



## **SEXUAL AND REPRODUCTIVE RIGHTS OF WOMEN**

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### **ABSTRACT**

It is the 21st century, things have changed for women, they get equal opportunities, have equal rights, are getting an education, are leading Nations, and getting acknowledged for what they are doing. Few claim that women these days get everything they ask for. But is that true? Does society have anywhere accepted the norm of women deciding whether they want to have a baby or not? Does society has got its sense of considering sexual intercourse without her consent is still rape even if it is with one's wife? Have we given women the right to lead the life they want or are we indirectly imposing our prospective of womanhood on them? In this article, the author would be discussing these issues that are commonly termed as sexual as well as regenerative privileges of ladies.

**Keywords:** Sexual Rights, Reproductive Rights, Basic Rights, Women.

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### **INTRODUCTION**

Since the evolution of humankind motherhood is considered a blessing was given to women. Almost every religion has said that a woman gets complete only when she becomes a mother. Motherhood is the ultimate reason for women's existence. So, what happens when a woman doesn't want to embrace this blessing and decides on living her life on her conditions? Well, society looks at it as a rebel and something that is against the very idea of womanhood, they think is accurate. Abortion or terminating the pregnancy looks like a sin committed. We put the life of an unborn child (basically fetus) above the life of the woman carrying it. It doesn't matter whether she is physically, mentally, or even financially ready to raise a child. The societal pressure of having a child on a woman starts in the very 1st year of her marriage. It is saddening that the

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one who has to endure changes mentally, physically, and who has to go through a lot of pain and struggles to have a baby has no role in deciding whether she is ready for it or not.

Consent is a powerful word, it consists of a woman's modesty, her choice, her reputation, and most important her role. Consent plays a very important role in deciding whether a woman is a person having intercourse or a victim facing sexual abuse against herself. There is a very fine line between rape and sex, that society doesn't want to understand. Without consent, sexual intercourse is nothing but rape. We still haven't recognized marital rape, forceful sexual intercourse committed against one's wife. Family planning, use of contraceptives, abortion, consent, marital rape are the few terms we need to understand and adopt to celebrate womanhood that is not limited to being a wife or a mother, a woman doesn't need to become someone else to become the more of herself, she is complete from the day she was born.

## **REPRODUCTIVE RIGHTS**

Reproductive Rights embrace certain common freedoms that are as of now perceived in national laws, global laws and worldwide basic rights reports, and other agreement records. These rights lay on the acknowledgement of the essential privileges, everything being equal, and people to choose unreservedly and capably the number, spacing, and timing of their kids and to have the information and means to do as such, and the option to achieve the best quality of sexual and regenerative wellbeing. It likewise incorporates the option to settle on choices concerning reproduction liberated from discrimination, intimidation, and brutality, as communicated in human rights documents.<sup>1</sup>

The demand for reproductive rights came into the pictures with " The women's health movement" in the 1960s. It was an ascent of the second influx of feminism emerging in the U.S whose sole agenda was to bring attention to the conceptive wellbeing of ladies. The option to utilize birth controls, early termination and admittance to regenerative wellbeing administrations was in their demand. In 1965, in the case of *Griswold v. Connecticut*, the U.S Supreme court struck down a prohibition on the use of contraceptives, even for married couples saying prohibition was infringing the couple's right to privacy.<sup>2</sup>

In the year 1973, one landmark case of *Roe v. Wade* led to abortion being legal in America citing that women's health must remain paramount.<sup>3</sup>In India, the first time the term family planning was coined with the first five-year plan of 1951 as a step towards the health of mothers. The

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<sup>1</sup>(*Ohchr.org*, 2021) <https://www.ohchr.org/Documents/Publications/NHRIHandbook.pdf> accessed 16 July 2021.

<sup>2</sup> *Griswold v. Connecticut*, 381 U.S. 479 (1965).

<sup>3</sup> *Roe v. Wade*, 410 U.S. 113 (1973).

government brought since then many programs and legislation focusing on family planning and the use of contraceptives. It was 1972 that first time in India, a liberal law allowed abortions on the grounds of wellbeing and compassionate and eugenic contemplations came into power.

The focus towards reproductive rights of women began to be recognized with a victory of the feminist movement in Bombay in 1982. The movement was initiated against the use of sex determination techniques. Lastly, in 1998, Maharashtra becomes the first state to bring legislation penalizing sex determination techniques.

Since then, Indian courts have given a few outstanding choices perceiving ladies' regenerative rights as inalienable survival rights certainly ensured under the fundamental right to life of article 21 of the Indian constitution. Our Courts on several occasions considered regenerative rights as fundamental for ladies' equality and have called the regard for women's right to autonomy and decision-making concerning pregnancy.

“India is a signatory of various international conventions advocating the conceptive privileges of ladies, 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 and social rights (ICESCR); and the Convention on the rights of the child (CRC), all of which recognize reproductive rights.”<sup>4</sup>

Although India was one of the main nations on the planet to create a legal and policy system ensuring admittance to early abortion and contraception, Women and girl in India still suffer from better reproductive health services and their less than no role in deciding of having a baby or not. India's National Population Policy ensures ladies' deliberate admittance to the full scope of contraceptives strategies, practically speaking state governments keep on presenting plans advancing female sterilization, including through targets promoting coercion, hazardous unsatisfactory sterilization systems, and refusal of admittance to non-permanent techniques.

Furthermore, abortion is lawful on different grounds until 24 weeks of gestation, and all through a pregnancy where important to save the existence of the pregnant ladies under the Medical Termination of Pregnancy Act (MTP Act).<sup>5</sup>

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<sup>4</sup> 'OHCHR | Home' (*Ohchr.org*, 2021) <http://ohchr.org/> accessed 16 July 2021.

<sup>5</sup> 'The Medical Termination Of Pregnancy (Amendment) Bill, 2020' (*PRS Legislative Research*, 2021) <https://prsindia.org/billtrack/the-medical-termination-of-pregnancy-amendment-bill-2020#:~:text=The%20Bill%20allows%20abortion%20to,cases%20of%20substantial%20foetal%20abnormalities.> accessed 16 July 2021.

In 2011, In the landmark cases of *Laxmi Mandal V. Deen Dayal Harinagar Hospital & Ors.*<sup>6</sup> And *Jaitun V. Maternity Home, MCD, Jangpura & Ors.*, Delhi High court issued a joint decision concerning refusals of maternal medical care to two ladies living underneath the poverty line. The Delhi High Court in a joint hearing of these cases cited CEDAW and ICESCR, quote " 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 (reproductive right) which is so inherent in the right to life gets enforced".

In 2012, the High court of Madhya Pradesh repeated the Delhi High Court Judgment in *Sandesh Bansal V. Union of India*,<sup>7</sup> a public interest case looking for responsibility for maternal deaths, of all the guidelines High court sets in this case the most important choice explicitly dismissed monetary imperatives as an avocation for reproductive rights infringement.

In 2016, The Supreme court gave a judgment on account of *Devika Biswas V. Union of India and ors.*<sup>8</sup> That moved past the conceptive wellbeing system to likewise perceive ladies' self-rule and sex quality as central components of ladies' naturally ensured reproductive rights.

Reproductive rights of women consist of: -

1. Contraceptive access: - Contraceptive information and accessibility is a must for girls and women. It forestalls accidental pregnancies and accordingly likewise helps to lessen the need for perilous abortion. This gives ladies & girls liberty to decide whether or when they want to get pregnant.

Family arranging permits the spacing of pregnancies and can defer pregnancies in young ladies at an expanded danger of medical conditions and death from early childbearing. Infringement of conceptive rights emerging from coercive and unacceptable sterilization and the absence of admittance to the full range of contraceptive techniques. In the case of *Devika Biswas V. Union of India*, the Supreme Court set up that state approaches and projects prompting sterilization abuse ladies' fundamental and human rights. For this situation, the Supreme Court held that regenerative rights are both pieces of the right to healthcare just as a part of personal liberty under article 21 and characterized such rights to incorporate the right to "access a range

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<sup>6</sup> *Laxmi Mandal V. Deen Dayal Harinagar Hospital & Ors.*, (2010)SCC OnLine Del 2234.

<sup>7</sup> *Sandesh Bansal V. Union of India*, (2011) SCC OnLine MP 948.

<sup>8</sup> *Devika Biswas v. Union of India* ,(2016) 10 SCC 726

of reproductive health information good facilities and services to enable individuals to make informed free, and responsible decisions about their reproductive behaviour.”<sup>9</sup>

2. Maternal health: - Maternal Health implies the wellbeing of ladies during pregnancy, the birth of the child as well as post-delivery. It consists of healthcare revolving around family planning, preconception, pre-birth, and post-pregnancy care to decrease maternal dismalthness and mortality. As per a recent report of the UN, India is expected to enrol the biggest expansion in kid and maternal passings in South Asia in 2020. It is important to seek accountability for pregnancy-related deaths and injuries. It is the government's obligation under article 21 of the Indian constitution to provide maternal health guarantees including essential foundation, like admittance to blood, water, and power, in health facilities, ideal maternal health administrations and skilled staff; and viable reference and complaint redressal systems where maternal medical care is denied.<sup>10</sup>

### 3. Abortion: -

At the point when a pregnancy is intentionally dispensed with at an early phase, it is known an early. Abortion is a sort of service offered to ladies who would prefer not to proceed with their pregnancy. In this situation, they may end their pregnancy either through medication or surgery. “The Medical termination of pregnancy act, 1971-a a law that was considered in front of its time legalized abortion in India as long as 20 weeks of pregnancy dependent on specific conditions and when given by an enlisted medical expert at an enrolled medical facility.” Conditions under the MTP act under which a pregnancy might be ended are: -

Continuation of the pregnancy would imply a hazard to the existence of the pregnant lady or cause grave injury to her physical and mental wellness. Pregnancy is because of the failure of contraceptives in a wedded lady or her significant other (dared to establish grave injury to mental well-being). Pregnancy is brought about by assault (ventured to establish grave injury to psychological well-being). The significant danger is that the kid when born would be seriously impaired because of physical or mental abnormalities under the recent amendment of the MTP Act, the government has exceeded the period within which abortion may be carried out up to 24 weeks.

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<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

In 2009, The Supreme Court perceived ladies' conceptive autonomy as a fundamental right expressing that 'There is no uncertainty that a ladies' right to make the reproductive decision is additionally a component of individual freedom as perceived under article 21.

In 2011, “the High Court of Punjab and Haryana emphasized ladies' right to conceptive autonomy by dismissing a suit recorded by a husband against a doctor who did abortion without the husband's consent saying that it is an individual right of a lady to bring forth a kid. No one can meddle in the individual choice of the spouse to continue or about her pregnancy. Undesirable pregnancy would naturally influence the mental wellness of pregnant ladies.”

## **SEXUAL RIGHTS**

Beijing Platform for Action states that “the human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination, and violence.”<sup>11</sup>

Every woman has the right to freely give consent to choose around their bodies like, for example, to pick when and whom to engage in sexual relations with. No one other than the woman should make these decisions for her not even her husband. They should not confront any coercion, segregation, and rejection because of the decisions they make.

“In 2016, The Supreme court gave a judgment on account of *Devika Bismas V. Union of India & Ors.* That moved past the reproductive wellbeing system to likewise perceive ladies autonomy and gender equality as central components of ladies' constitutionally ensured regenerative rights. Sexual rights incorporate and to a great extent centre around – sexual joy and passionate sexual expression. The most conspicuous stage that has seen the battle for sexual rights has been WAS Declaration of Sexual Rights. The 1995 Beijing Conference on Women set up that basic liberties incorporate the right of ladies to have the option to uninhibitedly and with no coercion, brutality, or discrimination, have full command over and make choices concerning their sexuality and their sexual and regenerative wellbeing. Numerous nations have deciphered this to be the pertinent meaning of ladies sexual rights. ( According to Sweden’s international policy on Sexual and Reproductive Health and Rights)The UN Commission on Human Rights has set up that if ladies had more force, their capacity to ensure themselves against violence would be fortified. (according to E/CN.4/RES/2005/41 and E/CN.4/RES/2005/84).”

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<sup>11</sup> 'OHCHR | Sexual And Reproductive Health And Rights' (*Ohchr.org*, 2021) <https://www.ohchr.org/EN/Issues/Women/WRGS/Pages/HealthRights.aspx> accessed 16 July 2021.

## **CONCLUSION**

These sexual & regenerative rights belong to the basic right of every woman. A woman should be the only one taking her decisions for her. The right to choose when and whether she will have a baby or not, with whom and when will she want to have sexual intercourse, when and whether will she get married, she has the right to reproductive and sexual health care; these are the few simple things that give women more power and liberty to make their decision for themselves. Indian judiciary has done a significant and evolving job in framing these rights for women. There are several times where the political and legal obstructions which work to deny ladies and girls their reproductive rights have been addressed. In a country like India where litigation has its difficulties, including long periods and trouble in execution of choices, the vigorous acknowledgement of conceptive rights and sexual rights arising within the society will create an order for the government to move away from population control draws near, face unfair stereotypes that limit ladies' power, and rather focus ladies' privileges to respect, autonomy and bodily respectability in reproductive and sexual rights.

## **SUGGESTIONS**

There is still a long way for our Indian society to finally accept ladies' sexual and regenerative rights. We need to make women and girls feel free and socially acceptable for the decisions they make. After all, it is they who face the challenges the pain, and burdens that come along with the child or the extra responsibility they are confronted with after their marriage. So, why not give them the right and liberty of deciding what kind of life they want to lead.

1) Sex education should be a must from an early age so that every girl gets aware of her sexual rights.

2) Age of marriage should be more than 18 years as this limit is not enough and many girls have to suffer the early pregnancy under societal pressure that comes within the very first year of marriage.

3) Every boy should be made aware of the word consent and they must respect the decisions of their female counterpart.

4) Recognition of marital rape as rape should be a must as there should be no woman suffering sexual abuse in the name of marriage.

5) There should be some changes made to the MTP Act as its conditions for abortion are still very minimal and not up to the level of female autonomy such as in the unmarried pregnancy there is not any provision.

6) Government should bring changes that make sure that every woman has health access.

7) Family planning, use of contraceptives, the taboo against menstruation should be addressed.

8) Like Maternity leave, period leave should be allowed too.

Women are the essence of society. We can imagine a home without a man but a home without a woman is not home. Yatra Nari Pujayente, Tatra Devata vasti, A home where women of the family are respected, is the family where god resides.

We claim that women nowadays are no less than men but in reality, there are still sacrifices that women are expected to make. We need to let women decide for them. Women's role is not just limited to being a wife or a mother there are so many other roles that a woman can take. Women have faced many barriers and struggles throughout history. They were regarded as no more than a slave, they were forced, traded and abused in wars. It was these feminist movements that have made the lives of women nowadays much better. We haven't done anything but accepted their worth them and now it's time that we give them the autonomy they deserve. The day when a woman would be free to live unmarried, married but childless, married but not forced to make physical relations with her husband would be the day Our society will be equal in terms of men and women. Till then, it is still discriminatory.