and aggravates her mental trauma which would be deleterious to her mental health."

The decision boldly acknowledges that an unborn fetus isn't an entity with human rights. The pregnancy takes place inside the body of a female and has profound impacts on her health, mental well-being and life. Thus, however she desires to move with this pregnancy must be a call she and only she can make. The right to control their own body, fertility and motherhood choices ought to be left to the women alone. Let us not lose sight of the basic rights of women: the right to autonomy and to make a decision regarding what to do with their own bodies, including whether to induce pregnancy and stay pregnant.

Child Marriage

There has equally been growing acknowledgement by Indian Courts of child marriage as a human and fundamental rights abuse. The Delhi High Court delivered two rulings in 2010 and 2012 inclosing child marriage as a violation of human rights. These judgements further found that child marriage involves girls' fundamental rights, although they didn't expressly acknowledge child marriage as a violation of fundamental rights. The Delhi High Court expressed concern that child marriage typically involves young, vulnerable girls and exposes them to domestic violence, sexual abuse, and social isolation underscoring that child marriage is a violation of the "right to lead a life of freedom and dignity."

[26] 2013 (3) ABR 119
High Court on Its Own Motion v. State of Maharashtra & Another

The Delhi High Court has also noted the impact of lack of education on married girls, stating that it limits girls' knowledge about sexual relations and reproduction, which is compounded by cultural silence concerning reproductive and sexual health, and denies them the ability to make informed decisions about health, sexual relations, and family planning. Finally, the court has recognized that child marriage results in an "unrelenting cycle of gender inequality, sickness and poverty."

The Madras High Court similarly recognized child marriage as a human rights violation in 2011, and in 2015 issued an important decision establishing child marriage as a violation of girls' fundamental rights under Articles 14 and 15 of the Constitution.

This decision, ***M. Mohamed Abbas v. The Chief Secretary***[27]**,** confirmed that the Prohibition of Child Marriage Act (PMCA), establishing 18 years as the minimum legal age for marriage of girls, surpasses personal laws without violating Article 25 (freedom of religion) of the Constitution; rather, the ruling emphasizes that under CEDAW, fundamental rights, and directive principles of state policy, girls should be empowered and that child marriage is not in girls' interest. The Court further stated that PCMA *"is in favor of all the girl children getting proper education and empowerment and equal status as that of men in the Society, as guaranteed under Articles 14, 15, 16 and 21 of the Constitution."*

CHAPTER 2

LEGAL ASPECT OF REPRODUCTIVE RIGHTS OF WOMEN

Reproductive rights are elemental to the apprehension of all human rights. They include a gamut of civil, political, economic, and social rights, from the rights to health and life, to the rights to equality and indiscrimination, privacy, information, and to be free from torture or maltreatment. States' obligations to ensure these rights need those women and girls not only have access to across-the-board reproductive health

[27] AIR 2015 Mad 237

information and services but also that they experience progressive reproductive health outcomes like lower rates of precarious abortion and maternal mortality and the ability to make fully enlightened decisions—free from violence, discrimination, and coercion—about their sexuality and reproduction. Violations of reproductive rights inexplicably put the heath of women at risk because of their capability to become pregnant and legal protection of such rights as human rights is vital to empower gender justice and also the equality of women.

The Constitution of India acknowledges several of those same rights as fundamental rights that the State has an onus to uphold, which also includes the right to equality and indiscrimination (Articles 14 and 15) and also the right to life (Article 21) that is known through jurisprudence to incorporate the rights to health, dignity, freedom from torture and maltreatment, and privacy.[28] India is also a signatory to multiple international conventions, like the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); and the Convention on the Rights of the Child (CRC), all of which acknowledge reproductive rights.[29] Article 51(c) of the Indian Constitution and the judiciary have established that the government has a constitutional obligation to respect international law and treaty obligations.[30]

The government of India also bears a constitutional obligation to ensure legal remedies for violations of fundamental rights and human rights. Article 39(a) requires the government to promote equal access to justice and free legal aid as a means to ensure that *"opportunities for justice are not denied to any citizen by reason of economic or other disabilities."*

[28] Parmanand Katara v. Union of India, (1989) 3 S.C.R.997; Paschim Banga Khet Mazdoor Samity v. State of West Bengal, A.I.R 1996 S.C.C. 2426; Chameli Singh v. State of U.P., (1996) 2 S.C.C. 549; Consumer Education and Research Centre v. Union of India (1995) 3 S.C.C. 42; Francis Coralie Mullin v. The Administrator, Union Territory of Delhi, A.I.R. 1981 S.C. 746; Kharak Singh v. The State of U.P. & Others, A.I.R. (1963) 1 S.C.C. 332.

[29] Convention on the Elimination of All Forms of Discrimination against Women; Committee on the Elimination of Discrimination against Women; Article 12 of the Convention (women and health), (20th Sess., 1999); International Covenant on Economic, Social and Cultural Rights.

[30] Apparel Export Promotion Council v. Chopra (1999) 1 SCR 117

As far as reproductive rights in India are concerned there is no specific law to deal directly with reproductive rights. The term ‘reproductive rights’ has not been explicitly used/ defined in Indian statutes. However, the law recognizing certain reproductive interests is prevailing in a scattered form. In this Chapter an attempt is made to discuss various provisions relating to the reproductive rights incorporated in Indian laws like the provisions of the Constitution of India, Indian Penal Code 1860, Medical Termination of Pregnancy Act 1971 and PNDT Act 1994, Prohibition of Child Marriage Act, 2006. Further the role of judiciary in granting and respecting reproductive rights and analyzing the circumstances and the period up to which a pregnancy can be terminated has been an attempt.

Reproductive Freedom under Indian Constitution

The Constitution of India etches justice as the first promise of the Republic, which means that state power will execute the pledge of justice in favor of masses who are the Republic. It is assumed that the philosophy of social justice is a myth without reproductive justice as it covers some basic aspects of life. Nothing would advance a woman’s welfare more than respecting their reproductive and sexual autonomy. Such autonomy must incorporate and safeguard the personal intimacies of marriage, motherhood, procreation and child tending. This autonomy is an essential element for development of one's personality and in such areas, an individual requires to be at liberty to do as he likes. This autonomy is also broad enough to comprehend a woman's decision whether to terminate her pregnancy.

The expression ‘Reproductive Justice’ - prima facie appears as an alien concept for Indian soil. However, the fertility of the preambular goals and philosophy cultivated with the efforts of judiciary as a guardian, has ingrained it over Indian land explicitly. In accordance with Article 253 of the Constitution of India, International human rights standards as enclosed in the Conventions are binding on India. Therefore, the Protection of Human Rights Act, 1993 acknowledges that the aforementioned Conventions are now element of the Indian human rights law. According to Article

253 of Constitution of India, our lawmakers can give effect to any Convention in the form of law for the advancement of society. On the basis of International Conventions, Hon'ble Supreme Court acknowledged this right to privacy in numerous verdicts. Being a signatory to various international instruments of Human Rights, India has undertaken the responsibility to offer and safeguard rights of the women and therefore, it confers a concatenation of rights upon women. It ensures not solely the equality before law and equal protection of law to women but also confers certain assenting rights. Article 14 of the Constitution of India certainly ensures equality before law and equal protection of laws. Article 15 prohibits discrimination by state of any citizens on the basis of sex etc. only. Article 15(3) empowers the state to form special policies for the women and children.

The right to life assured under Article 21 of the Constitution is the heart of fundamental rights. Justice Bhagwati in *Francis Coralie Mullin* case observed "The fundamental right to life is the most precious human right and forms acme of all other rights." Privacy, although not explicitly provided under our Constitution, it implicitly involves the right to privacy as personal liberty in Article 21. A national has, therefore, a right to protect the privacy of his own, his family, marriage, procreation, motherhood, childbearing and education among different matters.

The Constitution of India under Article 21 guaranteed personal liberty which may include the liberty of conceiving a child and giving birth to it. At identical time under various provisions of other laws, woman is given ample independence and choice in matters like procreation, abortion and sterilization. Therefore, right to make reproductive decisions is also a component of personal freedom as fathomed under Article 21 of the Constitution. With the immense growth of the concept of Personal Liberty, the Right to Privacy has additionally been accepted to be compromised therein and that such Right of Privacy would come with the Right to or not to beget and bear a child, the Right to be or not to be a parent, the Right to use or not to use contraceptives, the Right to get sterilized or not to sterilize oneself, the Right to have sex without having a child, or to have child without having sex by artificial insemination. The Right has accordingly been held to include the right to stop the

parenthood or motherhood in transit, that is, the Right to terminate pregnancy prematurely by aborting the fetus.

(A) STATUTORY FRAMEWORK AT DIFFERENT COUNTRIES

The right to sexual and reproductive health is also subject to accountability and rule of law. Human rights approaches identify "rightsholders" (usually individuals) and their entitlements, along with corresponding "duty bearers", and their obligations. Entitlements include the right "to a system of health protection, including health care and the underlying determinants of health, which provides equality of opportunity for people to enjoy the highest attainable level of health.[31] The reference to the underlying determinants of health is important because it defines a wide range of factors, from adequate sanitation to access to sexual and reproductive health education and information, that affect an individual's ability to enjoy and take responsibility for her or her own sexual and reproductive health. The notion of entitlements also implies accountability on the part of the state and other duty bearers, which are answerable for the observance of human rights. As defined by the Special Rapporteur on the Right to Health, "Ill health constitutes a human rights violation when it arises, in whole or in part, from the failure of a duty bearer—typically the state—to respect, protect, or fulfil a human rights obligation."[32] Under this framework, "respect" implies that a state cannot deny or limit equal access to sexual and reproductive health including services, information, or education; "protect" implies a state's obligation to "prevent third parties from jeopardizing the sexual and reproductive health of others" such as through laws prohibiting marital rape or setting a minimum marriage age; while "fulfil" implies a responsibility to include sexual and reproductive health in national legal systems. When duty bearers fail to respect, protect, or fulfil this right, rightsholders are entitled to institute proceedings to obtain redress before a competent court of law.

[31] Special Rapporteur on the Right to Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, E/CN.4/2004/49.
[32] Special Rapporteur on the Right to Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, E/CN.4/2004/49

The notion of entitlements also implies particular responsibility on the part of the state. As defined by the Special Rapporteur on the Right to Health, "Ill health constitutes a human rights violation when it arises, in whole or in part, from the failure of a duty bearer—typically the state—to respect, protect, or fulfil a human rights obligation." Under this framework, "respect" implies that a state cannot deny or limit equal access to sexual and reproductive health including services, information, or education; "protect" implies a state's obligation to "prevent third parties from jeopardizing the sexual and reproductive health of others" such as through laws prohibiting marital rape or setting a minimum marriage age; while "fulfil" implies a responsibility to include sexual and reproductive health in national legal systems.

EXAMPLE OF SOME COUNTRIES

South Africa

South Africa is an example of a country which has evolved within the framework of respecting, protecting, and fulfilling the right to sexual and reproductive health. In apartheid era South Africa, there were no comprehensive sexual and reproductive health policies. Most health resources were allocated for the white minority living in urban areas, denying equal access to black majorities primarily based in rural, less developed areas of the country. The only policies aimed at South African blacks focused on contraception for the purposes of population control. Maternal health services were overcrowded and understaffed, large but untold numbers of women died from unsafe abortion in black townships[33], and infant mortality was ten times higher in the black than in the white population.[34] Coercive and unequal policies severely undermined governmental responsibility, particularly around the health needs of poor, black women.

In distinction, the years following the primary democratic election of 1994, saw passage of a major variety of sexual and reproductive health laws and policies. This

[33] Reproductive Health Matters. Ten Years of Democracy in South Africa: Documenting Transformation in Health Policy and Status, 2004.
[34] The Lancet. Saving the Lives of South Africa's Mothers, babies, and Children: Can the Health System Deliver, 2009.

was due in large part to the shift to democracy, and remarkable activism on the part of civil society to pass new and reformed health statute. The Choice in Termination of Pregnancy Act of 1996, as an example, was ground-breaking in acknowledging the significance of reproductive choice, in particular for black women. Despite gaps in access to services, 2 years later from the passing of the act, the figure of women suffering abortion related morbidity was lowered by half. The 1997 patient's rights charter supplied patients with the information and right to address biases in the healthcare system; The 1998 Domestic Violence against Women Act is taken into account amongst one of the foremost advanced in the world, addressing a wide range of violence consisting physical, sexual, emotional, verbal and psychological abuse.

Building on outcomes of the ICPD, the official 1998 Population Policy cited twelve guiding principles, involving respect to reproductive rights, free and informed selection, fairness, equal access to reproductive care and women's rights. This human rights-based framework stressed "equity in resource distribution, expanded access, decentralized services aimed at promoting local health needs, community involvement through the district health care system, and preventative and promotive health care." Over than 1300 new basic healthcare clinics were built, and user fees withdrawn for maternal and child health services at the levels of basic health care and state hospital. A Mother, Child and Women's Health unit was founded inside the National Department of Health to assist in facilitating access to sexual and reproductive health.

Ecuador

Ecuador is among one of the countries with a robust legal framework for discharging the right to sexual and reproductive health. One argument advanced by adversaries to the acknowledgement of this right in the region has been that as long as the right wasn't mentioned in the Constitution of State, it didn't exist. Whereas countries like Mexico, Colombia, and Brazil acknowledges aspects of sexual and reproductive health within their constitutions, in 1998, Ecuador became the sole nation in the region to explicitly include the term "sexual and reproductive health" in its constitutional text. Ecuador's new 2008 constitution articulates state obligation to provide sexual and reproductive health services especially during pregnancy, childbirth and

postpartum as well as young people's right to sex education. It describes "the right to personal integrity" to include making free, informed, voluntary, and responsible decisions about one's sexuality, sexual orientation, and reproductive life, and includes new clauses on the state's responsibility to prevent violence against women and discrimination, including discrimination based on sexual orientation."[35]

In Ecuador, adoption of the 1998 Law for free maternity and infant care was both a step towards universal access to sexual and reproductive health, and an excellent example of incorporating all four components of availability, accessibility, acceptability, and quality into policymaking on the ground. Created in the wake of the ICPD through heavy petitioning by women's organizations, the law contributes to the disposal of resources by requiring health centres and hospitals to provide as many as 55 services connected with sexual and reproductive health for free. These include: antenatal, delivery and postpartum care, including obstetric emergency services; family planning; screening for breast and uterine cancer; testing women for HIV and AIDS; care for victims of family violence; treatment for sexually transmitted diseases and treatment for the most common childhood ailments for children under five, including those requiring hospitalization. By breaking down economic barriers to access and targeting women and children— particularly vulnerable groups—the law also helps make health resources accessible, contributing to the concept of healthcare as a civil right and the importance of the state's role in providing it.

In designing the law, the state actively sought the input of a wide range of civil society stakeholders, including women's and indigenous organizations, in addition to health professionals. This helped ensure services were acceptable, particularly to more marginalized groups. Furthermore, Local Health Management Committees in different counties, rather than the Ministry of Health, oversee the channelling of funds to municipal health centres. Input from a range of stakeholders sitting on the Local

[35] International Women's Health Coalition, Top Ten Wins for Women's Health and Rights, 2008. Website: http://www.iwhc.org/index.php?option=com_content&task=view&id=3512&Itemid=1119, accessed August 23, 2009.

Management Committees has led to a diversification of healthcare providers, from traditional birth attendants to non-profit organizations.

Several innovations were incorporated into the law to evaluate the quality of services provided and ensure continuous quality improvement. Patient care protocols were developed, for example, to ensure high quality of services. The law also separated the functions of financing health services from healthcare delivery. Payments to health facilities are based on the volume and quality of services produced, with transfer of funds dependent on meeting quality of care requirements. Lastly, the creation of citizens/users' committees to monitor the laws implementation is another mechanism formally recognized by the state to monitor quality of services provided. The National Council on Women, a government agency, with assistance from UNFPA is working to ensure the user committee system is positioned in a human rights framework, so that committee members have a sophisticated understanding of how to apply a human rights-based approach to implementation of the law.[36]

United Kingdom

The UK Department for International Development (DFID) is an example of an institution whose policy on sexual and reproductive health pulls from the human rights standards elucidated in this section. DFID frames its focus on the rights of individuals and responsibilities of duty bearers through the prism of three guiding principles: "inclusion, participation, and fulfilling obligation."[37] The first two principles refer to empowering and educating individuals, particularly those belonging to marginalized groups to become involved in ensuring their own sexual and reproductive health "and rights".[38]

Inclusion, in this context, refers to ensuring participation of poor, vulnerable and excluded groups; addressing discrimination and disparity in access to services and

[36] Harvard School of Public Health and UNFPA. UNFPA at Work: Six Human Rights Case Studies, 2008.
[37] DFID. Sexual and Reproductive Health and Rights: A Position Paper, 2004.
[38] DFID uses the terminology "sexual and reproductive health and rights".

health outcomes; empowering women to control their sexual and reproductive lives; and working with men and boys. Participation insinuates to increasing people's knowledge on sexual and reproductive health to supply people options and "a sense of entitlement" to quality services, and guaranteeing involvement of civil society, women's assemblies, and community leaders, amongst others, in regard to the promotion of their self-health. Obligation, within this framework speaks to the responsibilities of governments, legislators, and donors. It refers to reforming law and order, implementing laws that protect women's health and permit vulnerable factions to access services; ensuring a way of redress when rights are desecrated, and building capability of policymakers, governments and others at nation level to endorse sexual and reproductive health and rights.

DFID's approach also stresses the "progressive realization of human rights". This implies that what's expected of a country will vary with time, subject to resource convenience[39] and necessitates governments to line indicators and benchmarks to evaluate the steady realization of human rights. Furthermore, as per DFID, this approach "recognize(s) the challenge of implementing human rights approaches in different cultural and political contexts."[40] It considers the very fact that adversary to aspects of sexual and reproductive health could also be based in deeply held religious beliefs and cultural traditions that don't seem to be simply forsaken. However, it also observes cultures as dynamic and fluid, permitting communities the time and space to encompass new standards into their own values and traditions.

Sweden

Sweden is a country that ascribes to this new, more comprehensive definition of sexual health. The Sweden Government applies the ICPD definition of sexual and reproductive health but goes beyond in essential ways. Their policy, for example, distinguishes between "sexuality" and "reproduction", emphasizing sexuality outside the framework of childbearing. As per their framework, emphasis on sexual health

[39] Special Rapporteur on the Right to Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, E/CN.4/2004/49.
[40] DFID Sexual and Reproductive Health and Rights: A Position Paper, 2004.

and rights involves an affirmative approach towards sexuality; including its "life affirming, and life quality enhancing factors" and free and open discussion concerning sexuality and sex education.[41]

Sweden sees itself as an active promoter of the ICPD and Beijing Platform and has taken the gender and empowerment framework farther than other stakeholders in its international development work. They view gender equality and women's empowerment as prerequisites for translating sexual and reproductive health into practice. Their strategy adopts a gender-based power structure perspective: Women and men are entitled to the same opportunities, rights, and responsibilities in all areas of life. Emphasis is placed on the role and responsibility of men in the promotion of gender equality and in all areas of sexual and reproductive health. Accordingly, the problem of gender-based violence is highlighted and broadly viewed, including physical, sexual, and psychological violence in the family and in society. Sex work is also viewed as a form of men's violence against women. HIV and AIDS are tackled with a view to how poverty and inequitable gender and power structures contribute to HIV infection.

Thailand

In Thailand, attention to gender sensitive approaches to sexual and reproductive health is evolving. While the Thai government has long recognized the importance of addressing reproductive health mainstreaming population issues into its policies since the 1960s—the integration of gender into strategy and programme has increased since the ICDP. The Cairo conference served as a catalyst for the development of a new National Population Action plan incorporating reproductive health into primary health care infrastructure.[42] In the fifteen years since ICPD, existing reproductive health services have been strengthened, while additional services have been made available, including pilot health care programmes for adolescents, sex education, postabortion

[41] Swedish Ministry for Foreign Affairs. Sweden's International Policy on Sexual and Reproductive Health and Rights, 2006.
[42] UNFPA. Reproductive Health of Women in Thailand. Progress and Challenges Towards Attainment of International Development Goals, 2005.

care, premarital counselling, women's health counselling, and prevention of mother to child transmission of HIV and AIDS. Attention to the gender dimensions of reproductive health was first seen in the Eighth National Development Plan (1997-2001) and has increased in subsequent plans.

The evolution of integrating gender into sexual and reproductive health can be seen in government efforts to curb the spread of HIV and AIDS. Whereas Thailand is considered a model country in its response to the epidemic, only recently have responses to the disease begun to focus on women's concerns. While the first phases of the response (1984-1990) targeted high risk groups such as sex workers, the second phase (1990-1995)— which occurred by the time HIV had penetrated the general population—emphasized prevention and education in the home. However, the onus was on women to curb the spread of the disease, rather than male responsibility, particularly in terms of introducing HIV into the household setting. It was not until the third phases of HIV prevention and response efforts, which occurred after the ICPD (1996-2003), that the issue was addressed within the broader framework of reproductive health, sexuality and gender. It was also around this time that the government began to emphasize sex education, producing guidelines for a national curriculum, including emphasis on issues such as sexual development, interpersonal relationships, and prevention of sexual violence and harassment. The government has further developed programs for parents to discuss sexuality with their children, including conveying information on sex in a positive light. Such programs can be seen as evidence of the government's increasing attention to gender and the empowerment of women and girls within their reproductive health approach.

Sri Lanka

Sri Lanka is a different kind of case study of the connections between women's empowerment and better reproductive health outcomes. Attention to women's needs in both the public health and education systems has contributed to the creation of sexual and reproductive health conditions in Sri Lanka's far outpacing that of other countries in the region. Education, for example, has been free since the dawn of the

state, and over a decade ago was made compulsory for the 5–14-year-old age group.[43] Consequently, girls' enrolment in schools dramatically increased. Data from 2006-2007 show more than 82 per cent of women in Sri Lanka have secondary school or higher education.[44] Sri Lanka's education system is credited with helping raise demand for reproductive health services. The rise in educational attainment correlates both with increased age at marriage, greater use of contraceptives—with over 99 percent of married women aware of at least one method—and overall declines in fertility rates.

Health services in Sri Lanka are also provided free of charge as part of a "welfare package". In the wake of the ICPD, policy emphasis on improving maternal and child health shifted to the provision of wider reproductive health services and a focus on women's needs and rights. A wide-reaching reproductive health policy was promulgated in 1998, and to this day remains the basis upon which reproductive health programs are developed. Achieving gender equality was one of eight goals of the far-reaching program whose hallmarks are counselling and choice.

Every social unit in Sri Lanka, as an example, is matched with a Public Health Midwifes, grass root level health workers, accountable for providing preventive and encouraging health services. as a result of Public Health Midwives are recruited from the villages they serve and supply home based mostly care, they assist guarantee tending is accessible and culturally acceptable, even to girls in remote and rural areas. Their work includes birth control substance (including provision of state sponsored contraceptives), perinatal and new-born care. They additionally function a passage to state sponsored tending and area unit one reason that 99 per cent of all births in state occur within the presence of proficient birth attendants. From a gender equality and management perspective, Public Health Midwives provide girls the tools to form wise choices around birth control and procreative health. the supply of such procreative

[43] The Policy Project. Adolescent and Youth Reproductive Health in Sri Lanka., 2003. Website: http://www.policyproject.com/pubs/countryreports/ARH_Sri_Lanka.pdf.
[44] The World Bank. Sparing Lives: Better Reproductive Health for Poor Women in South Asia, 2009.

health info has contributed to Sri Lanka's low rates of maternal mortality, love that of the many developed countries.

India

It has been evidenced definitely that right to health together with women's right to procreative health has additionally been recognised as a neighborhood of human rights. Article 30 declares that: "(E)nsure equal access to and equal treatment of girls and men in education and health care and enhance women's sexual and procreative health moreover as education." thus, Indian Parliament has additionally passed several legislations and therefore the Government has start off with varied schemes to safeguard and uphold the right to health and women's right to procreative health. Such laws area unit the Medical Termination of Pregnancy Act, 1971, Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, the legal code, 1860 (Sections 312-318), the Maternity Benefit Act, 1961 et al. however, until now no comprehensive, consolidated and direct law/act has been passed covering all the aspects of women's right to copy.

The laws mentioned above have circuitously safeguarded the health of girls and her right to form option to bear a toddler and spacing. These ratifications implicitly support women's right to reproductive health as physiological property and spacing between 2 kids are two aspects of such right. Thus, it additionally includes right to termination of pregnancy. Within the abovementioned 3 Acts women's right to health has been recognized and she has been armed with the right to consent or to not give consent for abortion or miscarriage. Dominant thought has been given to the physical and mental health of mother and kid in these enactments. Maternity advantages in Republic of India are chiefly provided underneath the Maternity Benefit Act, 1961.

The Act provides varied sorts of advantages to girl employees throughout physiological state and when the birth of kid to safeguard the health of mother. The Supreme Court in ***MCD v. Female Workers (Muster Roll)*** declared that the maternity profit is applicable to any or all casual employees and daily wage employees. The

Court additional ascertained that there's nothing within the Maternity Benefit Act, 1961 that entitles solely regular girl staff to the good thing about maternity leave and to not people who area unit performing on casual basis or on roster on daily-wage basis. Thus, the women's right to procreative health has been punctually established and recognised in Republic of India underneath these enactments. It should not be forgotten that these laws are passed to fulfil international obligations provided underneath the abovementioned international conventions/declarations.

The Constitution of Republic of India and therefore the right to health with special relevancy women's right to reproduce. The Indian Constitution doesn't have any direct provision on right to health or women's right to procreative health. The Supreme Court of Republic of India has declared it as an elementary right at intervals the shadow of Article 21 of the Constitution. although Chapter III and Chapter IV with reference to "fundamental rights" and "directive principles of State policy" severally, don't give right to health and health care services at intervals their framework, the Supreme Court has provided them a base to say and retain them however it's referred international conventions/covenants as their source.

The directive principles of State policy involve the right to health and health care services. Underneath the directive principles of State policy varied provisions are provided to safeguard human health. Article 38 of the Constitution imposes liability on the State that States can secure a social order for the promotion of welfare of the folks. Article 39(e) connected with employees to safeguard their health. Article 41 obligatory duty on the State to public help primarily for people who area unit sick and disabled. Article 42 makes provision to safeguard the health of baby and mother by maternity profit. Right to health and women's right to procreative health are elucidated by the Supreme Court time and again. they need been declared to be at intervals the shadow of Article 21 of the Indian Constitution.

(B) JUDICIAL PRONOUNCEMENTS

In the absence of adequate legal framework for the safeguard of reproductive rights of women an inevitable task has been left to the judiciary to solve the issue of reproductive rights. Today, with new reproductive technologies, the face of reproduction has changed totally. The matter of reproductive rights not only deals with legal questions but also with ethical and moral issues.

In India, very few cases have come before the judiciary concerning reproductive rights. But there is no doubt that in future judiciary will have to face new challenges on variety of these aspects. There are many reported and unreported cases which obviously thrash the heart of the academicians, Jaw makers, judiciary etc. There is a need to be prepared for the critical issues which underlie with the reproductive rights and the reproductive technologies. Furthermore, there is host of complex issues embedded with these new trends of reproduction. Therefore, there is a call for a multi-pronged policy and programme within which judiciary and other organs have imperative task to occupy for themselves.

The Supreme Court being the caretaker of the public rights and the High Courts established in every state have been empowered to issue appropriate directions/ orders etc. It has shown its concern towards women's rights dealing with various issues that are important part of women's life. Rights of women can be guaranteed only in an atmosphere where women will be treated equally and when women will acquire equal position in the society.

Right to health and women's right to reproductive health have been declared by the Supreme Court time and again. They have been declared to be within the penumbra of Article 21 of the Indian Constitution. Looking at the judicial pronouncements made by the Supreme Court it can be said that it is now a settled law that right to health is integral to right to life and the Government has a constitutional obligation to provide health facilities.

Response of Judiciary on Gender Issue

The debate on gender issue is the recognition of the equality in dignity and human rights of women and men. The concern of gender equality comes from the protection of women from sexual harassment and the right to work with dignity which is recognized as basic human rights and has been accepted almost by all the countries of the world.[45]

The Supreme Court of India has always shown positive attitude towards the issue of gender equality. It has actually taken various bold steps to eradicate the menace of gender biases from the society. Various reforms have been made by the judiciary to protect the dignity of women, such as - protection of woman against sexual harassment at the workplace.

The Supreme Court of India has always responded to the issues of gender discrimination in an optimistic manner. There are many cases where the court has significantly advanced the cause and dignity of women. In ***C.B. Muthama v. Union of India***[46] a service rule whereby marriage was a disability for appointment to Foreign Service was declared unconstitutional. Similarly, in the case of ***Air India Nargesh Meerza***[47] ere the court declared pregnancy as a disqualification to continue in public employment was ultra vires under Article 14 and 16 (1) of the Constitution.

In the case of ***Bodhisatwa Gautam v. Subhra Chakraborty***[48], the Supreme Court observed that rape in criminal law is not only an offence but also violation of fundamental right to life and liberty under Article 21 of the Constitution. Also, the ***Vishaka v. State of Rajasthan***[49] where the Supreme Court has given landmark judgment forwarding application of international law and gender equality in India.

[45] J. Palok Basu, Law relating to Protection of Human Rights 92 (I" edition 2002).
[46] AIR 1979 SC 1868.
[47] (1981) 4 sec 335: AIR 1981 SC 1829.
[48] AIR 1966 SC 922
[49] AIR 1997 SC 3011

The decision pronounced by the Supreme Court is based on the provisions of the International law instruments, Conventions and Declaration of which India is the party and has ratified it. The Supreme Court has done every possible effort to implement the provisions of international law and constitutional law for securing the equality of women. Despite the fact that the Supreme Court has shown dynamic attitude in ensuring gender equality, judicial activism is yet to flourish to the lower levels of the judicial system. Moreover, some of the much talked about reforms are safeguards to working women against sexual harassment at workplace, women's right to privacy, equal pay for equal work, prohibition of dowry system etc. which has been achieved through judicial intervention. But women's access to gender justice is still difficult especially because of the age-old cultural barriers rooted in male dominated society.[50]

In ***Madhu Kishwar v. State of Bihar***[51], the court has considered the provisions of the Convention on the Elimination of all Forms of Discrimination against Women, 1979 (CEDA W) and marked that the Fundamental Rights and the Directive Principles of State Policy of Indian Constitution contains all the elements of the Convention and will be applied with the same spirit.

Maternity leave is provided to working women during post-delivery in India by the Maternity Benefits Act, 1961. The labour legislation also provided for breast feeding intervals and creche facilities in workplaces. The Supreme Court ***in B. Shah v. Labour Court Coimbatore***[52] stated that the Maternity Benefits Act is intended to achieve the object of social justice to women workers. It is an example of a legislative provision specifically designed to make women's reproductive roles into account and ensure security to women and that they are not discriminated in employment as a result of their reproductive roles.

[50] AIR 2001 Journal section 149 at 152.
[51] AIR 1996 SC 1864.
[52] AIR 1978 SC 12

Justification of right to Procreation

The family formation begins either with marriage or parenthood, or both. The element of right to found or establish a family is related to individual's right to procreate. The new assisted reproductive technologies brought new challenges to the traditional concept of procreation. As one of the main ends of marriage is the 'procreation of children'. In ***White v. White***[53], a husband insisted on a particular sexual procedure which practice would guarantee that the wife could not get pregnant. The court held- that it results to cruelty on his part as the wife was very interested to bear a child.[54]

The marriageable age of the girl and a boy has been fixed by law as 18 years for girls and 21 years for boys.[55] In ***Leela Gupta v. Lakshmi Narain***[56], the Supreme Court held that breach of minimum age condition does not render the marriage void. The Child Marriage Restraint Act, 1929 also does not invalidate the marriage even in case of violation of the minimum age provision but punishes the persons responsible for such violation. Therefore, a girl minor or major possesses equal right to marriage and ultimately thereby to conceive a child.

The High Court of Madras delivered a landmark judgement in ***Krishna v. G. Rajan***[57] and upheld the validity of minor girl's consent in the matter of retaining pregnancy. The court held that a minor girl cannot be forced to abort her child much against her desire.

The increased concern for women's health and gender equality as contained in various international documents has moved the focus towards the means necessary to exercise reproductive freedom. In other words, the right to procreation will enable the right to

[53] (1948) 2 ALI ER 141.
[54] J. Palok Basu, Law relating to Protection of Human Rights 124 (I" edition 2002)
[55] Section 5 (3), Hindu Marriage Act, 1955.
[56] AIR 1978 SC 1351.
[57] 1994 (10) W Cri 16 Mad (DB).

take decision as to when to conceive and how to conceive, to limit the number of children and to space the number of children as to one's desire.[58]

Here, it is necessary to mention the case of ***Javed and others v. State of Haryana and other***[59] where the constitutional validity of a provision for population control in the Haryana Panchayat Raj Act, 1994 was challenged on the ground of being in direct violation of Article 14 and Article 21 of the Constitution. The Act disqualifies those having more than two kids from holding Panchayat office. The court held that the object of enactment is to popularize the family planning taking into consideration population growth in a country. Fundamental rights are not to be read in isolation. They have to read along with the chapter of Directive Principles of State Policy which provide for the welfare of the people and developing a social order empowered at justice-social, economic and political. Though, the court focuses on the population problem, but it failed to issue any direction to ensure that the state helps citizens to practice family planning.

The ***Javed*** decision shows the reality of women's lack of reproductive decision-making power because the social, cultural and economic obstacle is not reluctantly taken into consideration by the Judiciary. The judiciary seems to be not informed of the Indian position in the demographic transition that the growth rates have declined the fertility rate as well. Moreover, such coerced policy will only add misery to women's problems relating to reproductive health.

Right to Abortion

Abortion is an issue misted up with the question of morality, infanticide, suicide, ethics, religious belief and women's rights. Today some 50 to 60 million abortions occur every year throughout the world, up to half of them illegal and dangerous killing about half a million women annually. Apart from this, at least 500 million women

[58] Maja Kirilova Eriksson, Reproductive Freedom in the context of International Human Rights 240 (I" edition 2000)
[59] AIR 2003 SC 3057.

around the world are placed at the risk of repeated pregnancies with serious health problems. However, it is shocking that such a basic right as the right to help with planning or preventing the birth of an unwanted child· has been denied to women. It emerges that the clash for gaining this right would be earned through the courts rather than Parliament or State Legislation. Sooner or later, the right to life and personal liberty as guaranteed by Article 21 of the Constitution would have to interpret in such a way as to include the right to abortion also.

In ***Satya (smt) v. Shri Ram***[60], the High Court of Punjab and Haryana held that termination of pregnancy at the instance of wife but without the consent of her husband amounts to cruelty. In ***Deepak Kumar Arora v. Sampuran Arora***[61] a division bench of Delhi High Court has observed that if a wife undergoes abortion with a view to spite the husband, it may, in certain circumstances be contended that the act of getting herself aborted has resulted into cruelty. In an English case ***Forbes v. Forbes***[62] it was held that if a wife deliberately and consistently refuses to satisfy her husband's natural and legitimate craving to have children and the deprivation reduces him to despair and affects his mental health, the wife is guilty of cruelty. In ***Sushil Kumar v. Usha***[63], the Delhi High Court held that aborting the fetus without the consent of the husband would amount to cruelty.

However, judiciary has denied right to abortion of woman if there is no consent of the husband by declaring it as cruelty which is one of the grounds of divorce under personal law. Such a decision discourages woman to exercise her right to take decision to abort child if she is not physically or mentally ready for it. The MPT Act has allowed woman to take decision without the consent of her husband. But such right cannot be exercised by a woman freely if court marked it as matrimonial cruelty. Here, court is required to have wider viewpoint taking into consideration the reproductive right of woman.

[60] AIR 1983 P&H 252.
[61] (1983) I DMC 182.
[62] (1955) z AJI ER 311.
[63] AIR 1987 Del 86.

Implementation of the Pre-Conception and Pre-Natal Diagnostic Technique Act (PNDT)

The use of sex-determination technology by parents for the purpose of sex-selective abortion has been the prime concern of the country. Internationally, the UN Special Rapporteur on Violence against Women among others has condemned such practices. Similarly, in India, there is enactment and enforcement of the Pre-natal Diagnostic Techniques Act, 1994 to prohibit sex determination or sex-selection of the fetus. The use of these. new technologies have resulted into the killing of female fetuses and sex-selective abortions. The reproductive right does not include a freedom of the couples to decide on their child's sex if that is for the devaluation of any of the sexes. There has been great number of sex-selective abortions of females in India and China as a sign of devaluation of women.

There has been worldwide son preference, but it is so grave in South Asia and the Middle East. The obvious reason for son preference in these societies is historically rooted in the patriarchal system. Another reason for such practice is the social and cultural stigma attaches to the daughter or a girl child because of the dowry system where considerable costs of marrying off a daughter have to pay. Also, if the daughter does not marry, she will remain dependent upon her family. Thus, pre-natal tests meant to detect the abnormalities of the fetus are being widely used to determine the gender of the child. There has been, therefore, prohibition of sex determination or selection through government initiative where the pre-natal diagnostic technique including ultrasonography for the purpose of determining the sex of a fetus is prohibited under the PNDT Act. However, in India, the situation of sex selective abortion resulted into female foeticide continues to worsen even after the introduction of the PNDT Act. The reason could be non-implementation of the Act as well as the growing misuse of reproductive technologies.[64]

[64] Ashok K. Jain, The Saga of Female Foeticide in India 143 (I" edition 2006).

In 1998, a Public Interest Litigation was filed in Supreme Court in a case of (Centre for Enquiry into Health and Allied Themes) ***CEHAT v. Union of India***[65] for direction to implement Pre-natal Diagnostic Act. The Hon'ble Court passed a constructive interim order in May 2001 directing the Central Government and States to take all necessary steps to realize this Jaw. Compliance with the Act in serious note, therefore, initiate with the passing of this order.[66] Here, while executing the Act the Court has revealed loopholes and problems inherent in the Act. The main shortcomings highlighted were. that there were no clear provisions regulating pre-conception techniques in the Act. Further, it was asserted that the Act drafted at the time when amniocentesis was considered to be the main threat which was incorrectly drafted as far as the use of ultrasound tests were concerned.

Moreover, that the Appropriate Authorities constituted under the Act were abusing their powers and harassing practicing doctors. Thus, the prenatal test meant to discover abnormalities of the fetus are being used to determine the sex of the child, effecting abortion if it is a female. Although, it is appropriate to spot out at this crossroads that the compliance affidavits filed by the States in the Centre for Enquiry into Health and Allied Themes (CEHAT) case shows that most of the actions taken against doctors is on the ground of non-maintenance of proper records. There are very few cases where doctors have been caught in the· act of disclosing the sex of a fetus.

The Supreme Court issued a series of directions during 2001-2003 to the following authorities

(i) Central Government,

(ii) Central Supervisory Board

(iii) State Government/ Union Territories Administration, and

(iv) other appropriate authorities.

[65] AIR 200 I SC 2007.
[66] Asmita Basu "Sex Selective Abortion" The Lawyers Collective 20-21 (2003).

The Apex Court directed all the States to confiscate ultrasound equipment from clinics that are being run without licenses. It was found that many Genetic counseling centers, laboratories or clinics were not registered and no action has been taken in accordance with the provisions of the Act, besides issuance of warning. The Centre assured the Supreme Court that it will establish a National Inspection and Monitoring Committee for the enactment of the Act. In 2003, the Court was notified that the PNDT Act has been amended in terms of the direction of the Supreme Court taking required steps to achieve the objective of the Act. But the saddest truth is that sex selective abortion remains prevalent in the country.

The most intimate matters of privacy are marriage, family, procreation motherhood etc. In ***B.K. Parsarthi v. Government of Andhra Pradesh***[67], it was held that reproductive right or right to reproductive autonomy form a part of right to privacy. Any encroachment on right to reproduction or procreation is an encroachment on privacy. Procreation is a matter out of the ambit of State control or interference. A couple has an absolute right to decide the mode of conceiving a child, whether natural, adopted, through surrogacy or any other method. The Bill bans the fertile parents from receiving the service of surrogacy, whether through altruistic or commercial means. There is no rational basis for the provision to prohibit fertile couples from adopting surrogacy. This is purely the choice of the couple, whether fertile or infertile.

Not allowing fertile couples to get the services of surrogacy is in a way forcing a fertile woman to undergo pregnancy to have a biological child, even when she is not willing to do so. In ***Suchitra Srivastava v. Chandigarh Administration***[68], it was held that *"reproductive choices can be exercised to procreate as well as to abstain from procreation."* This is a major encroachment on the choice of procreation, which in turn violates the right to privacy under Article 21 of the Indian constitution. In addition to this, infertility has to be proved to get the service of surrogacy. Proven infertility, according to the Bill, means inability to conceive a child even after 5 years of unprotected coitus preventing a couple from conception. No concern is given to the

[67] *B.K. Parthasarathi* v. *Government of A.P.*, AIR 2000 AP 156.
[68] *Suchitra Srivastava* v. *Chandigarh Administration*, Civil Appeal No. 5845 of 2009.

fact that there might be a medical condition whereby a woman can conceive or is fertile but cannot carry a child for the gestational period.