

Woman's Right to Control their Reproductivity- A Human Right Dimension

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Abstract

The voluntary limiting of human reproductivity is one of the very few topics that have been recognized as a topic of immense importance and controversial since the very beginning of human civilization. Reproductivity refers to the ability of a woman to give birth. Reproductivity control or Birth control encompasses the wide range of rational and irrational methods that have been used in the attempt to regulate fertility, as well as the response of individuals and of groups within society to the choices offered by such methods. In this paper we are disused history and international provisions regarding to the Reproductivity. A The twenty year "Cairo Programme of Action" was adopted in 1994 at the International Conference on Population and Development (ICPD) in Cairo and we are also found some General Women's Right that impact on reproductivity .Women are treated as equals in the eyes of law and as they are entrusted with several rights and possibilities relating to equality, empowerment etc, by our Constitution of India, they are also given the right to control the reproductivity. Along with the consent of the man, there should also be the discretion on the part of the woman to plan, determine and also control reproductivity. This will surely ensure that in the democratic country like India, women are treated as equal to men.

Introduction

The voluntary limiting of human reproductivity is one of the very few topics that have been recognized as a topic of immense importance and controversial since the very beginning of human civilization. Reproductivity refers to the ability of a woman to give birth. Reproductivity control or Birth control encompasses the wide range of rational and irrational methods that have been used in the attempt to regulate fertility, as well as the response of individuals and of groups within society to the choices offered by such methods.

Talking about the modern days we have some well defined laws now with our hand. The World Health Organization defines reproductive right as follows---“Reproductive rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health.

This topic is always disputed because of some of its inherent questions. Some of them I will like to quote here

1. Why we should interfere with a normal biological system of human body?
2. How much safe are these procedures?
3. Why woman's only? (though now a days contraceptives are available for male also, it was not before) etc.

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What are "Reproductive Rights"?

Many efforts have been made to ensure certain rights for the women of India relating to reproduction which may include:

- ↗ become pregnant and have a child
- ↗ adopt a child
- ↗ decide not to have a child
- ↗ have access to abortion clinics
- ↗ refuse forced sterilization
- ↗ know about birth control and its side effects, and
- ↗ have access to the health care system

Reproductive rights began to develop as a subset of human rights at the United Nation's 1968 International Conference on Human Rights. The resulting non binding Proclamation of Teheran was the first international document to recognize one of these rights when it stated that: "Parents have a basic human right to determine freely and responsibly the number and the spacing of their children. States, though, have been slow in incorporating these rights in internationally legally binding instruments. Thus, while some of these rights have already been recognized in hard law, that is, in legally binding international human rights instruments, others have been mentioned only in non binding recommendations and, therefore, have at best the status of soft law in international law, while a further group is yet to be accepted by the international community and therefore remains at the level of advocacy. According to pro-choice activist. Issues related to reproductive rights are some of the most vigorously contested rights' worldwide, regardless of the population's socioeconomic level, religion or culture.

Here I would like to bring out a brief history about the starting of reproductive right and some of its important aspects-

History:

1. Proclamation of Teheran

In 1945, the UN Charter included the obligation "to promote... universal respect for, and observance of, human rights and fundamental freedoms for all without discrimination as to race, sex, language, or religion". However, the Charter did not define these rights. Three years later, the UN adopted the Universal Declaration of Human Rights (UDHR), the first international legal document to delineate human rights; the UDHR does not mention reproductive rights. Reproductive rights began to appear as a subset of human rights in the 1968 Proclamation of Teheran, which states: "Parents have a basic right to decide freely and responsibly on the number and spacing of their children and a right to adequate education and information in this respect".¹

This right was affirmed by the UN General Assembly in the 1974 Declaration on Social Progress and Development which states "The family as a basic unit of society and the natural environment for the growth and well-being of all its members, particularly children and youth, should be assisted and protected so that it may fully assume its responsibilities within the community. Parents have the exclusive right to determine freely and responsibly the number and spacing of their children."The 1975 UN International Women's Year Conference

echoed the Proclamation of Teheran.

2. Cairo Programme of Action

The twenty year "Cairo Programme of Action" was adopted in 1994 at the International Conference on Population and Development (ICPD) in Cairo. The non binding Programme of Action asserted that governments have a responsibility to meet individuals' reproductive needs, rather than demographic targets. It recommended that Family planning services be provided in the context of other reproductive health services, including services for healthy and safe childbirth, care for sexually transmitted infections, and post-abortion care. The ICPD also addressed issues such as violence against women, sex trafficking, and adolescent health. The Cairo Program is the first international policy document to define reproductive health stating:

Reproductive health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and its functions and processes. Reproductive health therefore implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so. Implicit in this last condition are the right of men and women to be informed [about] and to have access to safe, effective, affordable and acceptable methods of family planning of their choice, as well as other methods for regulation of fertility which are not against the law, and the right of access to appropriate health-care services that will enable women to go safely through pregnancy and childbirth and provide couples with the best chance of having a healthy infant.

Unlike previous population conferences, a wide range of interests from grassroots to government level were represented in Cairo. 179 nations attended the ICPD and overall eleven thousand representatives from governments, NGOs, international agencies and citizen activists participated. The ICPD did not address the far-reaching implications of the HIV/AIDS epidemic. In 1999, recommendations at the ICPD+5 were expanded to include commitment to AIDS education, research, and prevention of mother-to-child transmission, as well as to the development of vaccines and microbicides.

The Cairo Programme of Action was adopted by 184 UN member states. Nevertheless, many Latin American and Islamic States made formal reservations to the programme, in particular, to its concept of reproductive rights and sexual freedom, to its treatment of abortion, and to its potential incompatibility with Islamic Law.²

3. Beijing Platform

The 1995 Fourth World Conference on Women in Beijing, in its non-binding Declaration and Platform for Action, supported the Cairo Programme's definition of reproductive health, but established a broader context of reproductive rights:

The human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence. Equal relationships between women and men in matters of sexual relations and reproduction, including full respect for the integrity of the person, require mutual respect, consent and shared responsibility for sexual behavior and its consequences. The Beijing Platform demarcated twelve interrelated critical areas of the human rights of women that require advocacy. The Platform framed women's reproductive rights as "*indivisible, universal and inalienable human rights.*"³

4. The Yogyakarta Principles

The Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, proposed by a group of experts in November 2006 but not yet incorporated by States in international law, declares in its Preamble that "the international community has recognized the rights of persons to decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free from coercion, discrimination, and violence." In relation to reproductive health, Principle 9 on "The Right to Treatment with Humanity while in Detention" requires that "States shall provide adequate access to medical care and counseling appropriate to the needs of those in custody, recognizing any particular needs of persons on the basis of their sexual orientation and gender identity, including with regard to reproductive health, access to HIV/AIDS information and therapy and access to hormonal or other therapy as well as to gender-reassignment treatments where desired"⁴

Nonetheless, African, Caribbean and Islamic Countries, as well as the Russian Federation, have objected to the use of these principles as Human Rights standards.⁵

General Women's Right that impact on reproductivity

The United Nations Population Fund (UNFPA) and the World Health Organization (WHO) advocate for reproductive rights with a primary emphasis on women's rights. In this respect the UN and WHO focus on a range of issues from access to family planning services, sex education, menopause, and the reduction of obstetric fistula, to the relationship between reproductive health and economic status.

The reproductive rights of women are advanced in the context of the right to freedom from discrimination and the social and economic status of women. The group Development Alternatives with Women for a New Era (DAWN) explained the link in the following statement:

Control over reproduction is a basic need and a basic right for all women. Linked as it is to women's health and social status, as well as the powerful social structures of religion, state control and administrative inertia, and private profit, it is from the perspective of poor women that this right can best be understood and affirmed. Women know that childbearing is a social, not a purely personal, phenomenon; nor do we deny that world population trends are likely to exert considerable pressure on resources and institutions by the end of this century. But our bodies have become a pawn in the struggles among states, religions, male heads of households, and private corporations. Programs that do not take the interests of women into account are unlikely to succeed.⁶

Attempts have been made to analyze the socioeconomic conditions that affect the realization of a woman's reproductive rights. The term reproductive justice has been used to describe these broader social and economic issues. Proponents of reproductive justice argue that while the right to legalized abortion⁷ and contraception applies to everyone, these choices are only meaningful to those with resources, and that there is a growing gap between access and affordability.⁸

Some aspects of reproductive rights that impact on reproductivity of women:

a. Sex Education

In the past, girls and women with disabilities rarely received sex education. However, in the

'90's we saw an increased interest on this issue which resulted in programs and literature being available. For example, the Sex Information and Education Council of Canada (SIECCAN), has published a series of 16 easy-to-read books about sexuality and relationships for adolescents and adults who are users of bliss symbolic.

Many services which provide counseling on sex and sexuality are physically inaccessible. Reading material is not usually accessible for women who are blind or have low vision. Few services have communication devices for women who are deaf and women who are non-verbal.

b. Health Services

The Ontario Medical Association and the Ministry of Health need to encourage doctors to buy low examining tables which can be raised or lowered to accommodate disabled women. Doctors and birth control counselors need to understand how different types of birth control will interact with certain disabilities and medications. Pregnant disabled women need to know how certain medications will affect their fetus. More research is needed in these areas.

c. Sexuality in institutions

Some women live in institutions which tend to deny or restrain sexual activity. Instead of being taught methods of birth control, some women with disabilities have been sterilized without their consent.

Whether women with disabilities are lesbian, bi-sexual or heterosexual and are living in an institution, their right to express their sexuality needs to be recognized. Furthermore, women with disabilities must not be denied the right to control their reproduction and their bodies.

d. The disaster of Depo Provera

Depo Provera (DP) is a form of birth control given by needle. Partly because of a strong lobby of consumer groups in Canada, DP has not been approved for use as a contraceptive. Studies have shown a link between DP and cancer, and have shown dangerous long-term side effects.

However, because of a loophole in federal legislation, DP has been administered for many years to women with disabilities. Other women who have received DP include: Aboriginal women, poor women, teenagers and ethno-racial women. Physicians and institutional staff have administered DP to women with mental or physical disabilities, rarely informing them of the drug's side effects.

Some disabled girls as young as twelve have been given the drug without being told of its harmful side effects. Girls and women with disabilities are given DP to stop periods and prevent pregnancies for no other reason than for the convenience of institutions and caregivers. These caregivers may believe that they are helping these girls by giving them DP.

The results have been alarming. Donald Zarf as of the University of Western Ontario conducted a study in 1981 which showed that the death rate among women who have taken DP is much higher than normal. Reported side effects include: abdominal discomfort, depression, vision impairment, irregular menstrual flow, blood clotting problems, and suppression of sexual drive (it is used on male sexual offenders to suppress their sexual drive).

e. Population Control

Population control advocates on the other⁹ At the 1984 UN World Population Conference in

Mexico City population control policies came under attack from women's health advocates who argued that the policies' narrow focus led to coercion and decreased quality of care, and that these policies ignored the varied social and cultural contexts in which family planning was provided in developing countries. In the 1980s the HIV/AIDS epidemic forced a broader discussion of sex into the public discourse in many countries, leading to more emphasis on reproductive health issues beyond reducing fertility. The growing opposition to the narrow population control focus led to a significant departure in the early 1990s from past population control policies.¹⁰ In the United States, abortion opponents have recently begun to accuse reproductive rights advocates of advancing a racist agenda of eugenics, and of trying to reduce the African American population of the US.¹¹

Directive Principle of State Policy and woman

Women's' right to make reproductive choice: The Apex Court in *Suchita Srivastava & Another v. Chandigarh Administration*,¹² observed that a woman right to make reproductive choice is also a dimension of "personal liberty" under Article 21 of the Constitution of India 1950. However, reproductive choice can be exercised to procreate. As well as abstain from procreating. There should be no restriction whatever n exercise of reproductive choice such as woman's right to refuse participation in sexual activities or alternately the insistence on use of contraceptive method. The Court ruled that reproductive rights include a woman's entitlement to carry a pregnancy to its full terms, to give birth and subsequently raise children. Further, the Medical Termination of pregnancy Act, 1971 can also be viewed as reasonable restrictions that have been placed on exercise of reproductive choice.

Concluding Observation

Modern mankind can never return to the way of life that characterized most of human evolution. Settled agriculture and, to an even greater extent, urban living have irrevocably altered natural, finely tuned patterns of human reproduction. New social and artificial restraints on fertility must replace high infant mortalities and the invisible but important physiological controls that once limited family size. The variables that encourage small families are still not fully understood, but they include urbanization, educational and employment opportunities for women, and easy access to family planning services. In a traditional agricultural society children bring hope of economic rewards to their parents at an early stage by sharing in the work that is necessary to support the family, whereas in modern industrial societies the care and educating of children represent long years of heavy expenditure by the parents. This switch in the cost of children may be the most important factor determining the adoption of family planning.

Western societies took more than a century to reach zero population growth and adjust to the rapid expansion of population that accompanied their industrialization. Most of the changes that occurred in patterns of family planning took place before public family services were established and at considerable emotional and physical costs to many couples. By contrast, the majority of the governments of contemporary Third World countries has established national family planning policies and actively encourages the use of public family services. The World Fertility Survey shows that more couples in developing countries desire small families than actually achieve their goals.

The significance of the choices facing policymakers and individual families can be illustrated by reference to trends in family planning in the People's Republic of China. For a generation after the Revolution of 1949 national leaders maintained that a Communist

economy could accommodate any rate of population growth, and family planning services, while available, were not emphasized. As a result of the rapid population growth in the 1950s and '60s, however, the number of marriages in China exceeds by 10,000,000 each year the number of fertile partnerships broken by death or by the onset of the woman's menopause. In order to try to stabilize the population, the Chinese government has recommended that 50 percent of rural couples and 80 percent of urban couples have only one child. The application of this type of policy can have an ironic effect on individual women: older women belong to a generation that could not always obtain birth control services, and younger women may be encouraged or, in some cases, even forced to abort pregnancies they would like to keep.

Although consensus has not been reached on the range of birth control methods society should offer to individual members, the right of couples to determine the number and spacing of their children is almost universally endorsed, while the possibility of coercive family planning is almost as widely condemned. Throughout the world, awareness of the advantages and disadvantages of specific methods of birth control, thoughtful judgments about ethics, and further evolution in medical and scientific knowledge will continue to be important to the welfare of the family, of individual nations, and of the entire globe.

Women are treated as equals in the eyes of law and as they are entrusted with several rights and possibilities relating to equality, empowerment etc, by our Constitution of India, they are also given the right to control the reproductivity. Along with the consent of the man, there should also be the discretion on the part of the woman to plan, determine and also control reproductivity. This will surely ensure that in the democratic country like India, women are treated as equal to men.

Notes & References

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- ⁵United Nations General Assembly, Official Records, Third Committee, Summary record of the 29th meeting held in New York, on Monday, 25 October 2010, at 3 p.m. For instance, Malawi, speaking on behalf of all African States, argued that the Yogyakarta Principles were "controversial and unrecognized," while the representative of the Russian Federation said that they "had not been agreed to at the intergovernmental level, and which therefore could not be considered as authoritative expressions of the opinion of the international community" (para. 9, 23).
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⁹ Knudsen, Lara (2006). Reproductive Rights in a Global Context. Vanderbilt University Press. pp. 2. ISBN 0826515282, 9780826515285

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¹² 2009 (9) S.C.C. 1

“Poverty cannot be accepted as a pretext and justification for the exploitation of children. It does not explain the huge global demand with, in many instances, customers from rich countries circumventing their national laws to exploit children in other countries. Sex tourism has spread its illicit wings wide, and paedophiles search for their victims in all parts of the globe. The problem is compounded by the criminal networks which benefit from the trade in children, and by collusion and corruption in many national settings.”

-Vítit Muntarbhorn, the Special Rapporteur on the sale of children, child prostitution and child pornography until 1995