

REPRODUCTIVE RIGHTS: A LEGAL ANALYSIS

Dissertation submitted to National Law University and Judicial Academy, Assam

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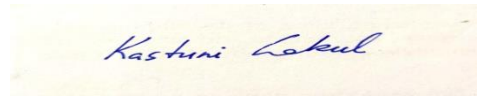
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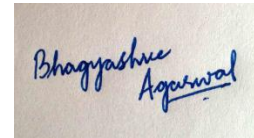
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DECLARATION

I, BHAGYASHREE AGARWAL, do hereby declare that the dissertation titled “REPRODUCTIVE RIGHTS: A LEGAL ANALYSIS” submitted by me for the award of the degree of MASTER OF LAWS/ ONE YEAR LL.M. DEGREE PROGRAMME of National Law University and Judicial Academy, Assam is a bona-fide work and has not been submitted, either in part or full anywhere else for any purpose, academic or otherwise.

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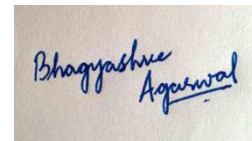
ACKNOWLEDGEMENT

The rate of success of an individual is determined by the path travelled, and to have a strong motivational support, valuable guidance and a good direction, adds to the process of growth. In an attempt to write a dissertation for the first time, I would like to mention a list of people who deserve my deepest gratitude and appreciation. This research is not the result of an individual effort, but a product of collective wisdom of many people.

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PREFACE

Reproductive rights, which are a part of the larger group of human rights like right to life and personal liberty, need to be realized and ensured for living a meaningful life. Reproductive rights, in itself, is an amalgamation of several rights – right to privacy, right to equality and non-discrimination, right to bodily integrity, right to information and education, right to proper healthcare facilities. Irrespective of age and gender, reproductive rights are available to all, but it generally affects women and adolescent girls more. Historically, in various international legal instruments, there has been a growth and development of reproductive rights through the years. There are various aspects of reproductive autonomy which help in understanding the concept. With regard to these rights, the vulnerable and marginalized sections of the society require attention for full and universal realization. Prevention of gender based violence is also a matter of concern.

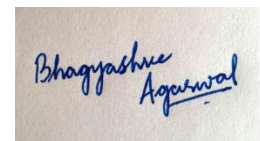
A single dedicated document/instrument for reproductive rights specifically is not available. There are various human rights which are provided in national legislations, international conventions and treaties that help in recognition of reproductive rights. It comprises of civil, political rights as well as economic, social and cultural rights. It affects individuals and couples equally. There are a variety of international human rights bodies and enforcement mechanisms which provide for the legal basis of reproductive rights like the *Universal Declaration of Human Rights*, *Convention on Elimination of Violence against Women*, and the *International Convention on Economic, Social and Cultural Rights*. The universality of human rights cannot be negated. The varied kinds of human rights cannot be arranged in a hierarchical fashion. Each one of the rights is as important and the realization of each right is crucial to enjoy the other rights. Human rights are interdependent in nature.

India is a signatory to various international treaties and conventions which affirm and emphasize on different kinds of human rights and related issues. This has created an obligation to ensure that these issues are tackled within the domestic legal framework of the country. Laws regarding medical termination of pregnancy/abortion, sex-selective discrimination, domestic violence and other kinds of sexual violence discuss the reproductive rights and their enhancement for the

individuals in the country. Various concerns have been put forward about the insufficiency of the laws and the requirement of revision. It is pertinent to mention that the country's healthcare system suffers from poor infrastructure and lack of funding as well. The quality and accessibility of healthcare services has deteriorated with regard to the poor population of the country which is in majority.

There have been various judicial pronouncements by the Supreme Court of India and the various High Courts of India which emphasize on the right to health and medical facilities to be implicit in the right to life given under Article 21 of the Indian Constitution. The healthcare system and the medical professionals of the country are under an obligation to provide treatment and protect lives of people in different situations. Reproductive autonomy is an integral part of personal liberty and therefore, a part of Article 21. This has been held by the Supreme Court of India in *Suchita Srivastava and Another v. Chandigarh Administration*.

In India, courts have played a proactive role while recognizing reproductive autonomy and aspects of sexual well-being. They have worked to create a system at par with the international standards. Grievance redressal system is robust and highly functional in nature. Reproductive justice has been envisioned in a holistic manner in the country. Even as litigation has its drawbacks, such as long timelines and difficulty putting decisions into practice, the Indian courts' strong acknowledgement of reproductive freedom as fundamental rights has created a responsibility for the state to move away from population control strategies and confront exclusionary stereotypes that limit women's power.

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TABLE OF ABBREVIATIONS

1	AIDS	Acquired Immunodeficiency Syndrome
2	AIR	All India Reporter
3	Anr.	Another
4	ART	Assisted Reproductive Technology
5	CEDAW	Convention on Elimination of All Forms of Discrimination against Women
6	COVID-19	Coronavirus Disease 2019
7	DPSPs	Directive Principles of State Policy
8	Et al.	Et alia
9	FGM	Female Genital Mutilation
10	HIV	Human immunodeficiency viruses
11	ICCPR	International Covenant on Civil and Political Rights
12	ICESCR	International Covenant on Economic, Social and Cultural
13	ICPD	International Conference on Population and Development
14	LGBTQ	Lesbian, Gay, Bisexual, Transgender, Queer
15	MDGs	Millennium Development Goals
16	NGOs	Non-Governmental Organizations
17	Retd.	Retired
18	SC	Supreme Court
19	SCC	Supreme Court Cases
20	SDGs	Sustainable Development Goals
21	UDHR	Universal Declaration of Human Rights
22	UN	United Nations
23	v.	Versus
24	Vol.	Volume
25	WHO	World Health Organization

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CHAPTER – I

INTRODUCTION

Reproductive rights and its aspects are related to sexuality and physical, mental and psychological well-being of individuals with respect to linkages between each of these factors and the economic and social contexts that influence access, experiences, and quality of care across various populations. Apart from women, there are several distinct stakeholders like persons with non-heteronormative sexual orientations, persons with disabilities, children, victims of sexual violence and other vulnerable and minority sections in the society. These groups should be informed and taken care of based on their respective specific needs to avoid high mortality rates and health complications.

The international human rights standards acknowledge different rights which are related to sexual well-being and reproductive autonomy of an individual. These include – right to life and liberty, right to physical autonomy, right to education, right to equality and non-discrimination, access to decent healthcare facilities, right to information. All of these combined define the legal basis in the international scenario for realization of reproductive rights. To ensure the effectiveness of the facilities offered, all services and medical centres must be available, affordable, acceptable, and of high quality. Making educated sexual choices, engaging in safe sex practices, and preventing disease, all of which are essential to ensuring sexual health, require scientific and fair information about sexual wellness.

Since the *International Conference on Population and Development* in 1994¹, reproductive rights have been steadily recognized as human rights. The *International Covenant on Economic, Social, and Cultural Rights (ICESCR)*² of 1966 and the *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*³ of 1979 both emphasize the importance of focusing on reproductive rights in establishing women's fundamental rights. Several targets of

¹ UN Population Fund (UNFPA), *Report of the International Conference on Population and Development*, Cairo, 5-13 September 1994, 1995, A/CONF.171/13/Rev.1.

² UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations.

³ UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations

the Sustainable Development Goals (SDGs)⁴ and the preceding Millennium Development Goals (MDGs)⁵ recognize reproductive rights, both explicitly and indirectly.

India is a signatory to several of these international conventions and treaties which creates an obligation to realize the goals of reproductive well-being in the country. The Indian Constitution, 1950 has also recognized reproductive freedom as an integral part of the right to life and right to privacy. Various legislations and policies of the government revolve around health and well-being in areas of medical termination of pregnancies, surrogacy, sex-determination of the foetus, violent crimes of sexual nature, sex education and informational privacy. Apart from the legislative framework, there have been innumerable judicial decisions which have highlighted and emphasized on the reproductive rights by interpretation of the law in a broad perspective and aligning it with the international standards.

This chapter examines the obtainable literatures on the area of study and identifies limitations in its coverage. It also highlights the research problem, aims and objectives of the research, research questions, methodology and scope as well as limitations of study. Further, the researcher also aims to provide a concise outline of the entire research under the heading research design.

1.1 RESEARCH PROBLEM

Every individual requires a set of certain rights which are fundamental to their well-being and for leading a meaningful life. These rights can be studied and interpreted through several variables. Reproductive rights and the lack of proper legislative framework along with faulty enforcement is the existing reality of today's world. There are various instances of violations of reproductive rights and flouting of bodily integrity of individuals with not access to proper judicial remedies. Due to lack of proper information and unavailable healthcare facilities, there is a rise of maternal mortality rates along with increasing infections and incidents of sexual crimes. India has tried to balance its population control goals and the realization of reproductive autonomy while focusing

⁴ UN General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development*, 21 October 2015, A/RES/70/1.

⁵ United Nations, *Millennium Development Goals Report 2011*, June 2011.

on building the health infrastructure of the country. Recent judgments in India have emphasized on reproductive and sexual well-being as a part of right to privacy which is inherent in right to life of an individual. It is high time that we treat this aspect of health as crucial and have open discussions. Change in the society's outlook with increased information dissemination which is easy to understand and reliable is the needed. Research and available literature on this aspect of human rights is very little and hence the problems surrounding this issue needs to be identified, statistical data is to be properly recorded and with an attitude of justice and cooperation, everyone has to come forward for realization of reproductive rights as human rights by setting the required standards.

1.2 RESEARCH AIMS

Following the identification of the research problem, the research work's objectives are drawn up for review of literatures and methodological selection. This work aims to provide a holistic approach to the reproductive rights available to individuals. Along with analyzing the international and national frameworks on reproductive rights, the researcher has also made an attempt to study the historical aspect and judicial decisions involved in this arena.

1.3 RESEARCH OBJECTIVES

The objectives of this research are –

- i. To provide a conceptual analysis of the reproductive rights available to a person. The conceptual study will also highlight the history and the keys aspects of reproductive autonomy of women.
- ii. To identify the provisions of the international and regional human rights instruments, those which are pertinent in the field of reproductive rights.
- iii. To discuss the legal developments that India has witnessed in its endeavour for realization of reproductive rights of woman and to analyze the existing national legal framework on reproductive rights.

- iv. To study the role of Indian judiciary on laying emphases on reproductive autonomy and sexual well-being of a person along with maintaining the international obligations and national needs.
- v. To put forward a set of possible steps that may be taken to effectively realize reproductive rights and empower the vulnerable sections of the population in the country and the world.

1.4 RESEARCH SCOPE AND LIMITATIONS

The scope of this research work is confined to the general understanding of the arena of reproductive rights, its concept and legal implications. The international framework on protection of rights, liberty and security of a person with respect to its relevance in reproductive autonomy and bodily integrity has been highlighted. It further extends to analysis of the legislative and policy frameworks for the enhancement of reproductive freedom along with prevention of the crimes associated with it. An attempt has been made to understand the varied judicial pronouncements and its impact on the exercise of reproductive rights of individuals.

In the light of the objectives and the purposes of this study, the researcher has tried to figure out the underlying problems and possible solutions to combat the crimes of sexual nature which hamper the exercise of reproductive freedom along with other impediments in the road to full and proper exercise of reproductive rights. Reproductive rights are a human rights concern as well as a psycho-socio-medical emergency. The scope of this work is limited to the issues revolving around the legal framework. Due to certain restrictions of time and money, the researcher has made the best efforts to make use of the available resources to find out the appropriate information and the interpretation of the vast number of judicial decisions on this subject for the loopholes in this sector to be identified.

1.5 LITERATURE REVIEW

In an article, Rose George⁶ introduced the meaning and constitutional perspectives on procreative choices. She further went on to explain the State policies in the U.S. and India towards reproductive rights. With respect to India, she dealt with policies related to abortion, forced sterilizations, pre-natal diagnostic techniques. International obligations toward reproductive rights were also discussed in this article. A comparison of the judicial attitudes with regard to reproductive autonomy is provided specifically relating to abortion and involuntary sterilization.

In the book, the author Schlossberger⁷ discusses the right to reproduce. The chapter on right to reproduce provided the difference between the decisions of right to reproduce and right not to reproduce. It dealt with and elaborated on issues of population control and use of reproductive technologies such as cloning. It discussed societal concerns with respect to assisted reproduction and related technological advancements along with religious beliefs surrounding the various aspects of reproductive rights.

Several examples of key practical elements of reproductive rights along with an understanding of sexual and reproductive health with the historical overview of international commitments regarding the same was provided by the handbook⁸ published by the United Nations in collaboration with The Danish Institute for Human Rights. It elaborated on promoting reproductive rights through a human rights-based approach to development. It specified the 3AQ approach – availability, accessibility, acceptability and quality. It enumerated the various principles and standards of human rights that are related to reproductive rights such as right to non-discrimination and equal treatment, right to life and physical integrity, right to marry, right to privacy, right to information and education as well as right to highest attainable standard of health. The international human rights treaties along with regional instruments in relation to reproductive health have been discussed in this handbook elaborately.

⁶ Simi Rose George, *Reproductive Rights: A Comparative Study of Constitutional Jurisprudence, Judicial Attitudes and State Policies in India and the U.S.*, 18 Student Bar Review 69, (2006).

⁷ EUGENE SCHLOSSBERGER, *A HOLISTIC APPROACH TO RIGHTS: AFFIRMATIVE ACTION, REPRODUCTIVE RIGHTS, CENSORSHIP AND FUTURE GENERATIONS* (2007).

⁸ *REPRODUCTIVE RIGHTS ARE HUMAN RIGHTS: A HANDBOOK FOR NATIONAL HUMAN RIGHTS INSTITUTIONS* (2014).

Bhattacharjee in her article⁹ discussed the ethnographic study of commercial surrogacy in India highlighting the important issues which require a nuanced understanding. The draft legislations were examined along with the issues faced by surrogates such as meagre and delayed payments, no societal recognition of livelihood means with moral repercussions. Increased exploitation with emerging unregistered clinics, involvement of middlemen and lack of any bargaining capacity of surrogates create more problems in this field. Law reforms should be envisioned with these issues in mind.

Ghosh and Khaitan¹⁰ in their article discuss the privacy judgment from India (*Justice K S Puttaswamy v. Union of India*). In that context, they examine two predominant reproductive rights issues – abortion and surrogacy. This article entails how the privacy judgment provided a thrust to the legislature to evaluate the challenges to laws on these two particular issues. Abortion and reproductive autonomy as well as questions around surrogacy were addressed in detail in this article.

The background on nature and scope of sexual and reproductive health and rights discussing the human rights key to these issues has been provided in the factsheet¹¹ published by the United Nations Human Rights Office of the High Commissioner. Certain select issues have been discussed such as – maternal healthcare, contraceptive information and services, abortion and post-abortion care, comprehensive sexuality education, marginalized and vulnerable sections of the population as well as adolescent and youth autonomy.

The Center for Reproductive Rights published a paper¹² reviewing the existing legislative framework on medical termination of pregnancy and the requirement of abortion access after 20 weeks. The much needed legislative reform after evaluating the recent cases on abortion was considered to be necessary. While comparing the Indian perspective along with the international scenarios, several recommendations were provided.

⁹ Dahlia Bhattacharjee, 'Commercial Surrogacy in India', ECO. & POL. WEEKLY (2016).

¹⁰ Arijit Ghosh & Nikita Khaitan, *A Womb of One's Own: Privacy and Reproductive Rights*, ECO. & POL. WEEKLY, Vol. 52, Issue No. 42-43 (2017).

¹¹ YOUR HEALTH, YOUR CHOICE, YOUR RIGHTS: INTERNATIONAL AND REGIONAL OBLIGATIONS ON SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS (2018).

¹² Center for Reproductive Rights, 'Ensuring Reproductive Rights: Reform to Address Women's and Girl's need for Abortion after 20 weeks in India', (2018)

In a casebook¹³ by Chandra, Satish and the Center for Reproductive Rights, a brief introduction on the constitutional and human rights framework for reproductive justice in India was given. In the following chapters, various issues were discussed with regard to the judgments pronounced by the Indian courts on these issues such as contraception and government policies, sex-determination, surrogacy, medical termination of pregnancy, adolescent reproductive rights and sexual crimes, disability, maternal health and employment-related issues.

The article¹⁴ by Reddy introduced the historical overview and the legislative developments in the field of surrogacy and assistive reproduction technology in India. It encapsulated the problems of commercial surrogacy in the country along with the repercussions of ban on commercial surrogacy. It even proposed solutions to regulate the surrogacy scenario in the country.

The reproductive rights movement has seen several controversies historically due to ethical, moral and religious undertones with regard to the subject. The Puttaswamy judgment in India recognized the right to privacy, inclusive of reproductive rights as a part of right to life. In an article¹⁵ by Narain, recognition of reproductive rights by the Indian courts was provided. The Medical Termination of Pregnancy Act, 1971 and its critique were minutely discussed along with challenges of surrogacy in India. The impact of the Puttaswamy judgment was definitive in the field of reproductive autonomy and sexual health.

1.6 RESEARCH QUESTIONS

After a detailed review of the existing literatures on reproductive rights and identifying the gaps, the researcher has framed the following research questions –

- i. What are the key issues with regard to reproductive autonomy of an individual and what are the consequences of such issues?

¹³ APARNA CHANDRA et al, SECURING REPRODUCTIVE JUSTICE IN INDIA – A CASEBOOK, (Centre for Const. Law Policy and Governance)(2019).

¹⁴ Jaya Reddy, *Indian Surrogacy: Ending Cheap Labor*, 18 SANTA CLARA JOURNAL OF INTERNATIONAL LAW 92, (2020).

¹⁵ ShefalikaNarain, *Aftermath of the PuttaswamyJudgement: ReproductiveRights in India*, VIVEKANANDA JOURNAL OF RESEARCH, (2020).

- ii. What provisions of the international and regional human rights instruments are implicitly or explicitly inclusive of the various reproductive rights and to what extent are these provisions guaranteeing the given rights?
- iii. How India's legislative structure is incorporating reproductive freedom and sexual autonomy and how far are these legal developments are relevant or effective in realization of the given rights?
- iv. What is the role played by the Indian judiciary whilst interpreting the laws of the country and the international conventions on reproductive rights?
- v. Is the judiciary concerned with the balance between the protection of reproductive autonomy and the population control goals of the country?
- vi. What are the possible measures that can be taken for effective realization of reproductive rights and improvement of sexual health?

1.7 RESEARCH METHODOLOGY

The methodology adopted by the researcher in this research work, entitled "Reproductive Rights: A Legal Analysis" is analytical and doctrinal in nature. The researcher has adopted doctrinal method on the basis of the data available for the present study. The researcher has referred to a great number of books, journals, newspapers, articles, reports and e-books for preparing this work. This research is analytical in nature as it analyses the development of the international, regional and national legal framework along with the role of the government and the judiciary for effective realization and enforcement of reproductive rights. Further, the existing loopholes and drawbacks of the current system are also analyzed detailing the hindrances in the way of full and informed exercise of rights.

1.8 RESEARCH DESIGN

In the light of the objectives and research questions formulated by the researcher, the research work has been divided in the following chapters for convenient and systematic study –

Chapter I titled ‘Introduction’ provides a brief introduction into the entire subject matter of study in hand, wherein the researcher has highlighted the basic and foundational understanding of the topic in general. It also includes the detailed review of literature which exists on the subject matter. Furthermore, it provides an analysis of the problem, the aims and objectives of this particular study, scope and limitation in this area of work and the methodology used work the research work.

Chapter II titled ‘Conceptual Analysis of Reproductive Rights’ provides a detailed understanding of the topic. It further investigates the historical developments that led to the establishment of reproductive rights. This chapter also entails the key issues regarding reproductive autonomy and elaborates on it.

Chapter III entitled ‘International and Regional Framework on Reproductive Rights’ focuses on the study of various international and regional legal frameworks which elaborate on the specific rights that are essential and form the basis of reproductive rights.

Chapter IV titled ‘Legal Framework on Reproductive Rights in India’ elaborates the statutory provisions and the developments in the Indian legal scenario with regard to reproductive rights and sexual well-being in the country.

Chapter V titled as ‘Judicial Approach on Reproductive Rights in India’ highlights the interpretation of the rights done by the judiciary to incorporate reproductive autonomy and other related aspects as a part of right to life of an individual. Other legal statutes and related judgments have been studied which reflect the progressive attitude of the judiciary in the country.

Chapter VI entitled ‘Conclusion and Suggestions’ sums up the whole work and tries to give a broad-spectrum idea about the existing socio-legal state of affairs of the reproductive rights. This chapter also provides the positive developments and achievements in this arena over the years. After analyzing the current situation, a set of recommendation has been laid down in the last part of the present work.

CHAPTER – II

CONCEPTUAL ANALYSIS OF REPRODUCTIVE RIGHTS

While discussing fundamental human rights and the right to health, sexual and reproductive rights get sidelined among others. To improve the quality of life for women and young adolescents, assure gender equality in all the spheres – reproductive health should be focused upon. Accessibility of sexual and reproductive healthcare facilities will help in securing the rights and reducing maternal mortality rates. Sex education and awareness also forms a critical part of the development of reproductive rights. Sexual and reproductive health and well-being doesn't mean prevention of various diseases or their treatments only; it also includes strands of pleasure, bodily integrity and autonomy.

“Reproductive rights embrace certain human rights that are already recognized in national laws, internal laws and international human rights documents and other consensus documents. These rights rest on recognition of the basic rights of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and the means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes the right to make decisions concerning reproduction free of discrimination, coercion and violence, as expressed in human rights documents.”¹⁶

The abovementioned definition has three distinct parts. Firstly, it provides for the right to decide the time, spacing and the number of children to partners as well as individuals. This right comes along with the information required to make such decisions. Marginalized and vulnerable groups should not be overlooked while imparting information. Secondly, it affirms the right to the highest standard of reproductive life and sexual health. It includes the child-bearing capacities and related issues along with a healthy and safe sex life of an individual. Thirdly, it is concerned with free consent, non-discrimination, equality, non-violence and full information. Persons with disabilities, minority ethnic groups, children, sexual minorities should not be excluded from the sexual well-being discussion.

¹⁶ International Conference on Population and Development (ICPD), Programme of Action, Para 7.3, Sep. 1994.

2.1 CONCEPTUAL ANALYSIS

The major facets of reproductive rights include – reducing the maternal mortality rates on a global scale, reducing gender-based violence, proper and equal access to health care facilities and family planning, counselling and sex education drives. According to sources, the majority of maternal deaths happen in the third world or developing countries in Africa and South Asia.¹⁷ Complications in pregnancy can turn out to be life-threatening if proper medical care is not available. Such deaths, complications, diseases are preventable. However, the numbers highlight the reality of the world and the disparity that exists between the rich and the poor.

Abortion services which are not accessible and lack of effective family planning and public awareness is a major cause of unsafe abortions worldwide. The deaths from complications of unsafe abortions are estimated to be about 68,000 each year.¹⁸ Adolescent girls who have started menstruating are denied higher education opportunities leading to early marriages and early pregnancies as well. Not just this, adolescent girls are also subjected to certain religious/cultural practices such as female genital mutilation/cutting which is a gruesome practice that strips away all the human rights available to an individual. Apart from physical difficulties, the mental health of the girl is completely disregarded and ignored.

Gender-based violence like sexual assault, rape, acid attacks is a massive abuse of an individual's personal autonomy and bodily integrity. It affects both – physical and mental – health of an individual. Lack of efficient grievance redressal mechanism adds up to the heap of problems. Apart from the individual, the family also gets affected adversely in these scenarios. Gender equality is a distant dream with such atrocious acts being committed in the society. Sexual and reproductive health impact the right to life and personal liberty. On a larger scale, it adversely impacts the sustainable development and growth across the world.

The World Health Organization (WHO) provided for five major components in the definition of sexual and reproductive health.¹⁹ They are as follows:

¹⁷ *Trends in Maternal Mortality, 1990 to 2008*, WHO, UNICEF, UNFPA and World Bank, 2010.

¹⁸ World Health Organization. The Lancet: Anna Glasier, A Metin Gülmezoglu, George P Schmid, Claudia Garcia Moreno, Paul FA Van Look. “*Sexual and reproductive health: a matter of life and death.*” The Lancet Sexual and Reproductive Health Series, October 2006.

¹⁹ UNFPA. *Sexual and Reproductive Health for All*. 2010.

- Contraceptive choices should be ensured with services relating to safety and infertility
- The health of the mother and the newborn should be improved in all circumstances
- The occurrence and spread of sexually transmitted infections along with maternal morbidities should be minimized
- Unsafe abortion practices should be prevented along with proper post-abortion care
- Harmful sexual practices should be eliminated with promotion of healthy sexuality

2.2 HISTORICAL OVERVIEW

Till the 1990s, controlling population explosion by restricting women’s fertility was the focus of reproductive health. However, this no longer remains true. Various documents have been developed on the sexual and reproductive health of individuals. There has been a growth of mindset and greater understanding in terms of sexual well-being and health of a person.

The 1968 Final Act of the Tehran Conference on Human Rights²⁰ was the first document to acknowledge reproductive rights as a part of human rights. Section 16 of the Act states, *“Parents have a basic human right to decide freely and responsibly on the number and spacing of children and a right to adequate education and information in this respect”*. This Act was endorsed by the United Nations General Assembly in the month of December 1968.²¹

Followed by this Act, the 1975 Declaration of Mexico on the Equality of Women and their Contribution to Development and Peace²² affirmed equality principle in matters related to the family and the non-violable nature of human body and integrity. In Principle 12, it states, *“every couple and every individual has the right to decide freely and responsibly whether or not to have children as well as to determine their number and spacing, and to have the information, education and means to do so”*.

The Vienna Declaration and Programme of Action²³ was adopted in 1993 by the World Conference on Human Rights. This document emphasized the unanimous support and worldwide

²⁰ UN Doc. A/CONF. 32/41.

²¹ United Nations General Assembly Resolution 2442 (XXIII).

²² UN Doc. E/CONF. 66/34.

²³ United Nations General Assembly Resolution A/RES/48/121.

consent to the sexual and reproductive rights. Section 3 dealt with the accessibility of proper healthcare facilities for women and children along with information, education and family planning services.

At Cairo in 1994, the International Conference on Population and Development (ICPD)²⁴ was held which helped in providing recognition to reproductive rights at a global level. The Programme of Action provided that sexual and reproductive rights have been affirmed by various national and international laws already in place. It emphasized on the relation between gender equality and population explosion. It also provided with the general definition of reproductive rights.

The Fourth World Conference on Women²⁵ was held at Beijing in 1995. The Beijing Declaration and Platform for Action which was adopted, acknowledged the right to equality in terms of healthcare facilities and the need for education for sexual and reproductive well-being. Education and its importance have been highlighted.

The members of the United Nations adopted the United Nations Millennium Declaration²⁶ at the Millennium Summit in 2000. Section III of the said Declaration discusses development and poverty eradication. On the basis of this, the establishment of the eight Millennium Development Goals (MDGs) took place. Out of these eight MDGs, four are related to reproductive rights and sexual health of an individual. MDG 5 is related to maternal health and well-being, emphasizing a reduction in maternal mortality rates and universal access and equality in medical facilities relating to reproductive health. This was followed by the World Summit Outcome²⁷ in 2005 reiterating the values and ideas of the MDGs and their fulfilment.

The Sustainable Development Goals (SDGs) which are the successor to MDGs present various targets to be achieved, which are measured on certain indicators. Among the given seventeen goals, SDG 5 talks about gender equality which is of utmost importance to emphasize the need for reproductive rights. However, all the other SDGs are interlinked and have required

²⁴ International Conference on Population and Development (ICPD), Program of Action, UN Doc. A/CONF.171/13 1994.

²⁵ United Nations General Assembly Resolution A/RES/50/203.

²⁶ United Nations General Assembly Resolution A/55/L.2.

²⁷ United Nations General Assembly Resolution A/RES/60/1.

implications on sexual and reproductive health like ending poverty and hunger, education, sustainable development in terms of industries, production, ecosystems.

An African regional treaty/document known as Maputo Protocol is the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women²⁸ in Africa. This treaty emphasizes on reproductive autonomy and its affiliation to human rights. Article 14 of the Maputo Protocol deals with the rights of women for their reproductive and sexual well-being, like abortion, education, contraception, fertility.

2.3 KEY ISSUES - REPRODUCTIVE AUTONOMY

Autonomy in reproductive decisions is yet to be imbibed wholeheartedly across the world. The judicial attitudes and legislative policies do not focus on this issue in a sufficient manner. Legalities of the reproductive rights are still ambiguous. Social, religious and cultural views impact the decision-making process in this arena. These are some loopholes in the effective realization of the existing laws on reproductive autonomy. However, there are certain fundamental issues in the sexual and reproductive arena that are required to be addressed for the greater enhancement of human rights.

2.3.1 Equality and non-discrimination

The most essential need for fulfilment of any right is equality and non-discrimination. In developing countries, disparities are quite prominent among the rich and the poor, the vulnerable and the powerful, the ignorant and the educated. To overcome this obstacle and ensure equality, non-discrimination clauses have found a place in almost every legal document of the world. Reproductive autonomy and well-being would be realized effectively if there is no discrimination between any of the sections of the society and law has equal application and approach.

²⁸ African Union, *Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa*, 11 July 2003.

2.3.2 Access to information

Sexual health and reproductive rights are a hush-hush affair in families and the society in general. The only purpose of reproduction is procreation, and other elements and issues are not discussed. If an individual does not have any information, then they cannot even exercise the rights in a proper manner. Even if information is available, there is a hesitant approach while accessing it. Due to lack of adequate information and knowledge, maternal mortality, unsafe abortions, unwanted pregnancies, complications during birth, sexually transmitted infections, child infanticide – all of these are prevalent at a large scale. Information should be available in vernacular languages to increase accessibility.

2.3.3 Abortion and related complications

Unsafe abortion practices - due to illegality or social stigma attached – leads to numerous deaths across the world which are preventable. Restrictions in law set to make abortions inaccessible and hence, people indulge in unsafe abortive practices. Economic incapacities also add up to them. Geographical locations also inhibit access to medical facilities. Administrative requirements and third party approvals are a major roadblock. In cases of sexual crimes, reproductive rights of the women should not be endangered by disallowing abortion and other medical help required. Abortion and its physical as well as mental implications should be taken into account. Pro-life debate ²⁹ and ban on abortion is a cultural block to safe access of healthcare.

2.3.4 Sex education

Education leads to awareness creation and the arena of sexual and reproductive health needs it. For making informed decisions about their reproductive health, adolescents should be educated about it in schools and at homes. If they are taught about it early on in life, various complications can be avoided and hesitation to approach appropriate authorities can be minimized. Healthy discussion on sex, consent and reproductive aspects of the body is vital in preventing sexual violence as well. Misinformation is a leading cause behind the complications associated with

²⁹ Pro-life and pro-choice have been the two facets of the debate on abortion policy. Certain religious beliefs and faith organizations have emphasized on the pro-life stance providing that the unborn foetus has a life of its own and should not be aborted. Whereas pro-choice supporters believe that the choice to carry on or not to carry on with the pregnancy should be that of the pregnant women.

unsafe abortions or early pregnancies. Early pregnancies compel young girls to leave their education. To avoid all these, sex education which is age appropriate should be made a mandatory subject to be taught in schools/colleges/universities all across the world.

2.3.5 Vulnerable sections of the society

Persons belonging to vulnerable sections of the society have a difficult time in accessing resources regarding sexual and reproductive health. Such vulnerable groups include ethnic minorities, persons with disabilities, lesbian, gay, bisexual, transgender, queer (LGBTQ) community, adolescents/children, economically weaker sections. People from these sections might be discriminated against. Realization of their sexual and reproductive rights should be emphasized in legislations as well as enforcement mechanisms – not just on paper, but in reality also. Information should be provided in all languages to make it easier to comprehend. Stereotypical notions and prejudices should be done away with by awareness generation.

2.3.6 Adolescents/Youngsters

Adolescents/teenagers are usually keen on exploring their sexuality and experimenting. However, lack of information or misinformation leads to various difficulties and this affects their reproductive autonomy as individuals. Parental controls, peer pressure, social stigma – all of this contribute to the inhibition while discussing sexual and reproductive well-being. Requirement of the consent of parents to access reproductive healthcare facilities is a grave breach of their autonomy and bodily integrity. Lack of access to sex education and contraceptive measure make them rely on unsafe sex practices which lead to various health complications. Medical facilities dealing with students are generally not friendly and judgemental in nature. All of this has a huge impact on the mental health as well as education of the individual.

2.3.7 Sexual violence

An individual's personal autonomy and bodily integrity is diluted and eroded in instances of crimes of sexual nature. Sexual assault, rape and other kinds of sexual acts committed without consent of the parties is a grave violation of every aspect of the fundamental rights available to an individual and depicts the failure of the law-enforcement and law-making machinery. Marital rape is still not a crime in many countries. However, same-sex relations have not been

decriminalized everywhere. This blurs the difference between the legality of consensual and non-consensual sex. Apart from this, there is victim-bashing, moral policing and inadequate compensation and care available which requires to be addressed.

These are the vital issues to be addressed while dealing with reproductive autonomy and sexual well-being of an individual. Social stigma should be done away with while discussing reproductive health. As it goes, reproductive rights are human rights and they need to be realized for leading an efficient life of growth and development.

CHAPTER – III

INTERNATIONAL AND REGIONAL FRAMEWORK ON REPRODUCTIVE RIGHTS

A single dedicated document/instrument for reproductive rights specifically is not available. In ICPD Programme of Action, it has been stated that there are various human rights which are provided in national legislations, international conventions and treaties that help in recognition of reproductive rights. There are a variety of international human rights bodies and enforcement mechanisms which provide for the legal basis of reproductive rights.

To recognize and validate reproductive rights in the international framework, these are the following rights/concepts which have been already affirmed:

- Non-discrimination and equal treatment
- Right to life
- Right to physical integrity
- Right to marry and start a family
- Right to privacy
- Right to information and education
- Right to the highest attainable standard of health
- Right to benefit from scientific progress

These rights provide the legal basis and framework for reproductive rights in the international scenario.

3.1 NON-DISCRIMINATION AND EQUAL TREATMENT

A guiding principle in the human rights arena is that of non-discrimination. Without this right, it is difficult to exercise the different rights provided. It is considered to be a right in itself. This right of non-discrimination is found in almost all international instruments and there exists an obligation on all the stakeholders to provide for it.

Any kind of discrimination which controls a woman's fertility and the related choices is a hindrance to the realization of her capacities as a human being and also her reproductive rights. If husband consent is unavailable and for this reason any health facility denies treatment to the woman, it is a grave violation of the non-discrimination clause on the basis of marital status of the woman.

Discrimination can be intersectional in nature. A woman of an indigenous group is doubly discriminated against due to her indigenous nature and on the basis of her being a woman. Women from various vulnerable sections are prone to be discriminated against and have less or no access to reproductive resources. Formal equality should lead to substantive equality. Legislation should be framed in such a manner that the disadvantaged and vulnerable groups have their problems minimized. Persons with disabilities also suffer from discrimination when it comes to sexual and reproductive health as it is assumed that they do not have such needs and therefore they do not require access to reproductive healthcare.

Women are taken to be naturally inferior and stereotyped as nurturers. This affects their employability and other professional aspects in a negative fashion. This is due to the fact that they will get pregnant and require maternity leaves. Such assumptions are to be dealt with when policies are being formulated for women empowerment. Discrimination is not just evident in the public sphere, but in the private sphere as well. It is quite evident in families – women lack personal bodily autonomy and this hinders the free and full exercise of their reproductive rights.

To maintain and preserve equality does not mean to treat everyone identically. Sometimes, it requires non-equals to be treated differently to establish the required equality in all spheres. Women, as compared to men, are seen to be at a higher risk for HIV and other infections. Female genital mutilation (FGM), polygamy, child marriage and marital rape – these practices have a harmful impact on the females. Women and adolescent girls have been subjected to unsafe sex practices and the related stigma due to the prevalent patriarchal setup of the society.

The International Covenant on Civil and Political Rights (ICCPR)³⁰ provides for non – discrimination clauses. Article 2 of ICCPR states: *“Each State Party to the present Covenant*

³⁰ *International Covenant on Civil and Political Rights*, 19 December 1966, (entered into force 23 March 1976) [ICCPR].

undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

The International Covenant on Economic, Social and Cultural Rights (ICESCR)³¹ and the Convention on the Rights of the Child and various other regional instruments contain provisions for preventing discrimination on the basis of various factors. The Convention on Elimination of All Forms of Discrimination against Women (CEDAW)³² sets out to prevent discrimination against women on the basis of their sex. Generally, all the international conventions and regional instruments contain a non-discrimination clause as it is a basic human right requirement.

3.2 RIGHT TO LIFE

Any death which is avoidable – the pregnant mother or the child – should be prevented. If not so, this is a major violation of the most basic and fundamental human right – right to life. Denial of access to quality and timely healthcare services is one of the biggest concerns when it comes to high maternal mortality rates among women and girls of reproductive age across the world. Right to life can be broadly interpreted to include various aspects and reducing infant mortality rates is a part of it.

The Universal Declaration of Human Rights (UDHR) 1948³³ protects the right to life in Article 3. The ICCPR and other regional instruments amplify this right as well. Article 6 of the Convention on the Rights of the Child³⁴ provides that the member states have an obligation “*to ensure to the maximum extent possible the survival and development of the child*”.

Deaths in pregnant women and during child-birth along with increasing infanticide and other social malpractices take away the essence of life violating the most basic right to life of a person.

³¹ *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, (entered into force 3 January 1976) [ICESCR].

³² *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, (entered into force 3 September 1981) [CEDAW].

³³ *Universal Declaration of Human Rights*, GA Res 217A (III), UNGAOR, 3rd Sess, Supp No 13, UN Doc A/810 (1948) 71.

³⁴ *Convention on the Rights of the Child*, 20 November 1989, (entered into force 2 September 1990).

Poor reproductive practices along with a lack of awareness on sexual and reproductive health contribute to it. Religious and cultural practices have a large impact on this sector. Faith plays a major role in deciding the sexual and reproductive health policies and their acceptability. To effectively impact a population and its views, religion and religious leaders play an extremely powerful role. To do away with social malpractices, support from such leaders and their organizations is essential.

3.3 RIGHT TO PHYSICAL INTEGRITY

Having personal autonomy which means a right to have control over own bodies and related decision-making process. This includes the sexual and reproductive rights of a person. This right should be exercised with full information and free from intervention of any kind, unless it is harmful for the person exercising it.

Derogation from prohibition against cruel, inhuman and degrading treatment is not permitted as it is in violation of Convention against Torture. Sexual violence, domestic violence, human trafficking – these are acts of degrading inhumane treatment against a person’s physical autonomy and bodily integrity. Forced sterilizations also go against the physical integrity of a person. Such sterilizations in disabled persons are gravely inhumane and constitute torture. Article 7 of ICCPR, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment³⁵ and the various regional instruments prohibit and prevent torture and any kind of inhumane, degrading treatment. These provisions discuss not just physical torture, but even include mental agony and pain caused.

If personal bodily integrity and autonomy of a person is violated, it is to be treated as grave violation. When pregnant women are denied access to quality health care services, it is a violation of her reproductive rights. If a pregnant woman is detained, she is to be treated humanely by giving access to decent medical facilities and healthcare services for herself and her newborn child. If a person is denied access to abortion when it can prove to be fatal to her life,

³⁵ *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984.

this situation is treated to be a violation of the right against torture and inhumane, degrading treatment.

Violence against women has been rampant all over the world. This is a major hindrance in realization of the reproductive rights of women. Female genital mutilation or cutting is a gruesome act of violence against women practiced in various countries. Religious and cultural beliefs contribute to it. Sexual assault, abuse, rape, acid attacks and other forms of violence against women have to be combated with the help of strong legislations and deterrent policies. Victims should be provided with support – physical and mental – along with monetary compensation. Awareness and sensitization campaigns and a change in the societal beliefs, practices and attitude are required for complete eradication of such crimes. For instance, marital rape should be criminalized in countries.

3.4 RIGHT TO MARRY AND START A FAMILY

The right to start a family does not necessarily mean the right to have children only. It goes beyond that to include the timing and spacing of children. The right to marry is limited by national legislations which have a minimum age of marriage. However, such minimum age of marriage should be the same for men and women. If not, it is a violation of the non-discrimination clauses as mentioned earlier. Different ages of marriage may cause disadvantages for girls and women in terms of education, employment and other welfare opportunities.

For marriages and starting a family, free full and informed consent of the persons involved is mandatory. Family planning policies have to adhere to the provisions of various international instruments. In cases of rape victims, a free choice should be available where they are asked to marry the rapist to reduce his liability/responsibility or whether they want to carry the pregnancy to term. Persons with disabilities should not be ignored when it comes to the right to marry and start a family. Forced abortions or sterilizations without consent, under the belief negating their sexual and reproductive health, are highly violative of their human rights.

The freedom to choose one's spouse is reflective of the reproductive rights of women. Access to information regarding contraceptives, family planning policies and other sex education measures should be initiated to sensitize, spread awareness and help people make free and informed reproductive health choices.

Article 23 of ICCPR and Article 19 of ICESCR recognize family as an integral part and building block of the society. This has also been affirmed in various regional instruments as well. Article 16 of CEDAW talks about prohibition of all forms of discrimination against women with regard to family and marriage.

3.5 RIGHT TO PRIVACY

Privacy is a fundamental part of the right to life of a person. With regard to sexual and reproductive health, privacy plays an important role because of the stigma and societal pressures attached to the various practices in this arena. To make free and informed decisions, privacy is to be ensured. Otherwise, lack of privacy while making such decisions can act as coercion.

Confidentiality is to be ensured when it comes to pregnancy, contraceptive choices, HIV positive status or visiting medical facilities. Failing to maintain confidentiality or disrespecting an individual's privacy is to be prevented in all circumstances. Practices such as authorization by spouses or medical personnel for exercising choices with regard to abortion are also seen as a violation of privacy.

Article 17 of the ICCPR states, *“no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation”*. Article 16 of the Convention on the Rights of the Child also provides for the freedom of child from *“arbitrary or unlawful interference with his or her privacy, family, home or correspondence”*. Various other regional instruments and international conventions have established the right to privacy as a fundamental right for all persons.

3.6 RIGHT TO INFORMATION AND EDUCATION

Information is necessary and essential to exercise any of the rights provided. If a person does not know about their rights, then they are not capable to exercise rights in a full fashion. For realization of reproductive rights, information is required as well. Information on sexual and reproductive health has several parameters to be followed – they should be age-appropriate, gender-neutral and not perpetuate stereotypical notions. Such information should be easily accessible and understandable. Complicated language does not serve the purpose of such information.

Everyone, including the vulnerable sections of the society, should have access to information regarding family planning, counselling and governmental policies. Full information should be available in all languages regarding the legislations on medical termination of pregnancy along with other contraceptive measures. Such information should also highlight the risks and benefits of such procedures as well.

Not just information, education also plays a vital role in determining decision making regarding sexual health and choices. An educated individual will understand the pros and cons of contraceptives, the health benefits of spacing among children and the risks involved if proper medical advice is not taken. Education helps in improving reproductive health. Informed reproductive choices make further education also possible for women.

Early/child pregnancies can be avoided as well with information and education. Sexual education to adolescents and children can help in preventing child sexual abuse, diseases like HIV/AIDS and sexually transmitted infections, early pregnancies and help them make informed choices about their bodies without giving into peer pressure. Trafficking of women and child can also be prevented with information and awareness campaigns. Vulnerable sections of the society, persons with disabilities can fully exercise their sexual and reproductive choices if they have the access to information. Consent for medical procedures should be taken in an informed fashion by explaining the details of the procedure to be performed and its repercussions on the health and life of the individual.

Article 19 of ICCPR talks about the right to, “*see, receive and impart information and ideas of*

all kinds.” Regional instruments also affirm this right with special reference to children and persons with disabilities. Article 10(h) of CEDAW stresses on the right to, “*access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning*”.

3.7 RIGHT TO HIGHEST ATTAINABLE STANDARD OF HEALTH

Right to sexual and reproductive health is a part and parcel of right to health and enhancement of women’s rights. According to the Committee on Economic, Social and Cultural Rights, “*the right to health is an inclusive right, extending not only to timely and appropriate health care, but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health*”.³⁶ The General Comment No. 14 of the Committee also talks about 3AQ – availability, accessibility, acceptability and quality.

Article 12 of ICESCR talks about the right to highest attainable standard of health for all individuals. Article 24 of the Convention on the Rights of the Child and Article 25 of the Convention on the Rights of Persons with Disabilities³⁷ discuss this same right for children and for persons with disabilities respectively. Article 12 of CEDAW provides for no discrimination against women while accessing healthcare and other services. Several regional instruments also highlight the right to health and access to medical facilities.

Healthcare does not just include access to medical facilities during pregnancy. It should take care of the post-natal period and other gynaecological requirements of a girl/woman throughout her life. Delivery of child, still-born babies, and post-partum depression – all of these should be addressed while discussing obstetric care. Menstruation and hygienic practices, safe sex habits, prevention of sexually transmitted infections, and consent – these should be a part of the sex education to be imparted to adolescent girls. Access to counselling services also forms a part of

³⁶ Para. 14 of General Comment No. 14 on the right to the highest attainable standard of health, 2000.

³⁷ *Convention on the Rights of Persons with Disabilities: resolution / adopted by the General Assembly, 24 January 2007.*

right to highest attainable standard of health.

Unsafe abortions and increasing maternal mortality rates hinder the right to highest attainable standard of health. To tackle this issue, awareness and sensitization programs are extremely effective. Child marriages give way to early pregnancies due to lack of information and sex education. Lack of legislation and its faulty implementation is a major roadblock. The importance of consent should be amplified to minimize sexual violence and crimes. Minimum legal age for marriage should be legislated. It should be same for both boys and girls. Such legislation will also help in reducing early pregnancies. Breast feeding should be promoted and encouraged as it is beneficial for both the child and the mother. All the required medicines should be easily accessible and available – especially in rural areas and to vulnerable sections of the society.

A holistic approach should be taken when it comes to sexual and reproductive health. A national health policy must be framed in all the states for enhancing the right to health provisions. Public health services and infrastructure should be advanced and improved to provide for all the necessary sexual and reproductive health services – even in the most remote areas of the country. It should be ensured by the state that the resources and services are distributed equitably across the country through all sections. Barriers to access of healthcare should be removed.

3.8 RIGHT TO BENEFIT FROM SCIENTIFIC PROGRESS

Article 15 of ICESCR establishes that all individuals have the opportunity and access to benefit from scientific progress, development in various spheres and the application of the same. Scientific progress in the field of healthcare has helped reduce maternal mortality rates and made various kinds of conception as well as contraception options available. It has widened the scope of sexual and reproductive health all across the globe. Assisted reproduction facilities have made exercising reproductive rights easier for various individuals and partners.

Medical advancements make it possible to save lives and create new lives. This would not have been possible a few years ago with the lack of scientific progress in the field. Treatments for

infertility and other medical conditions are available due to certain technological developments in the reproductive arena. Assisted pregnancies have made it possible to give birth without passing the HIV infection to the offspring. This is a major step as it helps in retaining the quality of life of the offspring. However, this scientific progress and advancements are usually limited to the rich. Poor people do not have the accessibility to such technology due to the lack of money. This creates a huge divide.

Commercial surrogacy is not legally recognized in all the countries. The role of a woman while birthing a child is seen as a nurturer. To make money out of her reproductive faculties is not perceived well by various cultural, religious and societal agencies. However, commercial surrogacy tends to exploit women from vulnerable and poor sections. Denying women the right to use their body the way they want to is against the sexual and reproductive rights available to her as an individual. A balance between both the approaches is required with concrete policies to regulate this sector.

Reproductive rights, as we have seen above, are a culmination of various rights available across the international conventions, treaties and regional instruments. It comprises of civil, political rights as well as economic, social and cultural rights. It affects individuals and couples equally. All the various legal rights together comprise of the reproductive rights as we know of today. Disrespect of any one of the given rights negatively impacts the sexual and reproductive health of the people and harms the sustainable growth and development in the country and the world.

The universality of human rights cannot be negated. It is applicable to all human beings all across the world. Vulnerable sections are not to be excluded or ignored. The varied kinds of human rights cannot be arranged in a hierarchical fashion. Each one of the rights is as important and the realization of each right is crucial to enjoy the other rights. Human rights are interdependent in nature.

CHAPTER – IV

LEGAL FRAMEWORK ON REPRODUCTIVE RIGHTS IN INDIA

India is a signatory to various international treaties and conventions which affirm and emphasize on different kinds of human rights and related issues. This has created an obligation to ensure that these issues are tackled within the domestic legal framework of the country. National policies have also addressed them in an eloquent fashion. Laws regarding medical termination of pregnancy/abortion, sex-selective discrimination, domestic violence and other kinds of sexual violence discuss the reproductive rights and their enhancement for the individuals in the country.

Various concerns have been put forward about the insufficiency of the laws and the requirement of revision. However, enforcement mechanisms are required to be questioned as well. It is pertinent to mention that the country's healthcare system suffers from poor infrastructure and lack of funding as well. There has been an increased privatisation of the medical industry in India. The quality and accessibility of healthcare services has deteriorated with regard to the poor population of the country which is in majority.

As we have already discussed, right to reproductive and sexual health entails a variety of human rights like right to life, personal liberty, information, bodily integrity, autonomy, etc. All of these rights are interconnected and interdependent in nature. While emphasizing the importance of reproductive rights in India, women have been in the limelight of a larger framework of issues that affect them on a daily basis. The variety of economic, social and cultural aspects of the country has to also be considered. However, as the major impact of decisions of reproductive health is on the individual, free, full and informed decision-making is mandatory.

4.1 CONSTITUTIONAL PROVISIONS – REPRODUCTIVE RIGHTS

In India, there are an amalgamation of laws and policies that promote reproductive rights and sexual well-being. These are related to employment, education, nutrition, protection from sexual crimes and healthcare. The Constitution of India has provisions entailing these aspects as well. It provides for fundamental rights which are enforceable in nature and there exists no hierarchy between the given rights.

Part III of the Indian Constitution contains ‘fundamental rights’. They are considered to be fundamental in the growth and well-being of an individual. Certain rights among these are available to both – citizens and non-citizens (persons). Article 13 of the Indian Constitution puts a prohibition on the State³⁸ from making any law that flouts the fundamental rights given under this chapter. A few examples of the rights given are – right to equality, right to life and personal liberty, freedom of speech and expression, right to constitutional remedies, etc.

Equality before law and equal protection of law – this has been provided explicitly under Article 14³⁹ of the Constitution. Articles 14 to 18 contain the right to equality and non-discrimination clauses. Article 15(1) prohibits discrimination against citizens on any of the grounds of caste, race, religion, sex, place of birth. Special provisions for women and children and social and economically backward classes have been provided under other clauses of Article 15 as well. Equality of opportunity in public employment and no discrimination, on any of the grounds like religion, race, caste, sex, place of birth, or descent of the individual, is permitted under Article 16. Right to equality and non-discrimination clauses are the backbone of the reproductive rights of an individual. Without it, none of the other rights can be realized or exercised fully.

Article 21 states, “*No person shall be deprived of his life or personal liberty except according to procedure established by law.*” This article is of utmost importance to ensure the well-being, growth and development of an individual.

Right to health or reproductive rights are not explicitly mentioned in the list of fundamental rights under the Indian Constitution. There have been various judicial pronouncements by the Supreme Court of India and the various High Courts of India which emphasize on the right to health and medical facilities to be implicit in the right to life given under Article 21 of the Indian Constitution. The healthcare system and the medical professionals of the country are under an obligation to provide treatment and protect lives of people in different situations.⁴⁰ Reproductive autonomy is an integral part of personal liberty and therefore, a part of Article 21. This has been

³⁸Article 12 of the Indian Constitution provides for what comes under the definition of State - “Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.”

³⁹Article 14 of the Indian Constitution states, “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India”.

⁴⁰Parmanand Katara v Union of India, 1989 SCC (4) 286 (India).

held by the Supreme Court of India in *Suchita Srivastava and Another v. Chandigarh Administration*.⁴¹

Apart from the fundamental rights, the Indian Constitution has the Directive Principles of State Policy (DPSPs) in Part IV which are non-enforceable in nature. There are various provisions under this section which are related to the promotion of right to health and related issues. Even though these provisions are non-justiciable, they provide a guiding light to the administration of the country and help in formulation of laws and policies which are beneficial for the country.

Article 47 provides for the prime responsibility of the State to raise the nutrition levels and the standard of living of the people in the country. Article 39(e) is related to the health and strength of workers – men and women. It also prohibits child labour and abuse of children who are forced to work due to economic necessities or hardships. Article 39(f) is for the healthy development and betterment of children. Article 42 states, “*The State shall make provision for securing just and humane conditions of work and for maternity relief*”. Article 45 discusses the right to education of children below the age of six years. All of these provisions are linked to right to health and promotion of reproductive health.

The Constitution of India does not have a specific provision on right to health or reproductive rights. But if the above-mentioned articles are studied and interpreted, it is safe to say that the Constitution does not deny or take away the reproductive rights of an individual. On the other hand, the provisions direct towards the sexual well-being of an individual by providing the necessary rights required for it.

4.2 ABORTION - MEDICAL TERMINATION OF PREGNANCY ACT, 1971

The Medical Termination of Pregnancy Act, 1971⁴² (hereinafter referred as MTP Act) is the governing law on abortions in India. It provides for certain conditions which need to be fulfilled for legal abortions to be carried out in the country. The Section 3 of the Act provides that registered medical practitioners can only perform abortions if they are of the view that the

⁴¹ (2009) 9 SCC 1 (India).

⁴²The Medical Termination of Pregnancy Act, 1971, No. 34, Acts of Parliament, 1971 (India).

pregnancy (up to twenty weeks), if continued, will be risky for the mother or the child. Likelihood of grave injury – mental or physical to the mother or complications/abnormalities in the child is to be considered by the registered medical practitioner.

Under twelve weeks of pregnancy, the authorization of a single medical practitioner is essential. However, if the pregnancy is between twelve to twenty weeks, then the recommendation of two registered medical practitioners is needed. If the pregnancy has exceeded the twenty-week mark, then Section 5 of the Act allows abortion - where if the procedure is not performed immediately, it can be dangerous to the pregnant woman's life.

Section 3 and 5 of the Act require permission from medical practitioners who are registered. This is a restriction on the individual autonomy and bodily integrity of the woman where she is not allowed to take such decisions individually. Even though consent of the spouse is not required, third party authorization by the medical practitioner(s) is a breach of privacy of the woman. However, the justification behind these restrictions is – to avoid sex-selective abortions and to protect woman's health and well-being.⁴³

Reformative attitude and amendments is the need of the hour. These provisions infringe on the reproductive rights of women. Doctors should not be provided with the final discretion over decisions on a woman's body. Recognition of only medical grounds for abortion and not legitimizing any other reason for termination of pregnancy is a serious violation. Without a medical ground, a woman is not allowed to terminate her pregnancy legally after the period of twenty weeks. At no point in her life, a woman can choose to end her pregnancy without authorization/consent from any other individual being required. With advanced technologies in the present world, this Act has failed in its purpose. A woman has the right to privacy and to make bodily choices, this right should not be abridged.

After twenty weeks, only serious/grave cases and medical risks are considered to be grounds for allowing the abortion. Other grounds mentioned under Section 3 are not sufficient for legal abortions post twenty weeks. The major drawback of this Act is that it only looks at medical hardships and does not consider economic inconveniences or other personal concerns while

⁴³ Arijit Ghosh & Nikita Khaitan, *A Womb of One's Own: Privacy and Reproductive Rights*, ECO. & POL. WEEKLY, Vol. 52, Issue No. 42-43 (2017).

allowing the abortion procedure. Marital rape⁴⁴ has not been yet recognized in our country and forced pregnancies for want of children add to the misery of married woman who are strained to conceive and carry to term against their own personal choice.

On 17th March 2020, the Medical Termination of Pregnancy (Amendment) Bill, 2020 was passed in the Lok Sabha and consequently it was passed by the Rajya Sabha on 16th March 2021. However, the Presidential assent for the Bill is awaited. This Bill has previously lapsed thrice in the Indian Parliament.

After various writ petitions, social pressure and opposition against the present Act, this Bill was deliberated upon by medical practitioners, social activists, and non-governmental organizations (NGOs) and other civil society actors along with the legislators of the country. This Bill aims to tackle the loopholes of the existing Act which does not allow abortions after the twenty week mark even if certain severe congenial issues appear after the said mark.

In this Bill, abortion is allowed up to twenty weeks after the authorization of a single registered medical practitioner. It also allows abortion in twenty to twenty-four weeks of pregnancy after authorization by two registered medical practitioners in special circumstances. It also authorized the States to set up Boards and decide if termination of pregnancy is to be allowed beyond twenty-four weeks in cases of abnormalities of the foetus. This Board is to be comprised of doctors and specialists as determined by the State governments. A time frame within which the Board has to make its decision is not provided.

This amending Bill protects and provides for informational privacy of the woman. If the doctor reveals the details of abortion performed on any of the pregnant woman to any person apart from those authorized by law, he is held to be violating the rights of the woman. However, this Bill also does not recognize any other reason apart from medical grounds like risk to the health of the mother or child, contraceptive failures or other medical complications. The Bill does not include transgender persons who may also at times require termination services.⁴⁵

⁴⁴Section 375, Indian Penal Code (1860) states, “*Exception —Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.*” Marital rape of a wife below the age of 15 years is not legally recognized in India.

⁴⁵[The Medical Termination of Pregnancy \(Amendment\) Bill, 2020](#), PRS LEGISLATIVE RESEARCH (May, 2021), [The Medical Termination of Pregnancy \(Amendment\) Bill, 2020 \(prsindia.org\)](#).

Deaths caused by unsafe abortions have increased due to legal restrictions on abortion and unavailability or inaccessibility of healthcare facilities. Legislations on reproductive health should create a balance between reproductive autonomy of woman and the state interest of health of women and children in general. Unsafe abortions should be prevented with awareness creation, removal of social stigma around abortions and increasing accessibility of the services.

4.3 COMMERCIAL SURROGACY IN INDIA

With assisted reproductive technology (ART) and its advancements, surrogacy has gained popularity among people. Reproductive rights also include surrogacy as a method to have children. Various discussions have surrounded the issue of surrogacy in its legal and ethical aspects. Custody of children and parenthood has been upon debated widely. Discussing these aspects, the Surrogacy (Regulation) Bill 2020 was approved by the Union Cabinet on February 26th 2020. It has taken into consideration several recommendations for better legislative action on the issue of surrogacy in India.

The surrogates have been seen in two major opposing views – on one hand, there is the reproductive right of the individual over her own body and decisions and on the other hand, the exploitative nature of commercial surrogacy is highlighted. Poor women from backward and vulnerable sections of the society tend to be oppressed more in this sector. Abandonment of children, exploitation and non-payment of dues are common problems.

India has seen a rise in ‘surrogacy tourism’ where international couples visit the country for finding an appropriate surrogate mother – cheap reproductive labour is the major factor behind it. Skilled medical doctors, low costs, lenient regulations have attracted a lot of people from countries outside India. However, this has increased exploitation of the surrogates as well. Payments are not received on time and proper medical help post-partum is not provided. India was a gateway to inexpensive surrogacy for the world.

Soon after commercial surrogacy was legalized in India in 2002, the country became a breeding ground for transnational surrogacy. This led to excessive mistreatment of surrogates with meagre payments and poor healthcare facilities available to them. This was due to the lack of any law

governing such kind of actions or creating accountability for the stakeholders. At first, the Surrogacy (Regulation) Bill 2016 was presented and then further sent to a specialized committee for suggestions.

After various suggestions, the Surrogacy (Regulation) Bill was presented in 2019. Under the Bill, commercial surrogacy is completely prohibited. This 2019 Bill did pay attention to the recommendations and was similar to the 2016 Bill. The Bill allowed altruistic surrogacy⁴⁶ in cases of proved infertility by either one of the partners or both partners in a couple. The other conditions provided were – the partners should be heterosexual and Indian married for five years and should not have any child of their own who is alive. There was an eligibility criterion for the surrogate mother too. She should be a close relative of the partners intending to become parents and a married woman with a child of her own possessing the necessary mental and physical health requirements within the required age group. Clinics performing such procedures had to be registered with the appropriate authority.⁴⁷ This Bill prohibits sex-selective surrogacy considering the disparities of the sex-ratio in the country. This Bill espoused for the creation of a National Board to regulate surrogacy in India.

The creation of a National Board for navigating through the surrogacy regulation in the 2019 Bill is appreciated. This Board would “advise the government on relevant policy matters, implement the rules and regulations made under the Bill, and set the minimum standards for physical infrastructure, laboratory, diagnostic equipment, and employees of the surrogacy clinics.”⁴⁸

This 2019 Bill was also referred to a Select Committee for recommendations. It recommended eliminating the ‘infertility’ and the ‘close relative’ clauses. This was to prevent coercion in Indian families, which would have led to women providing reproductive labour against their free will under family pressure. This Bill is very restrictive in terms of the required essentials from the intending parents as well as the surrogate mother. This can be seen as a hindrance in exercising the reproductive rights of an individual.

⁴⁶In altruistic pregnancy, only medical expenses and insurance during the pregnancy is provided. There is no other monetary compensation given to the surrogate mother. Commercial surrogacy involves monetary compensation also.

⁴⁷[The Surrogacy \(Regulation\) Bill, 2019](#), PRS LEGISLATIVE RESEARCH (May, 2021), [The Surrogacy \(Regulation\) Bill, 2019 \(prsindia.org\)](#).

⁴⁸Jaya Reddy, *Indian Surrogacy: Ending Cheap Labor*, 18 SANTA CLARA JOURNAL OF INTERNATIONAL LAW 92, 120 (2020)

“By banning commercial surrogacy, the Bill does not take into account the intersectional aspects of how the law would impact women’s right to their bodies. The altruistic model expects a woman to go through the physical and emotional tolls of surrogacy free of cost and only out of ‘compassion’. Such an expectation is paternalistic, unrealistic, and patriarchal in its approach. Its effect is the denial of a legitimate source of income to surrogates. This in turn severely limits the number of women willing to go through surrogacy, and indirectly denies intending parents the opportunity to avail of it. The proposed Bill also continues to deny this opportunity to LGBTQ+ persons, live-in couples, and single parents.”⁴⁹

A rights-based approach is required in the current scenario to deal with surrogacy in our country. State should act to preserve the reproductive and sexual health of individuals in the country. Post-partum care along with all the medical requirements of a surrogate should be looked after. The surrogate should not face any economic difficulty or loss of job due to the pregnancy. All expenses during the pregnancy should be compensated in an adequate manner. All these nuances should be considered for aiming at bodily integrity and reproductive autonomy of the surrogates as well as the right to parenthood of the intending parents. Proper legal and medical advice should be provided to all the stakeholders to prevent unequal bargaining power.

Critics have disregarded surrogacy as a practice on ethical and moral grounds. They are against the “commodification of a life” and the process of birth-giving which is considered to be an innate experience for the mother. The birth of a child should not be treated as manufacturing of a commodity. They are disinterested in the economic aspect of surrogacy and weigh down the emotional bits associated with it. Social ostracization of the surrogate mothers have heightened due to such beliefs as they are looked down upon as sex workers due to lack of any information regarding the process.

India should not go a step backward with the proposed surrogacy legislation and work on it with a progressive mindset. Black marketeering of surrogates and children should not be encouraged. The best interests of the surrogate mother, the intending parents and the child to be born should be considered in any legislation regarding surrogacy in the country. Reproductive slavery should

⁴⁹EeshanSonak& Sanvi Bhatia, *India's new Surrogacy Regulation Bill falls short of protecting bodily autonomy and guaranteeing reproductive liberty* , LSE HUMAN RIGHTS, (May 2021), [India's new Surrogacy Regulation Bill falls short of protecting bodily autonomy and guaranteeing reproductive liberty , LSE Human Rights.](#)

not be covered up and disguised as reproductive labour for financial necessity of the poor, illiterate and vulnerable in the country. The option of surrogacy should be available to all like single parents, unmarried partners, homosexual couples and not be restricted to hetero-normative structure of the society. If domestic laws and policies sufficiently regulate in the current scenario, the surrogacy industry can flourish in our country.

4.4 OTHER PROVISIONS REGULATING REPRODUCTIVE RIGHTS IN THE INDIAN LEGAL SYSTEM

Section 312 of the Indian Penal Code, 1860 states, “*Causing miscarriage.—Whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. Explanation. —A woman who causes herself to miscarry, is within the meaning of this section.*” This Section criminalizes abortion. However, the Medical Termination of Pregnancy Act, 1971 is considered to be an exception of this section. Based on this provision and lack of knowledge, abortion might be considered as a criminal activity by the unaware section of population in our country.

The Pre-Conception and Pre-Natal Diagnostics Techniques (PCPNDT) Act, 1994⁵⁰ provides for elimination of sex-selective abortions in the country. This is to maintain the sex-ratio of the country and prevent female foeticide which is rampant in the country even today. This Act aims to regulate the use of technology for sex-determination of the foetus and while dealing with other reproductive issues to maintain a healthy sex-ratio in the country. However, this Act should not act as a hindrance to access to abortions in genuine cases. Eliminating certain kinds of technology for sex-selection is no solution as with the advancement of science and technology, new ways of sex-determination have been developed. This Act was amended in 2003. Amendments would be required with every technological advancement that takes place. This

⁵⁰The Pre-Conception and Pre-Natal Diagnostics Techniques (PCPNDT) Act, 1994, No. 57, Acts of Parliament, 1994 (India).

serves to be futile in nature. Another impediment is the non-acceptance of the legislation in the society which damps its enforcement.

After and during the 1975 National Emergency, forced sterilisations were enforced in the country. For population control measures, India has promoted the two-child policy in the country. Such measures should not be coercive. Informed consent forms the basis of exercising reproductive rights in the country. Such a policy violates the reproductive autonomy of women. It leads to forced abortions and desertion of third child, if born. Such steps stunt the exercise and growth of reproductive autonomy in the country. Incentives, like financial benefits for carrying out such activities, are against the autonomy and bodily integrity of a person. “Tagging sterilization with such monetary benefits precludes individuals from making informed reproductive choice. In a country where over one-fourth of the population is below the poverty-line, disincentives tagged with basic human needs such as food, do not remain mere disincentives. Inevitably, they take on a coercive character.”⁵¹

As the COVID-19 pandemic rages on in the world, health infrastructure and its availability has suffered a great impact. During this global health pandemic, staying at home was advised and hospitals became inaccessible apart from cases of medical emergencies. This led to a rise in unsafe abortions as hospitals were out of reach. Privacy of individuals was also endangered as everyone was living with families in closed spaces. Apart from this, the pandemic also witnessed a rise in cases of domestic violence across the world. It can be said that sexual and reproductive health of individuals, especially women, cannot be ignored even during a pandemic situation.

India’s reproductive policies and framework have revolved around population control. Reproductive healthcare system has been unequal in terms of access and funding. On one hand, there have been evident mass sterilization camps, to prevent increase growth in population. On the other hand, there have been legislative curbs on access to abortions with prohibition on sex-selective abortions. India, as a country, has faced massive gender disparity along with population

⁵¹Simi Rose George, *Reproductive Rights: A Comparative Study of Constitutional Jurisprudence, Judicial Attitudes and State Policies in India and the U.S.*, 18 Student Bar Review 69, 78-79 (2006).

explosion. Women have been seen as child-bearing machines, which would provide children for manual help in agriculture or other family occupations.

Healthcare infrastructure of the country has been not efficient and accessible. Marginalized sections of the country's population are worse-hit when it comes to healthcare facilities and accessibility. This is due to lack of education and awareness among the people as well. Training of professionals, awareness and counselling sessions, alternative contraceptive methods available – all of this is necessary for the reproductive healthcare system to engage in its activities in an efficient manner. The gaps between the existing legal framework governing reproductive rights in the country and the enforcement as well as implementation of them have to be analyzed and also eliminated for better realization of reproductive and sexual health of individuals.

CHAPTER – V

JUDICIAL APPROACH ON REPRODUCTIVE RIGHTS IN INDIA

An individual's life decisions and health are heavily influenced by their freedom to make reproductive decisions and sexual well-being. In 1994, the International Conference on Population and Development Programme of Action recognized reproductive rights as human rights in terms of decision making with regard to number, timing and spacing of children along with the necessary information to make such decisions and access to healthcare services without any discrimination.

Reproductive rights include a variety of rights such as – right to life, non-discrimination, right to information and education, right to bodily integrity, right to access healthcare services. The realization of these rights creates an obligation on the State to take action for the same. Adequate measures have to be taken by the State to achieve the highest attainable standard of health for the individuals. For full attainment of reproductive autonomy, women have to be provided access to social and economic resources and capabilities to exercise and enjoy their rights in totality. There is an entire realm of civil, political, economic, social and cultural rights which have to be ascertained for enjoyment of reproductive rights by the individuals. For access to all these rights, judiciary plays a vital role in the country. It ensures justice and accountability among the citizens.

In India, courts have played a proactive role while recognizing reproductive autonomy and aspects of sexual well-being. They have worked to create a system at par with the international standards. Grievance redressal system is robust and highly functional in nature. Reproductive justice has been envisioned in a holistic manner in the country.

5.1 THE JUDICIAL APPROACH OF US COURTS ON REPRODUCTIVE RIGHTS

In the United States of America, the abortion debate amplifies the differences between the religious beliefs and protection of life on one hand and the right to reproductive freedom and choice on the other. The public discussions and debates on reproductive rights have been quite interesting. There is no explicit provision in the US Constitution regarding right to privacy. It is

considered to be part of as well as interpretation of right to liberty. The courts in the country have broadly interpreted the provisions and incorporated right to reproductive choices among them.

In *Grisworld v. Connecticut*⁵², it has been held that the reproductive choices should be free from unnecessary State interference and this is included in the right to privacy. Following this, various decisions of the courts have affirmed the non-requirement of third-party consent as it is violative of right to privacy. The lobbying of faith groups with pro-life and anti-abortion approach has been a part of the scenario in USA. Feminist movements asserting legalization of abortion has ascertained the pro-choice narrative. In India, abortion laws were usually never campaigned against by any such faith-based organizations.

In *Roe v. Wade*⁵³, the US Supreme Court tried to resolve the conflicting ideas surrounding the abortion debate in the country. In this case, a Texas law was challenged which made abortions, apart from medical necessity to save mother's life, illegal. The Court asserted that an unborn child/foetus has no constitutional personality and therefore, no right to life. It provided that right to abort is a part of right to privacy and the mental and physical health of a woman is impacted by pregnancy so unnecessary restrictions should not be imposed on the freedom of reproductive choice to be made. It also provided that the State should enhance the medical facilities and work on safeguarding health and potential life.

In *Planned Parenthood of Southern Pennsylvania v. Casey*⁵⁴, the "undue burden" test was proposed in which a woman had to prove such burden on her reproductive freedom. This decision was considered to be regressive in nature. It has been criticized that spousal consent is invalidated in the US and husband's interest in reproductive choices and procreation with wife has been stunted.

Involuntary sterilizations are a heinous crime against reproductive freedom and autonomy as it is irreversible in nature. It is motivation by concerns of population explosion and its required control. The US has a history of involuntary sterilizations. This was dealt with in the case of

⁵² 381 U.S. 479 (1965).

⁵³ 410 U.S. 113 (1973).

⁵⁴ 505 U.S. 833, 912 (1992).

*Buck v. Bell*⁵⁵. This case upheld a law which called for forced sterilizations of the “mentally defective”. The Court prioritized the interests of the community over the freedom of individuals in reproductive sphere and refused to view the law as a violation of privacy. However, there has been a change of attitude in the judiciary while dealing with matters of involuntary sterilizations.

In *Skinner v. Oklahoma*⁵⁶, the Court disregarded a legislation which called for sterilization of “habitual criminals”. However, the decision in *Buck v. Bell* was not overruled in this case. This was based on the fact that mental incapacities might be heredity in nature, so procreation should be controlled to prevent an influx of mentally defective population in society. Criminal tendencies do not have any hereditary effects, so sterilization was not considered necessary. This reeks of differential treatment and discrimination against vulnerable sections in the society.

It can be said that the US courts have worked to attain a balance between reproductive and sexual well-being of an individual along with the community interests of the society. It is based on libertarian ideas and beliefs. There has been a vast growth and improvement in the reproductive rights domain in the US.

5.2 OUTCOME OF PUTTASWAMY JUDGEMENT ON REPRODUCTIVE RIGHTS IN INDIA

On 24th August 2017, in *Justice K.S. Puttaswamy (Retd.) v. Union of India*⁵⁷, the Supreme Court of India established that right to life in Article 21 includes the right to privacy of an individual. This decision was taken unanimously by the nine-judge bench in this case. It also held that right to privacy is a part of other rights given under Part III of the Indian Constitution as well.

“The Puttaswamy judgement provides a wide affirmation of individual liberty and recognizes the right to privacy as safeguarding an individual’s autonomy by seeking to protect the person’s bodily integrity as well as her autonomous decision-making capacity. The Supreme Court unanimously was of the view that right to privacy includes personal autonomy of the mind and

⁵⁵ 274 U.S. 200 (1927).

⁵⁶ 316 U.S. 535 (1942).

⁵⁷ (2017) 10 SCC 1(India).

body and is not limited by informational privacy. Such a holding may result in constitutional challenges to several existing laws.”⁵⁸

This judgement affirms that the decision in *Suresh Kaushal v. Naz Foundation*⁵⁹ which upheld Section 377 of the Indian Penal Code 1860 was a “discordant one” and there seems to be no viable justification for denying an individual the right to privacy. The Protection of Children from Sexual Offences Act, 2012⁶⁰ (POCSO Act) and the Criminal Law (Amendment) Act, 2013⁶¹ also see the implications of the right to privacy judgment. These legislations increased the age of consent for sexual activities to eighteen years. However, this can be seen as a hindrance to exercise sexual autonomy for individuals below the age of eighteen years.

Section 19 of the POCSO Act creates an obligation on the healthcare professional to inform the police about any sexual crimes that have taken place or there is a possibility of such crime happening. This leads to a necessary duty being imposed on the healthcare professional to inform if a minor seeks access to abortion, contraception or any reproductive health related care, regardless of the choice of the girl. This provision can lead to unsafe abortions as the healthcare system will be inaccessible for minors in such cases. Section 357C of the Criminal Procedure Code⁶² requires the healthcare personnel to inform the police authorities about any sexual violence with respect to women taking place. This also creates inaccessibility and breach of privacy to a certain extent while availing reproductive healthcare services.

“The state can, of course, place limitations on fundamental rights, but these limitations must pass tests outlined in constitutional jurisprudence. Since privacy claims can be grounded in any of our fundamental rights, the bench affirmed that any limitations on privacy will be tested according to the fundamental rights which it infringes and the established jurisprudence on those rights. The bench separately highlighted Article 21, which guarantees the fundamental right to life and personal liberty, and entails a “just, reasonable, and fair” test (*Maneka Gandhi v. Union of India*

⁵⁸ ShefalikaNarain, *Aftermath of the PuttaswamyJudgement: ReproductiveRights in India*, VIVEKANANDA JOURNAL OF RESEARCH, July - Dec 2020, 1, 6.

⁵⁹ Civil Appeal No.10972 of 2013, India.

⁶⁰ The Protection of Children from Sexual Offences Act, 2012, No.32, Acts of Parliament, 2012 (India).

⁶¹ The Criminal Law (Amendment) Act, 2013, No. 13, Acts of Parliament, 2013 (India).

⁶² The Criminal Procedure Code, 1974, No. 2, Acts of Parliament, 1974 (India).

1978⁶³), that is, any law restricting Article 21 must be “just, reasonable, and fair” to remain constitutionally valid.”⁶⁴

With regard to The Immoral Trafficking (Prevention) Act, 1986⁶⁵, sex work in India is heavily regulated. This legislation prohibits solicitation in totality and reduces personal autonomy and bodily integrity of individuals who want to pursue sex work as an occupation. Also, the requirement of third-party authorization like the recommendation from registered medical practitioners for abortions under The Medical Termination of Pregnancy Act, 1971 is a breach of reproductive autonomy and privacy of an individual. After the Puttaswamy judgement, the State has to reconsider its legislation on the lines of right to privacy and its various aspects. The questions surrounding reproductive autonomy has to be fully addressed by the State. It has reignited discussions on abortion, surrogacy and other aspects of reproductive rights.

5.3 DECISIONS OF INDIAN COURTS ON MATTERS OF REPRODUCTIVE RIGHTS

In *High Court on its Own Motion v. State of Maharashtra*⁶⁶, the Bombay High Court affirmed that the woman’s right to bodily integrity is violated if she is asked to carry unwanted pregnancy to term against her wish. This affects her mental health and such a decision is protected under Article 21 of the Indian Constitution. An unborn foetus cannot be held on a higher pedestal than a living woman.

In the case of *Joseph Shine v. Union of India*⁶⁷, it was established that reproductive and sexual autonomy of a female is a part of her “inviolable core” and it reflects her right to privacy and dignity under Article 21 of the Indian Constitution. This case declared Section 497 of the Indian Penal Code, 1869 as unconstitutional and decriminalised adultery in the country.

⁶³ AIR 1978 SC 597 (India).

⁶⁴ Arijit Ghosh & Nikita Khaitan, *A Womb of One’s Own: Privacy and Reproductive Rights*, ECO. & POL. WEEKLY, Vol. 52, Issue No. 42-43 (2017).

⁶⁵ The Immoral Trafficking (Prevention) Act, 1956, No. 104, Acts of Parliament, 1956 (India).

⁶⁶ 2017 Cri.L.J. 218 (Bom) (India).

⁶⁷ 2018 SCC OnLine SC 1676 (India).

With the recent judgements, the reasoning behind the decision of *Javed v. State of Haryana*⁶⁸ can be questioned. In this case, the Supreme Court did not recognize the right to decide the number of children a couple wishes to have as a part of any fundamental right. The Court emphasized on the need for population control and the measures taken with this goal in mind. The two-child policy is not considered to be violative of constitutional provisions as it has the aim to control population growth which is for the benefit of the community. However, with recent judgements, reproductive autonomy to decide the number, timing and spacing of children has been highlighted.

In *Indian Young Lawyers Association v. State of Kerala*⁶⁹, It was realized that the menstrual status of a woman is a part of her private life and excluding her on such a basis is violative of her right to dignity as an individual. This also perpetuates the practise of untouchability with the belief of “purity and pollution” which is strictly prohibited under Article 17 of the Indian Constitution.

In *Sandesh Bansal v. Union of India*⁷⁰, the High Court of Madhya Pradesh found that “shortage not only of the infrastructure but of the manpower” for implementation of maternal health schemes led to the “inability of women to survive pregnancy and child birth [which] violates her fundamental right to live as guaranteed under Article 21 of the Constitution of India.” Right to health includes right to reproductive and sexual health and well-being and it is considered to be an important part of right to life under Article 21 of Indian Constitution.

In *Devika Biswas v. Union of India*⁷¹, it was held that right to reproductive health includes “the capability to reproduce and the freedom to make informed, free and responsible decisions. It also includes access to a range of reproductive health information, goods, facilities and services to enable individuals to make informed, free and responsible decisions about their reproductive behavior.” In this case, public interest litigation was filed with regard to unsafe sterilization medical procedures being conducted in the states of Bihar and Chhattisgarh. The Court observed that vulnerable sections of the society are exploited in such programs as they do not have proper information to provide their consent. Incentives provided in such cases act as coercion. The

⁶⁸ (2003) 8 SCC 369 (India).

⁶⁹ 2018 SCC OnLine SC 1690 (India).

⁷⁰ W.P. No. 9061 of 2008 (Order dated 6 February 2012) (India).

⁷¹ (2016) 10 SCC 726 (India).

Court took note of the hazardous and filthy nature of sterilization treatments, as well as the deaths that resulted in sterilization camps around the country. The right to choose sterilization based on informed consent was included in the scope of reproductive rights under Article 21 of the Indian Constitution, according to the Court.

In *Air India v. Nergesh Meerza*⁷², it was held by the Supreme Court that retirement of airhostesses after their first pregnancy, as a part of the regulations, was against the right to equality under Article 14 of the Indian Constitution. The terms of service prohibited marriage up to four years and terminated employment in case of third pregnancies. These provisions were acceptable on the grounds of upbringing and best interests of children. However, in *Navtej Singh Johar v. Union of India*⁷³, this reasoning was questioned to be discriminatory and unequal as the burden of the family lay on the women perpetuating stereotypical notions.

Motherhood is an integral part of a woman's life and she cannot be asked to choose between her employment and her procreative decision to be a mother. "The Delhi High Court in *Municipal Corporation of Delhi v. Female Workers (Muster Roll)*⁷⁴, stated that although the directive principles of state policy are unenforceable, Article 42 can be used to determine the legal validity of the petitioners' claim to maternity benefits. The Court found that the Maternity Benefit Act, 1961 aims at achieving a just social order by providing all the facilities to women employees that they are entitled to in order to deal with the state of motherhood in a dignified and peaceful manner, without fearing penalties for forced absence during the pre-natal or post-natal period."⁷⁵

In the issue of access and use of contraceptive measures and information on it, the Supreme Court held in *Suchita Srivastava v. Chandigarh Administration*⁷⁶ that the reproductive freedom of an individual is protected under the Constitution of our country. This right is inclusive of use of contraception or other birth-control methods and refusal of any kind of sexual activity. The Supreme Court looked into the legality of the High Court's order, which ignored the woman's permission while ordering the termination of her pregnancy.

⁷² (1981) 4 SCC 335 (India).

⁷³ (2018) 10 SCC 1 (India).

⁷⁴ (2000) 3 SCC 224 (India).

⁷⁵ APARNA CHANDRA et al, SECURING REPRODUCTIVE JUSTICE IN INDIA – A CASEBOOK, 9 (Centre for Const. Law Policy and Governance) (2019).

⁷⁶ (2009) 9 SCC 1 (India).

In a matter of ban on advertising and sale of emergency contraceptives, the Kerala High Court held in the case of *Krupa Prolifers v. State of Kerala*⁷⁷ that sale of such pills without prescription is not illegal as it does not cause abortion as per the Medical Termination of Pregnancy Act, 1971. A group that claims its major goal and purpose is to defend, maintain, and uphold the dignity of every human being from conception to natural death had filed a writ application in the Kerala High Court demanding the ban.

The Supreme Court issued guidelines for all the states to implement while dealing with the issue of sterilizations in *Ramakant Rai v. Union of India*⁷⁸. It provided for a checklist of questions for the doctors to ask the patients before performing the procedure along with assuring the consent of the person. Proper regulation of the methods used for the procedure and quality checks should be assured. In this decision, the Court criticized the non-uniformity in procedures followed by the states for implementation of the sterilization policy.

*Baby Manji Yamada v. Union of India*⁷⁹ was the first surrogacy case heard by the Supreme Court. A non-governmental organization (NGO) filed a case in the Rajasthan High Court opposing the baby's grandmother being given custody of Baby Manji (who was born through a surrogate mother). Because there was no law controlling surrogacy in India, many illegalities were unfolding, and the surrogacy contract was effectively a money-making racket and unlawful, according to the claim. In this case, the main issue was who would be entitled to custody of the child delivered as a result of a surrogacy arrangement. The Supreme Court did not reach a decision on the matter. This appears to be primarily due to concerns about the NGO's *locus standi* in approaching the Rajasthan High Court to challenge the child's custody. Several terms regarding surrogacy – medical and legal – were discussed by the Court in this judgment.

In *Rama Pandey v. Union of India*⁸⁰, the Delhi High Court emphasized on no difference between birth, adoptive and commissioning mothers while discussing the underlying principle behind maternity and paternity leaves. In addition, the court determined that statutes and standards should be modified to reflect contemporary technology and societal norms. The Court also

⁷⁷ MANU/KE/0499/2009 (India).

⁷⁸ (2009) 16 SCC 565 (India).

⁷⁹ (2008) 13 SCC 518 (India).

⁸⁰ (2015) 221 DLT 756 (India).

considered the influence of the idea of "best interests of the child" in assessing a commissioning mother's right to maternity leave in its ruling.

An HIV positive lady was 18 weeks pregnant as a result of sexual exploitation in *X v. Govt of NCT of Delhi*⁸¹. The woman was placed in a government protection home, and her plea for an abortion was initially denied by the authorities. The High Court allowed her pregnancy to be terminated, citing Section 3 of the Medical Termination of Pregnancy Act 1971, as well as her willingness to terminate a pregnancy that was the product of rape, as well as the emotional, physical, social, and economic hardships that the lady was likely to endure if the pregnancy was continued.

The Supreme Court stressed a woman's right to reproductive autonomy and physical integrity in *Meera Santosh Pal v. Union of India*⁸², stating that this includes the right to take any means necessary to save her own life. The state of the baby, according to the Medical Board, was not compatible with extra-uterine life, and the petitioner's health would be jeopardized if the pregnancy continued. As a result, the Court allowed the termination of a pregnancy that was dangerous to the mother.

Post-twenty week abortions require permission from the Supreme Court of the country which sets up a medical board to decide the same. There are several instances of pregnancy due to rape and minors being pregnant. All of these cases reflect a lack of information and awareness and lack of accessibility to healthcare facilities. Complications in pregnancy can be avoided early on if people are provided adequate sex education to realize the problems.

The Supreme Court in *Independent Thought v. Union of India*⁸³ held that the difference between married and unmarried girls is not needed and non-natural. In the public interest, the petitioner society brought proceedings under Article 32 of the Indian Constitution to challenge the exception created under Section 375 of the Indian Penal Code, 1860 for married girls aged 15 to 18. The Court was asked to decide whether sexual intercourse between a man and his wife, who is a girl between the ages of 15 and 18, constitutes rape. The Court struck down this provision. The Court rejected the argument that child marriage is a part of society and custom, especially in

⁸¹ 2013 SCC OnLine Del 6473 (India).

⁸² (2017) 3 SCC 462 (India).

⁸³ (2017) 10 SCC 800 (India).

light of rising awareness of the risks and damages involved. Traditions and norms should evolve with time.

In the 2013 case of *Hallo Bi v. State of Madhya Pradesh and Others*⁸⁴, the High Court of Madhya Pradesh reinforced the necessity of allowing rape victims to have abortions without court approval, 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.”

The Supreme Court established instructions in *R. D. Upadhyay v. State of Andhra Pradesh*⁸⁵ about the care of pregnant women held in prisons. The standards cover medical care for pregnant women in prison, nutritional needs for pregnant women and their children, delivery procedures, and keeping children in prison.

The Supreme Court's judgment in *Samar Ghosh v. Jaya Ghosh*⁸⁶ is the definitive verdict on whether or not denial of sex constitutes "cruelty." Noting that a all encompassing definition for what constitutes "mental cruelty" could not be offered, the Court enumerated a few conditions that, in its judgment, amounted to such cruelty. One of the grounds was a spouse's refusal to have sex for a "significant period" of time without good explanation. Another factor was one of the partner's unilateral decision not to have children.

The Punjab and Haryana High Court was asked in *Dr. Mangla Dogra v. Anil Kumar Sharma*⁸⁷ if the husband's express consent is necessary before his wife's pregnancy is aborted. In the situation of a married woman, the court held that an unintended pregnancy can be terminated with solely the lady's consent. The court also acknowledged the wife's reproductive choice, ruling that permission to consensual sex does not entail consent to give birth to a child conceived as a result of that sexual intercourse.

⁸⁴ 2013 Cri LJ 2868 (MP) (India).

⁸⁵ Criminal Appeal No. 652/2008, decided on Feb. 01, 2016 (Guj.) (India).

⁸⁶ (2007) 4 SCC 511 (India).

⁸⁷ ILR (2012) 2 P&H 446 (India).

Over the last several years, the country's courts have diligently worked on emphasizing reproductive rights of women as a fundamental part of right to life of an individual. It has recognized the right to equality, right to dignity and right to information in the various decisions taken. Various aspects of reproduction have been deliberated upon – abortion, contraception, marriage, consent, violence, education.

Though the decisions are not uniform in nature, but they act as a guiding light for the matters relating to reproductive autonomy and bodily integrity of individuals. Even as litigation has its drawbacks, such as long timelines and difficulty putting decisions into practice, the Indian courts' strong acknowledgement of reproductive freedom as fundamental rights has created a responsibility for the state to move away from population control strategies and confront exclusionary stereotypes that limit women's power.

CHAPTER – VI

CONCLUSION AND SUGGESTIONS

In this chapter, the researcher has endeavoured to present the findings and conclusion arrived at as a result of the doctrinal study undertaken. Some suggestions have been put forward by the researcher as well.

6.1 RESEARCH FINDINGS

The key findings of this study are drawn after a careful examination of the issues surrounding reproductive rights based on the research questions. Though reproductive rights are available to all irrespective of gender, but it has major implications on women in general circumstances. Women are often seen as nurturers and mothers, this is due to their reproductive capabilities and if any woman or girl is unable to conceive or give birth, they are shunned from the society for not being ideal as per their definition. The consequences of unavailability or inaccessibility of reproductive rights have physical, psychological, sociological as well as economic implications.

The primary goal of international legal instruments is to ensure that human rights are universally capable of being exercised. The international declarations and conventions like the *Universal Declaration of Human Rights*, *Convention on the Elimination of All Forms of Discrimination against Women*, *International Convention on Economic, Social and Cultural Rights* are significant instruments for ensuring human rights throughout the globe. The provisions of these instruments have been decisive in ensuring access and information dissemination of reproductive rights. Various international and regional bodies are constantly working and trying to ensure that violations of reproductive rights are minimized and information along with sex education is easily available to prevent any further violation or loss of life.

At the national level, there is no consolidated legislation which deals with all the reproductive rights and its legal aspects. However, the *Medical Termination of Pregnancy Act, 1971* provides for a detailed description of the abortion process and the necessary requirements. However, this Act has been subject to criticism for third-party authorization by the registered medical practitioners. India has completely banned commercial surrogacy under the *Surrogacy*

(Regulation) Bill and put up a series of necessary requirements for altruistic surrogacy. Under the *Constitution of India*, Article 21 protects the right to life and personal which is inclusive of right to privacy and reproductive autonomy.

With the global health pandemic going on, health is in the primary focus of all individuals, governments and organizations. Reproductive and sexual health forms an integral part of good health of a person. Access to reproductive healthcare, contraceptive procedures and other necessary requirements of sexual well-being should not be hindered in such a situation of global crisis. Reproductive health is not openly discussed due to the stigma associated with it. However, this should not lead to inaccessibility and cause health complications. Otherwise, it would be a grave violation of human rights of an individual.

Apart from the legislative framework, the judiciary has played an active role while determining the reproductive well-being of individuals. In the cases brought before it, the Hon'ble Courts have passed various landmark and defining judgments and issued guidelines for regulation of aspects of reproductive rights of individuals. However, due to lack of awareness and absence of effective enforcement mechanisms, the implementation has been sidelined or ignored.

6.2 CONCLUSION

With the active role played by the judiciary along with the development of legal framework with regard to reproductive rights, there has been a huge leap towards ensuring sexual well-being of women. International organizations have constantly been working to effectively realize the goals of reproductive health while increasing accessibility and availability of healthcare facilities. Dissemination of reliable information has been the key to achieving these goals.

Realization of all aspects of reproductive rights is an urgent necessity for protection of human rights guaranteed under the international and national instruments. Therefore, governments and other international as well as regional organizations should act with due diligence to ensure effective implementation of acceptable standards for healthcare facilities and spread awareness and required information for prevention of maternal deaths, crimes of sexual nature and other complications with regard to reproductive health.

6.3 SUGGESTIONS

After a comprehensive study of the concept and its related aspects, following are some of the suggestions which the researcher has put forward that may help in promotion of reproductive rights in the society.

- **States should work on achieving equality and non-discrimination with regard to sexual and reproductive health for all**

Through a variety of policies, states should design and implement measures to eliminate prejudice in the field of sexual and reproductive health. It should take steps to guarantee that vital health care for women, such as pregnancy-related services, are both legally and practically available, accessible, inexpensive, and of high quality. Third-party authorization from partners or medical professional should be eliminated. Certain forms of sexual activity which is consensual in nature should be decriminalized. Ethnic, racial minorities, persons with disabilities and other vulnerable sections should be protected from exploitation such as involuntary sterilizations and abortions. Steps should be taken to involve women in policies relating to their sexual and reproductive health. Access to justice for people who have been denied services, goods, or information related to sexual and reproductive health should be guaranteed.

- **States should take steps to ensure that everyone has access to full, scientifically correct and unbiased information about contraceptive techniques and such services should be available**

States should adopt a national policy that includes measures to guarantee that contraception information and resources are provided to everyone. For effective implementation, adequate monetary, human, and administrative resources should be allocated. Involuntary and forced contraceptive procedures should be prohibited. Conscientious objection by a healthcare provider or pharmacist should not prevent access to information and services.

- **Availability and access to underlying determinants of a healthy pregnancy and childbirth should be ensured**

Adequate nutrition, drinking water, education, transportation facilities, sanitation are certain essential requirements of a healthy pregnancy. Prenatal care, professional birth attendance, emergency obstetric care, and necessary drugs and technology for sexual and reproductive health should all be readily available and of high quality. Budgetary allocations should be sufficient for proper implementation. States should collect, evaluate, and disseminate disaggregated data needed to identify and address the chief reasons of maternal mortality and morbidity, both direct and indirect. Such policies should be eliminated which prioritize the foetus over the life and health of pregnant women and girls. Harmful practices such as early marriages and female genital mutilation should be prevented and prohibited. Preventable health risks and complications should be avoided. Accountability in cases of failure of healthcare machinery should be discussed.

- **Unsafe abortion procedures and other health hazards should be avoided**

States should take action to limit the frequency of unsafe abortions and the health and life hazards they pose to women and girls. Post-abortion care should be available to all women and girls without any discrimination, violence or coercion. To improve accessibility of reproductive services like abortion medicines and other medical procedures, information dissemination is required and need of the hour. Such information should be easy to understand and available in all languages. Unnecessary restrictions should not be imposed which will prevent access to safe healthcare services and lead to unsafe practices for aborting the foetus. Ethical and moral discussions on abortion should not be entertained or amplified as it is harmful and prevent access to contraceptive services.

- **Comprehensive sexuality education is the need of the hour**

All individuals should have access to correct, unbiased, scientific knowledge and information on sexual well-being, reproductive freedom, autonomy and health in general. This should be ensured, both within and outside the formal education system. Age-appropriate information should be provided. Such information should not perpetuate any

stereotypical notions or biases based on gender. It should be adapted to different age groups and cultures. Teachers and educators should be sensitized and trained accordingly. Factually incorrect information should be avoided. Law enforcement professional and judges should be provided necessary training in such areas. Education is a critical instrument in the fight against patriarchy, promoting individual equality, and strengthening reproductive rights.

- **Acts of violence against women should be criminalized**

All types of violence against women, such as sexual assault, harassment, and trafficking, as well as female genital mutilation, should be avoided, and all perpetrators should be held accountable. Causes and concerns of such acts of violence should be studied and analyzed. Public education campaigns addressing the causes and consequences of such violence should be conducted. Stigma associated with the survivors of the violence should be done away with by raising awareness. Loopholes in legal structure that cause escape of liabilities should be address and eliminated. Access to justice and robust investigation systems with ensured accountability will be beneficial for the survivors of violence.

- **Elimination of social and cultural exclusion of persons infected with HIV/AIDS**

Steps should be taken to minimize the spread and heightened risk of contraction of HIV and other sexually transmitted infections. Access to HIV prevention, treatment and care facilities should be affordable and accessible to all individuals from all sections of the society without any discrimination. States are obligated to ensure access to information and education on HIV along with access to condoms, medications, counselling and testing services. Individuals living with HIV should be provided adequate information to make an informed decision about childbearing, abortion and other reproductive technologies. Stigma associated with persons living with HIV should be reduced with scientifically accurate public education. Awareness on methods of transmission and prevention should be raised. Legislative and regulatory provisions should be enacted for protection of rights of individuals living with HIV.

- **Increase public awareness**

Steps should be taken to raise public knowledge about human rights and to combat all types of prejudice, particularly through information and education and the use of the media. Broad information efforts that reach the entire population can be beneficial. Reading materials such as pamphlets and posters should be printed or made. It should be translated in all languages and be available for persons with disabilities, such as visually and hearing impaired. Electronic media, notably television and radio, reach a significantly larger audience than print media. Community outreach should ideally be an element of large-scale information initiatives.

- **General recommendations for protecting, promoting, and fulfilling reproductive rights**

Strengthen, in a time-bound way, India's compliance with international human rights standards that safeguard, enhance, and fulfil human and reproductive health rights. Evaluation and inclusion of suggestions for national indicators for the Sustainable Development Goals (SDGs) that are important to reproductive health rights is required and necessary. All coercive, discriminatory, gender-biased, and target-based reproductive health laws and policies should be revisited.

Various international treaties and policy tools have gradually codified sexual and reproductive health rights. This recognizes sexual and reproductive health as a human right, and requires the state to ensure their preservation, advancement, and fulfilment. Reproductive rights are often not discussed openly due to stigma and embarrassment associated with it. There are physical, psychological, economic, social implications of denial of reproductive rights to an individual. With appropriate changes in the legal framework nationally and internationally, along with effective implementation and information dissemination, access to justice with regard to reproductive rights can be ensured. Promotion of sexual education in all institutions is needed for effective realization of reproductive rights.

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