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## Reproductive Rights of Women in India: An Overview

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### Abstract

Reproductive rights rest on the recognition of the primary right of all couples and persons to decide liberally and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the rights to attain the highest standard of sexual and reproductive health. They also include the right of all to make decisions regarding reproduction free. The struggle for women's 'reproductive rights' has resulted in the right to contraception being conceded in many parts of the world, although women still lack easy access to affordable contraceptives which are free from side-effects. Yet even today, these services are denied to women in many other parts of the world. Religious and cultural taboos prevent them from using contraception. In cultures such as India where motherhood is glorified and infertility viewed as a curse, the use of contraception is frowned upon. Nevertheless, thirty years after it began, the great effort for women's control over their own fertility has led to a severance between sexuality and reproduction, where women are able to experience their sexuality without pregnancy being the inevitable result.

### Introduction:

A series of human rights treaties and international conference agreements forged over several decades by governments increasingly influenced by a growing global movement for women's rights provides a legal foundation for ending gender discrimination and gender-based rights violations. These agreements affirm that women and men have equal rights, and oblige states to take action against discriminatory practices. The Vienna Declaration and Programme of Action, the Programme of Action of the International Conference on Population and Development (ICPD) and the Platform for Action adopted at the Fourth World Conference on

Women (FWCW) are international consensus agreements that strongly support gender equality and women's empowerment. Thus the reproductive rights were established as a subset of the human rights at the United Nations 1968 international conference on human rights<sup>2</sup>

As signatory of the ICPD Program Of Action India committed to the principle of informed free choice as essential to the long-term success of family-planning programmes where any form of coercion has no part to play.

**The WHO** defines reproductive rights as follows: “Reproductive rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have information to do so, and right to attain the highest standard of sexual and reproductive health. They also include the right of all to make decisions concerning reproduction free of discrimination, coercion and violence.”<sup>3</sup>

### **Fundamental Rights and Human Rights:**

Reproductive rights are essential to the realization of all human rights. They encompass a spectrum of civil, political, economic, and social rights, from the rights to health and life, to the rights to equality and non-discrimination, privacy, information, and to be free from torture or ill-treatment. States' obligations to guarantee these rights require that women and girls not only have access to comprehensive reproductive health information and services but also that they experience positive reproductive health outcomes such as lower rates of unsafe abortion and maternal mortality and the opportunity to make fully informed decisions—free from violence, discrimination, and coercion—about their sexuality and reproduction. Violations of reproductive rights disproportionately harm women due to their capacity to become pregnant and legal protection of these rights as human rights is critical to enable gender justice and the equality of women<sup>4</sup>.

The Constitution of India recognizes many of these same rights as fundamental rights that:<sup>5</sup>

1. The government has an obligation to uphold, including the right to equality and non-discrimination (Articles 14 and 15) and the right to life (Article 21) which is understood through jurisprudence to include the rights to health, dignity, freedom from torture and ill treatment, and privacy.
2. India is also a signatory to numerous international conventions, such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural

<sup>2</sup> Available on

<https://ro.uow.edu.au/cgi/viewcontent.cgi?article=1134&context=medpapers#:~:text=Right%20to%20access%20in%20order.co%2D%20cered%20sterilization%20and%20contraception>. assessed on 3 March 2022.

<sup>3</sup> Srinivas Kosgi, Women Reproductive Right in India: Prospective Future, Online Journal of Health and Allied Sciences, Volume 10, Issue 1; Jan-Mar 2011.

<sup>4</sup> Available on <https://reproductiverights.org/sites/default/files/documents/Reproductive-Rights-In-Indian-Courts.pdf> assessed on 2 March 2022.

<sup>5</sup> Ibid.

Rights (ICESCR); and the Convention on the Rights of the Child (CRC), all of which recognize reproductive rights.

3. Article 51(c) of the Constitution of India and the judiciary have established that the government has a constitutional obligation to respect international law and treaty obligations.
4. The government of India also bears a constitutional obligation to ensure legal remedies for violations of fundamental rights and human rights. Article 39(a) requires the government to promote equal access to justice and free legal aid as a means to ensure that “opportunities for justice are not denied to any citizen by reason of economic or other disabilities.”

Furthermore, the courts in India have an important role to play in ensuring women’s reproductive rights as guaranteed by their Constitutional and human rights.

In The **Puttaswamy judgment (2012)** the SC specifically recognized the constitutional rights of women to make reproductive choices, as a part of personal liberty under Article of 21 of the Constitution of India. Similarly, the SC held in **Suchita Srivastava v. Chandigarh Administration**, that reproductive autonomy is a dimension of personal liberty as guaranteed under Article 21<sup>6</sup>.

In 2011, the Delhi High Court issued a landmark joint decision in the cases of **Laxmi Mandal v. Deen Dayal Harinagar Hospital & Ors. and Jaitun v. Maternity Home, MCD, Jangpura & Ors** , concerning denials of maternal health care to two women living below the poverty line. The Court stated that “these petitions focus on two inalienable survival rights that form part of the right to life: the right to health (which would include the right to access and receive a minimum standard of treatment and care in public health facilities) and in particular the reproductive rights of the mother.” In 2012, the High Court of Madhya Pradesh echoed the Delhi High Court’s judgment in **Sandesh Bansal v. Union of India**, a public interest litigation seeking accountability for maternal deaths, recognizing that “the inability of women to survive pregnancy and child birth violates her fundamental right to live as guaranteed under Article 21 of the Constitution of India” and “it is the primary duty of the government to ensure that every woman survives pregnancy and child birth”.<sup>7</sup>

In the end, "Reproductive rights" are the rights of individuals to decide whether to reproduce and have reproductive health. This may include an individual's right to plan a family, terminate a pregnancy, use contraceptives, learn about sex education in public schools, and gain access to reproductive health services.

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<sup>6</sup> 2009(14) SCR 989

<sup>7</sup> Available on <https://reproductiverights.org/sites/default/files/documents/Reproductive-Rights-In-Indian-Courts.pdf> assessed on 1 March 2022.