

ANALYSING THE JUDICIAL TRENDS OF REPRODUCTIVE RIGHTS IN INDIA

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ABSTRACT

In any country, the pillar is stated to be the population. Population plays a very crucial role in determining the growth and development of a nation. In the same regard, women behold the maximum potential for the contribution by having reproductive strength and characteristics. Every female, whether she be poor or rich holds the power of giving birth and related rights too. But there are many noted incidents where the females weren't allowed to practice their rights like abortion, reproductive health checkup, etc. In India, there are many reasons for the same, but pre-dominantly the stereotype society and poor judicial checks on reproductive rights play a major role. There have been numerous cases where reproductive rights were questioned and certain revolts due to the inaccessibility of rights were made, leading to a situation of dilemma in the general public's mind about the clear status of such rights. With the progressive continuity of Indian Legislations, many legislations were made in order to provide females with the rights in relation to reproduction, by keeping the articles of the constitution as a basic substance. Altogether, the state of legislation and judicial trends made in relation to Reproductive rights will be explained and analyzed in the complete article.

What are reproductive rights? Are the rights confined to women individually? Does the family as a whole have any reproductive rights? My typical research about the context is based on different people's ethnicity, culture, and includes moral obligations to the society. Reproductive rights have been a point of concern throughout the world and has been provided a definition by World Health Organization which goes as follows: "Reproductive rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have information to do so, and right to attain the highest standard of sexual and reproductive health. They also include the right of all to make decisions concerning reproduction free of discrimination, coercion and violence"¹.

¹ Gender and Reproductive rights,26-08-2009
<http://who.int/reproductive-health/gender/index.html>.

The whole concept of reproductive rights evolved throughout the serenity of womanhood. Unfortunately, reproductive rights have been neglected for a long time, despite all the trauma and multi-hold pressures, the reproductive rights have a huge limitation. Reproductive rights have been confined to the one section of society, is somewhat curbed and is not universally accepted. A person is completely derived of own opinion in this regard, in the traditional families. There are many fundamental aspects that uphold society, some are taboos. One of the greatest taboos is the concept of fundamental life and upbringing. The modernized world, India as a country has few legal rights and freedom, the liberty and the authority to make its own decisions. The entire diegesis is about the legal outlines, the societal impressions, the entailment of complete jurisdiction.

The reproductive rights are the rights given to a complete family, each individual in the process of cohabitation to take either the decisions of starting a family. The process of decision of either having a new start depends on the whole outcome of their decision. These rights are not confined to having individual sexual health or reproductive health, they even give the rights to the termination of pregnancy, usage of contraceptives, learning about sex education in the early schooling and awareness, access to proper reproductive services. The reproductive rights are also the human rights, which comes under the ambit of fundamental rights. India, is one of the first countries that enabled and implemented the proper legal and policy frameworks guaranteeing the access to termination of pregnancy, abortion, usage of contraceptives. Despite the guidelines being elaborated, there are many women in India, who have no or poor access to poor health services and the legal rights are polarized to an extent.

Historically, the laws and regulations have failed to take a women's rights-based approach, instead focusing on demographic targets, such as population control, while also implicitly or explicitly undermining women's reproductive autonomy through discriminatory provisions such as spousal consent requirements for access to reproductive health services. The Puttaswamy judgment specifically recognized reproductive rights as constitutional rights and as personal liberty to women under the article 21 of constitution. This gave integrity, dignity and privacy to women. Reproductive rights are essential to the realization of all human rights. They encompass a spectrum of civil, political, economic, and social rights, from the rights to health and life, to the rights to equality and non-discrimination, privacy and information. Violation of these rights need legal protection for monitoring discrimination, to enable gender

justice and equality. The Supreme Court of India and several state high courts have made important strides in recognizing the denial of reproductive rights as violations of women's and girls' fundamental and human rights. This section highlights key decisions that have broken ground in clearly establishing that women's and girls' legal rights to reproductive healthcare and autonomy give rise to a range of government obligations, 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, legal abortion.

In India, the reproductive rights of individuals and couples can be located in a constellation of laws and policies relating to health, employment, education, provision of food and nutrition, and protection from gender-based violence.

Men and Women experience many common rights like the right to equality in reproductive decisions, the right to sexual and reproductive security, right to reproductive health and sexual services and the right to undergo sterilization. And challenged the predominant social norm of patrilineage that only offers the stamp of legitimacy to the 'legitimate' heir, and severely punishes sexual expression or reproduction outside marriage. They argue that the understanding of patriarchy must encompass far more complex realities, because we live in societies where political, economic, cultural and social factors come together to influence women's health and determine understandings of fertility and infertility, sexuality, reproduction and gender roles. To curb the differences of discrimination, to emphasize on personal choices and personal security. The whole notion, your body is a temple, the way you handle and care cannot be compromised and should not be suppressed under the ambit of societal norms.

Reproductive Right: Guaranteed by Indian Constitution.

This has been made clear by supreme court and many respective high courts that reproductive rights is a criteria under human rights or fundamental rights. The child marriage, forcefull pregnancy, poor maternal care and inaccessibility to the contraceptive methods are prevailing in India as assured by U.N Human rights and thus it is now a responsibility of India to look after the rights of women being obligated and a proper vision over it is provided.

* “Navtej Singh Johar & Ors. v. Union of India”²: IN this judgement, Supreme court gave an effective judgement by making adultery and homosexuality legal where the women have been provided their sexual rights and their right to personal liberty have been safeguarded.

*“Justice K. S. Puttaswamy v. Union of India”³: In this judgement, supreme court duly acknowledged that women have the reproductive right supported by the constitution of India under article 21 as a part of personal liberty.

- Article 21: The articles provide the protection of personal liberty and life as fundamental right. Reproductive rights come under the dimension of the liberty enjoyed by women as quotes by respected court, and reproductive right include right to consummate a gravidity to full term.

* “Independent Thought Vs Union of India”⁴: In this judgement, supreme court specifically mentioned that a girl no matter a married or unmarried have their human rights alive and nobody can go away with after causing some effect over their rights and they have the rights to make reproductive and sexual choices.

These judgements have a great impact in the route of providing girls and women their reproductive rights. Right to safe abortion is another important aspect to give females their active right to liberty and privacy.

The hindrance in the path of women to claim their reproductive rights accompany the obligation of many other rights as well. Like, this shows the failure to exercise right to life, right to protect the violence based on gender, right to equality and many more.

Right to health and right to adequate and timely medical treatment has been made as a part of right to life by the respected supreme court because it was not recognized under the fundamental rights.

“Parmanand Katara vs Union Of India”⁵, which was a case of Public Interest Litigation has demanded an emergency treatment at any hospital when a case of motor vehicle accident arrive. In furtherance, Supreme Court said that denial of timely medical assistance at the

²Navtej Singh Johar & Ors. v. Union of India, AIR 2018 SC 4321.

³K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.

⁴Independent Thought Vs Union of India,(2017) 10 SCC 800.

⁵Parmanand Katara vs Union Of India, 1989 AIR 2039.

hospital is a matter of obligating article 21 and the doctors at work will be bound to answer such negligence or ignorance and no law or act shall protect the medical professionals.

Now, a landmark case would be discussed which is “Suchita Srivastava & Anr. v. Chandigarh Administration”⁶:

The case pertains to an orphan mentally retarded girl, having mental capacity equal to a nine-year-old, who was forsaken by her parents at a very early age, missionaries of Charity took her care and a proper guardianship in New Delhi. Thereafter, she was admitted to Regime Institute for Mentally Retarded Children, Chandigarh, and later to the ‘Nari Niketan’, and determinately shifted to ‘Ashreya’, both of which are the regime-run institutions run by the Chandigarh Administration. She got raped and subsequently got pregnant in the institution, which came into light when staff nurse and medical staff of institute noticed her nausea and got to know about her menstrual period gap on 16/05/2009, after doing the urine test the pregnancy was confirmed. The case was taken to the police and F.I.R was lodged under IPC, it was then sent in view of state government, a medical board was further setup to look if she had requisite capability to give birth a new life and about the mental stability. The board opined about the intellectual identity of women. Her pregnancy needs to be terminated, as opined by a different government run medical board. The case was brought up in high court of Punjab and Haryana by the administrative, independent expert body was then created for proper guidance in the judgement. The expert bodies told high court that there is not a need of termination nor do the woman want to. But howsoever high court decided and gave decision /order to terminate the pregnancy of women on 17/07/2009.

Highly disappointed with the judgement, the appellant/woman approached the supreme court on 20/07/2009 to challenge the decision taken by the high court. The case began in the apex court, woman was 19 weeks pregnancy stage at the time of appeal, and section 3 of Medical Termination of Pregnancy Act, 1971 allows abortion up to 20 weeks of gestation. The case further hinged upon section 3 of MTP, 1971 and specifies that consent of women is also very important with physical, mental health and healthy foetus. The decision of High Court was overruled by Supreme Court after congruously analysis of arguments posited by both the parties and noting its own

⁶Suchita Srivastava & Anr. v. Chandigarh Administration, (2009) 14 SCR 989.

optical discernments, sanctioning the victim to perpetuate her pregnancy. Right of making Reproductive culls was also added as a dimension of article 21 of Indian Constitution. A proper care and supervision over the pregnant lady were directed by supreme court. The decision is greatly celebrated as it envisioned making article 21 of Indian

Constitution to cover reproductive choice too. Over the years, this judgment has been perpetually cited in many other later judgments. While doing so along with perusing the requisites for abortion in the Act, the court additionally upheld the eligible nature of the right of abortion as it explicated the legitimate 'state' interest involved in forfending the life of the unborn which, at times, may withal sanction it to regulate the abortion procedure. The case provided the supreme court with an opportunity to look forward to some extremely important issues like stereotypes, social prejudice, etc. Court tried its best to provide the maximum for the mentally incompetent population, to make them feel equal as others in the eyes of law.

While the judgment perpetuates to be a feather in the cap in the history of the jurisprudence of the Indian Courts, it is eminent that the judge's concern on the desideratum of relooking the convivial notions against the incapacitated has not yet garnered requisite attention. Ascertaining an unequivocal apperception to the incapacitated while repudiating the orthodox stereotypes of the society is still a long fight. Thus, the judgment result in a failure in proving itself to be a very progressive move in this regard, but the exigency of the case additionally needs to be taken into consideration while giving comments over on this aspect of the judgment.

The Drawbacks of Present Health System And Associated Issues:

The Public Health system of India has many drawbacks which consist of low public interest and funding, poor medical and recognition facilities, and unskilful human resources.

There has been a sharp scale of privatizing medical centers and this has led to the low accessibility and affordability by the local public. Making an institute public no matter it is a medical or any sector increases the charge of treatment which makes it difficult for the low-income group to go for effective treatments and medication. Also, there are many women who go against their family and spouse to exercise their reproductive rights which make them

unable to reach and research for good medical centers and they ultimately reach the low cost and unhygienic centers for the treatment and it introduces them with a varied range of diseases or improper treatments at the sensitive body parts.

Various Steps In The Concern:

Reproductive rights have always been a major concern of the judiciary as well to give them a proper equal status in every possible way.

It includes the right of family planning, proper availability to medical health planning, go for abortion, and other contraceptive methods without any hesitation.

Individuals of our country also have the right to equality in reproductive decisions which make them powerful enough to choose the right person they want to marry, having proper knowledge about the person they are going to be married with and take all the reproductive decisions thereafter, thus forceful sexual intercourse can't be accepted in any respect.

Conclusion And Suggestions:

Women are deficit to exercise their rights related to reproductive issues. But people need to understand that it isn't a matter of women's concern and their rights only but also for proper family health and social upliftment. While, the role of politics and government has a major portion in it as well, as they should give a stand and support to the women fighting with the social and moral taboos in the urge of sexual privacy and reproductive rights. The government should introduce new acts and judgments from time to time keeping the religious beliefs in the mind as well, which may lead to a reason of happiness for women sitting with a hope of some changes in the present system. The most important function of the spouse is to understand what their wife is going through and support them in the decisions by respecting her opinion. The acts we discussed should be the primary concern of the society and government, and new judgments in the same regard should be taken, also the judiciary should consider it as a part of fundamental right now as it's need of the hour.