

**INTERNATIONAL JOURNAL OF LEGAL AFFAIRS AND
EXPLORATION**

Volume 2| Issue 3

2024

Her Womb Her Right: Reproductive Rights of Women in India

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ABSTRACT

*The topic **Her Womb Her Right** is all about Reproductive Rights of Women. It justifies and highlights a women's right towards her body and the freedom to take a justified decision for it. Today women have come a long way forward as compared to the past in respect to their rights and freedom. From becoming self-dependent to fighting for their own rights with the entire world. From being discriminated of their voting rights to getting the most important right of each and every women that can only be granted to a women, that is the "Reproductive right of a Women". Reproductive right is not only concerned with the physical health conditions rather it also emphasizes the choice of a women and her right on her body specifically her womb. This right even gives importance to the mental health of a women besides the physical health. Giving birth to a new life is not a cakewalk. It is the toughest phase of a women's life. It proves her **strength**, her **bravery** and her **divine power**. Thus, reproductive right is the basic right that each and every women deserves and are completely entitled to it. We have come across a long way regarding reproductive rights of women where the judiciary have also played and still continues to play a very crucial role in addressing the legal, political and social barriers which causes hindrances to the enjoyment of reproductive rights and autonomy by a women. Though implementation of all these positive policies is difficult but then also judiciary have putted it's efforts in order to bind the government with obligations towards protecting the basic and fundamental right of each and every women. Further in the coming years it is hoped that the judiciary would come up with ground-breaking judgements regarding progressive interpretations or reformation of the MTP Act¹ or strengthening of the legal framework prohibiting child marriage as well as emerging issues like surrogacy. It is thus hoped that the continuing efforts would result in a positive outcome in the near future.*

Key Words: *Women, Strength, Divine Power, Freedom, Reproductive Rights.*

¹ The Medical Termination of Pregnancy Act or MTP Act of 1971 is an act to provide for the termination of certain pregnancies by registered Medical Practitioners and for matters connected therewith or incidental thereto.

1. PROBLEM

From the very beginning of the Indian society, patriarchy² has been a dominating version of it. Starting from getting property rights to voting rights, educational rights as well as the work culture in our society is dominated by the very concept of Patriarchy. Now the question arises that how it all started why from the very beginning it was only the man not the woman? Is it because of the **myth** that they have more intelligence, more power, more strength both physical and emotional? Well now if this question needs to be dealt practically and logically then the answer would be **NO**. Though men were given the property rights and all kinds of hereditary rights but ultimately it was the women from whose body a **Son** who is considered to be the **hope of heredity** well as the **legacy maintainer** in our so called developed society took birth and it can be concluded that the **hope arose from the womb of a women**. It is not only the hope that arises from the women but from the ancient societies itself the **respect and pride** of a family depended on a women's body. Therefore, women were always and are still continuing to be the one beholding the family's respect, pride and hope which a man was practically incapable of. In this topic, the question that mainly arises is that whether a woman in India has complete freedom over her body specifically her womb or not. Here reproductive right is concerned with all the women including married woman as well as unmarried girls.

2. OBJECTIVE AND METHODOLOGY

The objective of the study is to bring light onto the most common violated right of a woman that is still ignored in the Indian society that is the reproductive right. This study would try to stress on the reality whether women are actually enjoying their fundamental right that is their reproductive right as termed by the Supreme Court in the case of Justice K S Puttaswamy vs Union of India³. This would even try to act as an awareness on whether the provisions adopted to secure the reproductive rights are well implemented in its true sense or not. This study would also focus on the hard-core reality of a still continuing patriarchal society especially in the rural areas. It will also concern itself over what all are included in the domain of reproductive right of a woman.

The research would include conceptual method. It would take into its account various published data and literature available on the status of reproductive rights of women in India. This would

² Patriarchy is a hypothetical social system whereby the elder male member of a family has the absolute authority over everyone else.

³ Justice K.S. Puttaswamy (Retd.) vs. Union of India, 2017, Writ Petition (Civil) No. 494 of 2012, (2017) 10 SCC 1

help to analyse the real prospectus and the actual situation in India. It would also help to analyse whether people are well aware of the topic or not and also their mentality over the said topic.

3. REPRODUCTIVE RIGHTS : MEANING AND ITS ARENA

Both the terms Reproductive and rights are very much familiar to all of us. Reproduction is the process through which the human generation continues ages after ages. And Rights are certain liberties that are given to all person living in a society to exercise their freedom in all aspects with certain reasonable restrictions. The Indian constitution guarantees certain rights to its citizens which are also called as fundamental rights and among that the Right to Life and Liberty as guaranteed under Article 21 is considered to be the most important for each and every one. It And under that area only Reproductive right is also included as this right is related to the life of a woman especially her womb and her body. Reproductive right is not only about the physical health but is also concerned about the mental health of a woman as for bearing and giving right to a child both are equally important. This topic of Reproductive rights did not have any kind of significance previously but with passing time people are becoming aware of this aspect.

The concept of Reproductive Right is a very broad and wider one. It includes several aspects within its arena. It includes the idea of Abortion for both married and unmarried woman and under abortion it includes the prospects of Unwanted or unplanned pregnancy both before or after marriage due to lack of precaution, sometimes even due to marital rape⁴ and unwanted pregnancy out of rape of unmarried girls. In the second aspect it includes the mentality of a woman her wants that is whether a woman wants to give birth to a child or want to adopt it out of her own choice. The third aspect can be the gender of a baby.

The most common thing about all the aspects is that is about the choice of a woman and her freedom over her body especially her womb.

4. PREVIOUS SCENARIO AND MTP ACT 1971

In India there were laws on abortion or termination of pregnancy from 1971 onwards in order to confer the basic fundamental right that is reproductive right to the women. The Medical Termination of Pregnancy Act, 1971 also known as the MTP Act of 1971 was about legalising termination of pregnancy or abortion within 20 weeks of pregnancy. But there were certain shortcomings of this act on of which is it only applied to the married women. Though there were laws, but the matter of concern is about its implication in the true sense in all parts of the Indian society. Previously the marriages used to happen at a very low age of a girl. Especially in rural

⁴ Marital Rape is the act of forcing one's spouse to have physical relation without her consent.

areas, girls used to get married even at less than 18 years of age that is before the minimum legal age to get married. And mostly these were cases of forced marriages which most often led to forced pregnancy as well. In many rural families there used to be forced abortions based on the gender of the child regardless of the women's choice. Therefore, during those times women had no opinion and their choice had no importance according to their families as well as the society. Even after marriage also, they were not given the equal respect as others, and they were just considered to be an object to produce babies and continue the generation and family heredity.

Women if not were able to produce babies they were considered to be omen for the entire family as well as for the society and were regarded to be of no use. Thus, the ultimate thing which they were liable to do was to give birth to a baby preferably giving birth to a son.

5. SURVEY ANALYSIS

From the Primary Field Survey of 2012, it was found that almost half of the women were married before the minimum legal age of 18. Furthermore, it is being observed, that almost 16% of the girls in the age group of 15 to 17 have given birth to a child which is equivalent to the ratio of every four teenage girl in West Bengal, Jharkhand and Bihar (NFHS-3)⁵. This shows that women are not having the rights to choose and decide when to marry and bear a child. It was all done forcefully by their families and society. This thus resulted in significant health risks of both the mother and her child.

Through the study it is evident that, in a diverse country like India, girls are soon expected to bear a child irrespective of their age which again affects and risks their mental and physical health both. Findings from the Indian Demographic health survey indicated that 7.9% of adolescent girls aged 15 to 19 were already mothers at the time of the survey.

Though wide variety of research is available based on the context of the of fertility rates and sex ratio, but still very little attention has been paid to the appropriate timing of childbearing which has adverse effects on the woman and her child.

6. EFFECTS OF EARLY CHILDBEARING AND FORCED ABORTIONS

- Adverse effects on the mother's reproductive health and mental condition.
- It also affects the child's health as well.
- It affects their good parental knowledge and capability as well.

⁵ NFHS is known as National Family Health Survey. It is a large scale multi rounded survey conducted in a representative samples of household throughout India.

- Forced Abortions can lead to serious physical problems that is after effect of abortion on the body of a woman.
- Abortion includes physical invasion of a female's reproductive organs, thus leading to the risks and possibility of causing long term threat or injury preventing viable future pregnancies.
- Unsafe abortions can also cause various infections leading to serious harm.
- It may also cause adverse mental mortality, morbidity, sepsis and genital trauma as well.
- It also increases the risk for depression, anxiety and suicidal thoughts.
- It can have negative effects on their education and livelihood.
- Teenage pregnancies often affects their educational development and overall growth.
- It thus limits their future prospects and opportunities.

7. MEDICAL TERMINATION OF PREGNANCY (MTP) AMENDMENT ACT, 2021

As we have already observed that even after the introduction of MTP Act 1971, there were no such observable changes and there were certain loopholes and shortcomings in the said act. Therefore, in the year of 2021, the government of India took to bold stand to further amend the act, thus emphasizing more on the reproductive rights of woman. A lot of things were modified, and the new act came into effect.

In the new act, not only a married woman was allowed to terminate her pregnancy of up to 20 weeks in case of failure of contraceptive method or device, but also, it allows an unmarried woman to terminate her pregnancy for the said reason with the opinion of only one Registered Medical Practitioner (RMP). It also increased the upper gestation limit from 20 to 24 weeks for special categories of women, including survivors of rape, victims of incest and other vulnerable women like differently abled women, minors and others with the opinion of two RMPs. It also made a provision for termination of pregnancy even after 24 weeks in case of substantial foetal abnormalities with the opinion of State Level Medical Board. Further under this act, the confidentiality maintenance has been given great importance where a provision was made in which, the name and other particulars of a woman whose pregnancy has been terminated shall not be revealed except to the person authorised by any law that is currently in force.

Thus, this amendment further widened the prospect of the previous act making it more feasible and beneficial which even emphasized more onto women's reproductive rights and their right over their body.

8. THE MAIN DIFFERENCE BETWEEN THE PREVIOUS AND NEW ACT

MTP ACT 1971	MTP AMENDMENT ACT 2021
<ul style="list-style-type: none"> • It came in the year of 1971 	<ul style="list-style-type: none"> • The previous act got amended in the year of 2021.
<ul style="list-style-type: none"> • It only applied to the married woman 	<ul style="list-style-type: none"> • It extended further to unmarried woman as well.
<ul style="list-style-type: none"> • The gestation period was limited up to maximum of 20 weeks in all kinds of circumstances and cases. 	<ul style="list-style-type: none"> • The gestation period was extended from 20 to 24 weeks for rape survivors and even beyond 24 weeks for substantial foetal abnormalities by this amendment.
<ul style="list-style-type: none"> • Here the opinion of one RMP was required for termination up to 12 weeks and the opinion of two RMPs was required for up to 20 weeks. 	<ul style="list-style-type: none"> • Here the process became more feasible where the opinion of one RMP was enough till 20 weeks, two RMPs for 20 to 24 weeks and for cases beyond 24 weeks the approval by the State Level Medical Board was necessary.
<ul style="list-style-type: none"> • Here for the breach of the women's confidentiality, there was a provision of fine of up to Rs 1000 which was found to be very minimal in proportion to the serious of the offence committed. 	<ul style="list-style-type: none"> • In this amendment, the provision of punishment got modified and keeping in mind the serious of the offence, it got extended up to a fine and / or imprisonment of 1 year.

9. IMPACTFUL JUDGEMENTS ON REPRODUCTIVE

- *Justice K.S. Puttaswamy (Retd.) vs. Union of India (UOI) And Others (2017).*

In the aforementioned case, the honourable court highlighted the reproductive rights of a woman by emphasizing on the autonomy of a woman to take decision regarding childbearing and make reproductive choices wilfully and wisely and this right of a woman got recognized to be a significant part under the Right to Life and Personal Liberty as enshrined under Article 21 of the Constitution Of India. This Judgement by the honourable court laid down the path for an impactful and everlasting jurisprudence which emphasized on the reproductive rights as well as autonomy,

liberty and privacy of a woman by maintaining just, fair and reasonable procedures and rules essential for lawful termination and abortion based on the woman's will.

- *Suchita Srivastava & Anr vs Chandigarh Administration (2009)*.

While delivering the judgement of the aforementioned case, the honourable Apex Court⁶, ruled, that Reproductive choice is a choice that is conferred to a woman that is derived from Article 21 of the Constitution of India, which is about Right to Life and Personal Liberty. It was highlighted by the Apex Court in the judgement that if a woman is denied, restricted or infringed of the right to make choices and take decisions about her own body autonomously then that will be a straight curtailment of her Right to Personal Liberty as enshrined under Article 21 of the Indian Constitution. The Court also made a clear and distant differentiation to give insights into the difference between mental illness and mental retardation in which it was stated that a women's mental retardation cannot be a reasonable and justifiable cause to deprive her of her reproductive rights that is to choose and make decisions those are directly related to her own body and physical wellness and overall health.

10. WAY FORWARD

Despite enacting acts, amendments, impactful judgements and rulings as well as various other significant provisions adopted by the government, there are still cases where women are deprived of their right to make choices and decisions regarding her own body, thus, infringing upon her reproductive rights which are also a party of their fundamental right that is, Right to Personal Liberty as enshrined under Article 21 of the Indian Constitution.

Thus, it shows that only the enactment of various acts, provisions and measures are not enough to bring change into such a deep-rooted issue rather it is more important to focus on the implementation of such measures at the ground level in order to make visible and robust changes.

The measures that should be taken for further improvement are as follows:

- The first and foremost thing to be done is spreading awareness among people regarding the recent measures as adopted by the government.
- The common people should be made aware about the provisions regarding safe and lawful abortions.
- Mostly the women should be aware of their basic and fundamental right that is reproductive right.

⁶ Apex Court means the highest judicial court in a state or country. In case of India, it is the Supreme Court of India.

- They should know that they have every right to make choices and take decisions regarding their own body and no one can force to do anything against their will be it a abortion or forced pregnancy.
- People should also be aware of the penalty measures and punishments as related to the cases of any kind of infringement of a women's rights which would create an understanding regarding the depth, seriousness and importance of the issue.
- In the rural areas, efforts should be put to make people aware of the various contraceptive measures available to prevent unwanted pregnancies.
- They should also be aware regarding the consequences of forced, unwanted pregnancies and abortions.
- Educational measures should be stressed on more to confer people the understanding and knowledge regarding gender equality and woman's rights and freedoms which are in fact constitutionally guaranteed to them.
- There should also be a focus on girl child's education because until and unless they are aware of their rights, they can make no use or proper utilisation of it.
- Marrying at proper age should be emphasized more in the rural areas.
- And in order to enforce all of these there should be volunteers employed by the government at the ground levels and there should also be an authority who will keep a check on their working. This would result into more accountability and efficiency.
- Also, medical services should be feasible enough to be availed by all people especially those living in the rural areas.

Thus, all these measures would add more efficiency and effectively into the acts and provisions enacted by the government which may result into better prospects in the future.

11. CONCLUSION

Therefore, from above research and analysis it can be inferred that Reproductive Right of a Woman in India is recognised as a basic Human Right as well as a Fundamental Right by connecting and relating it with Article 21 that is Right to Life and Personal Liberty. It highlighted and showcased a Women's right to make choices and take decisions regarding her own body. It restricts others from having authority over a women's body which affects her wilful decisions as well as may cause harm to her physical health and affect her mental health. Thus, both the time of childbearing and abortion needs to be done according to a woman's will. This further strengthens a women's overall rights and gender equality.

Also, this topic is till now a very heated topic and is of utmost importance which should be taken care of by implementing all the governmental measures taken to address the issue efficiently and effectively. This may fetch better results in the future thus leading to betterment in this field.