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Authored By: Prof. (Dr.) Kuldeep Chand, Maharaja Agrasen University,  
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### **ABSTRACT:**

*“The actuality of the topic, its extent and its importance were strong reasons for writing this Article Reproductive Rights and Women’s Health: A New Prospective. To this, the description of the topic is based on the social and legal position of women especially in India. The stereotype position of women and the changing dimension of women’s struggle for their rights in modern world have made this topic more interesting. It is even more useful as reproductive right is central to women’s right and their freedom. Emancipation of women is incomplete without assuring them reproductive rights. It is only when women have control over their body, they can exercise all other rights. Women will be physically and mentally free when they will be able to take decision regarding their body themselves.*

*Various human rights of women can be acquired only when they can exercise their reproductive rights. Sexual and reproductive health and rights have increasingly been recognized in the international arena, but their evolution and the definition of their scope and content have not been received without controversy. The development of these rights cannot be read in isolation but must be analyzed together with the broader landscape that hosts social and political movements, ideologies, religions, and revolutions. This article contributes to the scholarly literature by providing an overview of past trends and of the conditions under which they occurred. Retracing the history of these rights enables us to clarify the scope of the state’s obligations to realize the right to sexual and reproductive health, to improve monitoring opportunities, and to ensure accountability for violations”.*

**Keywords: Protection of Women’s Status, Reproductive Rights, International Human Rights Law, Right to Health, Women’s Rights.**

### **I. INTRODUCTION:**

Reproductive rights appeals appreciation for women’s bodily integrity and conclude an environment that is complimentary from anxiety of corruption, extreme force and bullying. Reproductive rights are the natured privilege for females and are necessary for their physical



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and mental wellness. These rights are of fundamental importance to women for exercising rest of their rights. These rights may be linked to the provision of such social and economic necessities as food, shelter, childcare and education.<sup>1</sup> The concern for reproductive rights plays a valuable role because there is deficiency of responsibility on the part of the government and moreover there is absence of awareness in the society to admit and protect this right. So, basically freedom of rights can’t be achieved without providing them basic reproductive rights. Reproductive rights matters are crucially important to women as they affect women’s mental and physical integrity, their health and sexual autonomy, power to go in and exit the relationship, their development of knowledge and skill training, their capability to give to their families and their performance to keep balance in work.<sup>2</sup>

A right to reproductive wellness contains the right to safe termination of pregnancy, to information about various health issues and most importantly, to make decisions about child birth and birth spacing.<sup>3</sup> Although, women in India consist of half of the total natives of the country, they are suppressed in various ways in this country. For the country as a whole, less than half of couples in the reproductive age group use contraception.<sup>4</sup> As per the survey of WHO, UNICEF and World Bank more than three lakh fifty thousand deaths of maternal are rising per year worldwide. Of the total estimated maternal deaths, developing countries accounted for almost 99% of the maternal deaths and India accounts for a maximum number of maternal deaths, more than 45,000 deaths in 2015.<sup>5</sup> Overall, 52 percent of women and 74 percent of children age 6-35 months are anemic. Anemia during pregnancy increases the risks of maternal and infant death, premature delivery, and low birth weight.<sup>6</sup> Under nutrition among women and children continues to be a serious problem. More than one –third of

<sup>1</sup> Srivastava, Lily, Law and Medicine, Universal Law Publishing Co. Pvt. Ltd., New Delhi, 2<sup>nd</sup> Ed. 2013, p.112

<sup>2</sup> Talukdar, Shristi, “An Insight on the Reproductive Rights in India”, Gauhati Law Times, Vol.V, 2016, p.19

<sup>3</sup> Pandya, Rameshwari, Women in India: Issues, Perspectives and Solutions, New Century Publications, New Delhi, 1<sup>st</sup> Published 2007, p.330

<sup>4</sup> Mishra, R C, Women in India: Towards Gender Equality, Authorspress, Delhi, First Published 2006, p.27

<sup>5</sup> Danasekaran, et.al., “Utilization of Antenatal Healthcare Services among Fishermen Population in Kachipuram District, Tamil Nadu: A Cross-Sectional Study”, *Indian Journal of Community Medicine*, Vol.42, No.3, July-September 2017, P.159

<sup>6</sup> India National Family Health Survey (NFHS-2), key Findings (1998-99), p.19.

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women age 15-49 are undernourished (according to the body mass index) and almost half of adolescent under age three years are underweight or stunted.<sup>7</sup> Besides maternal mortality deaths, a tremendous wastage of female reproductive energy occurs due to high rates of illegal abortions, neonatal, postnatal and prenatal mortality rates.<sup>8</sup> As per the WHO estimates around the world there are approximately 40 million abortions annually, of which 26 to 31 million are legal and 20 million are illegal and thus unsafe. Nearly 20,000 Indian female’s death occurs every year due to unsafe abortions.<sup>9</sup> Early marriage is the cause among girls from poor families, those living in rural areas, and those who are uneducated. Girls who are married young more vulnerable to physical and sexual violence, which increases their risk of early pregnancy and exposure to STI.<sup>10</sup> Reproductive health is a fundamental aspect of women’s well-being. Without normal approach to free from harm and services of high-quality women are more accessible to a health hazard for example death or injury during childbirth, unwanted pregnancy, and *sexually transmissible infections (STIs)*.<sup>11</sup>

## **II. CONCEPT AND MEANING OF REPRODUCTIVE RIGHTS:**

The reproductive rights of women mean the privilege of women to achieve the most standard of sexual and reproductive health and meanwhile to attain full contribution in the social and economic life. Reproductive rights indicates that the individuals are capable to have amusing sex and also, they have the power of reproduction and freedom to take decisions whether they want to do it or not at that particular point of time. Rights of Reproduction ensure for the equality of relationship between men and women, admiration and nobility of the individual for the sexual behavior and its aftereffects. Reproductive rights are universal, undeniable and indivisible. Reproductive rights contain different types of basic rights that have been

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<sup>7</sup>*Ibid* at p.22

<sup>8</sup>Savita Chettri, and Lakshmi, R., “Health Status of Indian Women”, Third Concept, *An International Journal of Ideas*, Vol.26, No.309, November 2012, P.33.

<sup>9</sup> Syed, Sadiq Jilani, “Effect of Biotechnology on Women: Female Foeticide and Law”, *Kali’s Yug, Women and Law Journal*, October 2000, P.16.

<sup>10</sup>M. Sharma, Vijay Kumar and k.Rajeshwari, , “Social Work Interventions in Promoting Adolescent Reproductive Health in India: A Critical Review”, *Orient Journal of Law and Social Sciences*, Vol. VIII, Issue 12, November 2014, p.86.

<sup>11</sup>Nandita Dutta, and Sumitra Jha, , *Women’s Human Rights*, Pacific Books International, New Delhi, 2014, P.113.

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acknowledged under numerous international instruments. The rights involves the right to life; right to health which includes sexual and reproductive health; the privilege to decide the gap between the adolescent; the right to consent to marriage and to equality in marriage; the right to privacy; Equal rights and non-discrimination; the right to be free from practices that harm women and girls; the right to not be subjected to torture or other cruel, inhuman, or degrading treatment or punishment ; the right to be free from sexual and gender - based violence; the right to access sexual and reproductive health education and family planning information; the right to enjoy the benefits of scientific progress; right to liberty and security of person;<sup>12</sup> right to legal or safe abortion and the right to access to quality reproductive health care etc.

*The Declaration and Platform for Action of the 1995 UN Fourth World Conference on Women in Beijing (Beijing Platform for Action)* emphasized that reproductive health is “*a state of complete physical, mental and social well-being*”, and officially recognized reproductive rights as encompassing sexual rights which include the right to be free from sexual violence and coercion, and the right to the highest standard of sexual health.<sup>13</sup> The issue of reproductive rights became apparent at the International Conference in Cairo in 1994 and in Beijing in 1995. When heated debate took place around the issue of reproductive rights. It is now essential to ascertain that the right to a free choice in matters of sexuality, reproduction and lifestyles, mainly named as the “*reproductive rights*”, should be regarded as an integral part of human rights.

All women should have right to exercise full control over their bodies without any coercion, discrimination, including, for all the right to control their lives and to decide freely for themselves in these matters. Any restrictions on the exercise of any one of these rights would violate an individual’s freedom of reproductive choice.<sup>14</sup> The International Conference on Population and Development was held in Cairo, Egypt, 5-13 September 1994. It urged that

<sup>12</sup> Talukdar, Shristi, “An Insight on the Reproductive Rights in India”, *Gauhati Law Times*, Vol. V, 2016, p.18.

<sup>13</sup> Nidhi, Sharma, “Recognition of Reproductive Rights of Indian Women”, *CPJ Law Journal*, Vol. IV, July 2014, p.187.

<sup>14</sup>Subhash Chandra Singh, , “Reproductive Rights as Human Rights: Issues and Challenges”, *Indian Socio-Legal Journal*, Vol.XXXI, No.1&2, 2005, p.61.

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the main motive of the family strategy programs is to make aware to couples and persons to take their decision on their own for the total gap between their children’s and to have information regarding the proper methods to do so and to make sure that the choices must be fully informed by them and ensuring make full range of safe and effective methods.<sup>15</sup>

### **III. REPRODUCTIVE RIGHTS OF WOMEN AND INTERNATIONAL PERSPECTIVES:**

The right to health and reproductive rights of women is recognized by various International Conventions. *Universal Declaration of Human Rights, 1948* provides that All persons have the absolute right to live the standard life for the physical and mental wellness of himself or herself and of his family which contains food, clothing, shelter and basic needs of the medical care and important social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in situations which is far away from their control.<sup>16</sup> The declaration further provides special provisions for the well-being of the health of women; it provides that motherhood and childhood are titled to special needs and care.

*Article 10 (2) of the International Covenant on Economic, Social and Cultural Rights*, provides that distinguished care should be according to mothers during a tolerable extent of time before and after childbirth. During such extent especially working mothers should be given paid leave with proper social security benefits.<sup>17</sup> Apart from the aforesaid conventions, the reproductive rights of women have been accorded recognition in the *Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), 1979*. It contains special international legal provisions for the protection and promotion of women’s health under Article 10, 11, 12, 14 etc. Article 11 ensures the health and safety in working conditions; including the safeguarding of the function of the reproduction. Article 11 (2) of

<sup>15</sup>P.V Sathe,, *Epidemiology and Management for Health Care For All*, Vora Medical Publications, Mumbai, Third Edition 2009, p.310.

<sup>16</sup> See, *The Universal Declaration of Human Rights, 1948*; Article 25 (1).

<sup>17</sup> See, *The International Covenant on Economic, Social and Cultural Rights, 1966*; Article 10(2).



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this Convention also describes the reproductive right of working women, because, it provides the maternity benefits and child care leave for the benefit of children and mothers.<sup>18</sup>

#### **IV. REPRODUCTIVE RIGHTS OF WOMEN AND CONSTITUTIONAL PERSPECTIVES:**

Article 21 of the Constitution of India provides that “*No person shall be deprived of his life or personal liberty except according to procedure established by law.*”<sup>19</sup> The state has to frame its rules in ensuring the health and the physical power of workers, male and females and the minor age of children are not abused and natives should not be forced by their financial conditions to do things which are unsuitable for them.<sup>20</sup> The state is also required to make provision for just and human condition of work and for maternity benefits.<sup>21</sup> It is the primary duty of the state to endeavour for the raising of the level of nutrition and standard of living of its people and improvement of public health and to bring about prohibition of the consumption, except for medical purposes of intoxicating drinks and of drugs which are injurious to health.<sup>22</sup>

#### **V. REPRODUCTIVE RIGHTS OF WOMEN AND LEGISLATIVE PROVISIONS:**

So far as legislative framework on reproductive rights in India is concerned; there is no specific law to deal with reproductive rights directly. Even the term reproductive right has not been explicitly used in Indian Statutes. However, the law recognizing reproductive rights is prevailing in a scattered form.<sup>23</sup> Like, Indian Penal Code, 1860 declares miscarriage as an offence. The Indian Penal Code makes adequate provisions for the protection of mother and

<sup>18</sup>S.D., Sharma, “Health as Human Right: Gender Focused Strategy Summary of an International Width”, *Civil & Military Law Journal*, vol. 47, No. 2, April-June 2011, p. 113.

<sup>19</sup>See, The Constitution of India, 1950; Article 21.

<sup>20</sup>*Id.*, at Article 39 (e).

<sup>21</sup>*id.*, at Article 42.

<sup>22</sup> *id.*, at Article 47.

<sup>23</sup> Arora, Tarun, “Twilight of Reproductive Justice in India: A Welfare State.” *Nyaya Deep*, Vol.XII, Issue 3, July 2011, p.53.

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unborn child. It has provision to save the women from miscarriage. Indian Penal Code specifies the provisions relating to miscarriage. Section 312 to 318 of IPC deals with the law on abortion and 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.<sup>24</sup> Sec.312 of Indian Penal Code, 1860

Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.<sup>25</sup> The Indian Penal Code also prescribes punishment for act done with intention to prevent child from being born alive or to cause it to die after its birth.<sup>26</sup> It also provides punishment for the act aiming at abandoning or exposing the child with an aim to cause physical risk to the child.<sup>27</sup> Indian Penal Code also provides punishment of that person who is guilty of concealing or secretly disposing of the dead body of any child which dies before, during or after birth.<sup>28</sup>

With an aim to regulate the illegal abortion in India, the Union Government has enacted the Medical Termination of Pregnancy Act, 1971. The Medical Termination of Pregnancy Act, 1971 allows women access to abortion in certain circumstances. This Act is aimed at eliminating abortion by untrained persons and in unhygienic conditions, thus reducing maternal morbidity and mortality. *The Medical Termination of Pregnancy Act, 1971* has been passed for the termination of certain pregnancies by Registered Medical Practitioners

<sup>24</sup>See, Indian Penal Code, 1860; Section 312.

<sup>25</sup>*Id.*, at Section 313.

<sup>26</sup>*Id.*, at Section 315.

<sup>27</sup>*Id.*, at Section 317.

<sup>28</sup>*Id.*, at Section 318.

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and for matters connected therewith or incidental thereto.<sup>29</sup> The Medical Termination of Pregnancy Act provides the conditions under which the pregnancy could be terminated. A registered medical practitioner shall not be guilty of any offence under Indian Penal Code or under any other law for the time being in force, if any pregnancy is terminated by him in accordance with the provisions of this Act.<sup>30</sup> ***A pregnancy may be terminated by a registered medical practitioner;***

- i. Where the length of the pregnancy does not exceed twelve weeks, the opinion of such medical practitioner is required.<sup>31</sup> However, where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, the opinion of at least two registered medical practitioners is required.<sup>32</sup>*
- ii. When the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health.<sup>33</sup>*
- iii. Where there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.<sup>34</sup>*
- iv. Where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.<sup>35</sup> Where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.<sup>36</sup>*

Pregnancy of a woman, who has not attained the age of eighteen years or who having attained the age of eighteen years is a mentally ill person shall not be terminated except with the

<sup>29</sup>See, The Medical Termination of Pregnancy Act, 1971.

<sup>30</sup> *Id.*, at Section 3(1).

<sup>31</sup> *Id.*, at Section 3(2) (a).

<sup>32</sup> *Id.*, at Section 3(2) (b).

<sup>33</sup> *Id.*, at Section 3(2) (b) (i).

<sup>34</sup> *Id.*, at Section 3(2) (b) (ii).

<sup>35</sup> *Id.*, at Explanation I of Section 3(2).

<sup>36</sup> *Id.*, at Explanation II of Section 3(2).

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consent in writing of her guardian.<sup>37</sup> The termination of pregnancy by a person who is not a registered medical practitioner and terminates any pregnancy in a place other than that mentioned in Section 4 shall be an offence punishable under this Act.<sup>38</sup> Section 6 and 7 of the Act provides for the rules and regulations making powers to the Central and State Government to carry out the provisions of this Act. This Act also provides that no suit or other legal proceeding shall lie against any registered medical practitioner for any damage caused by anything which is done by him in good faith.<sup>39</sup> Thus, this Act gave the right to women to decide the number and frequency of children and further right to decide on having or not having the child, but this Act was being misused to force women to abort the female child.<sup>40</sup>

The termination of pregnancy by a person who is not a registered medical practitioner and terminates any pregnancy in a place other than that mentioned in Section 4 shall be an offence punishable under this Act.<sup>41</sup> Section 6 and 7 of the Act provides for the rules and regulations making powers to the Central and State Government to carry out the provisions of this Act. This Act also provides that no suit or other legal proceeding shall lie against any registered medical practitioner for any damage caused by anything which is done by him in good faith.<sup>42</sup> Thus, this Act gave the right to women to decide the number and frequency of children and further right to decide on having or not having the child, but this Act was being misused to force women to abort the female child.<sup>43</sup> Keeping in view the alarming increase in the cases of selective abortion of female foetuses across the country the Union Government has enacted the *Prenatal Diagnostic Techniques (Regulation and Prevention of Misuses) Act, 1994*. This Act has been amended as *Pre-Conception and Pre-Natal Diagnostic*

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<sup>37</sup> *Id.*, at Section 3(4) (a).

<sup>38</sup> *Id.*, at Section 5(2) &(3).

<sup>39</sup> *Id.*, at Section 8.

<sup>40</sup> Dalpat, Singh, “Female Foeticide in India: issues and Concerns”, *Bhatner Socio-Legal Journal*, Vol.2, Annual 2015, P.131.

<sup>41</sup> *Id.*, at Section 5(2) &(3).

<sup>42</sup> *Id.*, at Section 8.

<sup>43</sup> Dalpat, Singh, “Female Foeticide in India: issues and Concerns”, *Bhatner Socio-Legal journal*, Vol.2, Annual 2015, P.131.



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*Techniques (Prohibition of Sex-Selection) Act, 2003*, for curbing pre-conception sex selection through the misuse of technology. This Act provides that no person, including a specialist or a team of specialists in the field of infertility, shall conduct or cause to be conducted or aid in conducting by himself or by other person, sex selection on a woman or a man or on both or on any tissue, embryo, conceptus, fluid or gametes derived from either or both of them.<sup>44</sup> There is a total prohibition on conducting any pre-natal diagnostic technique for the purpose of sex determination of the foetus and for the purpose of selection of sex before or after conception.<sup>45</sup> The Act empowers and directs the Central Government to constitute a Board to be known as the Central Supervisory Board.<sup>46</sup> The Board performs important functions like advising the Government on policy matters relating to use of pre-natal diagnostic techniques and against their misuse, reviewing the implementation of the Act and the rules and recommending changes, creating public awareness against sex selection and female foeticide etc.<sup>47</sup>

Along with above legislations dealing with certain reproductive rights, Indian legal framework also provides Maternity Benefits Act, 1961 with the object to promote equality of all women in the workforce and the health and safety of the mother and child. The Act intends to regulate the employment of women in certain establishment for certain period before and after child birth and to provide for maternity benefit and certain other benefits. Likewise, The Employees State Insurance Act, 1948 has been enacted with the purpose to provide certain benefits to employees in case of sickness, maternity and injury during employment.<sup>48</sup> Various other legislations have been enacted by Indian Parliament which directly or indirectly address the health issues of women such as *Child Marriage Restraint Act, 1929*; *Child Labour (Regulation and Prohibition) Act, 1986*; *Infant Milk Substitutes, Feeding Bottles and Infant Food (Regulation of Production, Supply and Distribution)*

<sup>44</sup> See, The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994; section 3 (A).

<sup>45</sup> *Id.*, at Section 6 (a) & 6 (c).

<sup>46</sup> *Id.*, at Section 7.

<sup>47</sup> *Id.* at Section 16.

<sup>48</sup> Arora, Tarun, “Twilight of Reproductive Justice in India: A Welfare State”, *Nyaya Deep*, Vol.XII, Issue 3, July 2011, p.54

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*Act,1992; Unorganized Sector Workers’ Social Security Act, 2008; Protection of Women from Domestic Violence Act, 2005; The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; The Dowry Prohibition Act, 1961; The Indecent Representation of Women (Prohibition) Act, 1986; Protection of Children From Sexual Offences Act, 2012 etc.*

## **VI. REPRODUCTIVE RIGHTS OF WOMEN AND JUDICIAL**

### **RESPONSE:**

Indian Judiciary plays significant role in protection of reproductive rights of women. In past ten years, Courts have given numerous decisions in providing privileges to the female’s reproductive rights as being part of inalienable survival rights essentially shielded under the basic right to life. In specific judgements given by the Apex courts, they have considered it as main reproductive rights are important for the equality of females and they have right to decide about their own pregnancy at any point of time. The contribution of Indian judiciary in recognizing and protecting of reproductive rights can be highlighted with the help of a few cases.

In *Suchita Srivastava and another vs. Chandigarh Administration*,<sup>49</sup> the Supreme Court recognized reproductive rights of mentally retarded women. The case came before the Supreme Court in appeal against the judgment of Punjab and Haryana High Court allowing the Chandigarh Administration to terminate the pregnancy which was an outcome of rape. With regard to the grounds of termination of pregnancy, the Supreme Court relied upon the provisions of Medical Termination of Pregnancy Act, 1971. Looking at the provisions of the Act, the Supreme Court expressed its opinion in favour of continuation of pregnancy as the court observed that “her reproductive choice should be respected in spite of other factors such as the lack of understanding of the sexual act as well as apprehensions about her capacity to carry the pregnancy to its full term and the assumption of maternal responsibilities thereafter.” The Supreme Court recognized women’s reproductive autonomy as a

<sup>49</sup> AIR 2010 SC 23.

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fundamental right, stating that “There is no doubt that a woman’s right to make reproductive choices is also a dimension of ‘personal liberty’ as understood under Article 21.”

In ***Kharak Singh vs. State of U.P. and others***,<sup>50</sup> the Supreme Court has certainly recognized that a person has complete rights of control over his body organs under Article 21. It is also said to be including the complete right of woman over her reproductive organs. In ***Cehat and Ors. vs. Union of India and Ors.***,<sup>51</sup> a grievance was made by a Non-Governmental Organization that the provisions of the ***Preconception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994*** are not properly implemented. After considering this grievance, the Supreme Court has noted that it has already issued directions to secure compliance of the provisions of the said Act. The Supreme Court has issued further directions to the Central Government, State Government and Union Territories to ensure Compliance of its earlier directions and to create public awareness against the practice of pre-natal determination of sex and female feticide through advertisement in the print and electronic media by hoardings and other appropriate means.

The Supreme Court widened the scope of Article 21 and recognized the right to privacy as fundamental right read with right to abortion. In ***D. Rajeshwari vs. State of Tamil Nadu***,<sup>52</sup> an unmarried girl of 18 years who is praying for issue of direction to terminate the pregnancy of the child in her womb, on the ground that bearing the unwanted pregnancy of the child of three months made her to become mentally ill and the continuance of pregnancy has caused great anguish in her mind, which would result in a grave injury to her mental health, since the pregnancy was caused by rape. The Court granted the permission to terminate the pregnancy. In ***Dr. Nisha Malviya and Another v/s State of M.P.***,<sup>53</sup> the accused had committed rape on minor girl aged about 12 years and made her pregnant. The allegations are that two other Co-accuseds took this girl, and they terminate her pregnancy. So, the charge on them in firstly

<sup>50</sup> 1963 AIR 1295.

<sup>51</sup> AIR 2001 SC 2007.

<sup>52</sup>(1996) Cri. LJ, 3795.

<sup>53</sup> (2000) Cri. L.J, 671.

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causing miscarriage without the consent of girl. The court held that all the three accused guilty of termination of pregnancy which was not consented by the mother or the girls. The Supreme Court in the Peoples Union for Civil Liberties v/s Union of India<sup>54</sup>, implicitly recognized and enforced under Article 21 of the Constitution the fundamental right to life of the mother. This includes the right to health and reproductive health.<sup>55</sup>

In Vinod Soni vs. Union of India,<sup>56</sup> the constitutionality of the PCPNDT Act was challenged as being in violation of the right to personal liberty as it allegedly prevented a woman from exercising her right to reproductive health under Article 21 of the Constitution upholding its constitutionality, the Bombay High Court held that personal liberty could not limit the “*coming into existence of a female or male foetus which shall be for nature to decide.*” In reaching its conclusion, the court regarded the foetus as having life. It held that the Act was enacted to further the ‘right of every child to full development’ The ultimate aim of the Act is to promote gender equality in India by recognizing that gender discrimination against women starts from the conception stage. Therefore, the court’s ruling is progressive in the sense that it recognizes and enforces the purpose of the Act.

In Mr. Vijay Sharma and Mrs. Kirti Sharma v/s Union of India<sup>57</sup>, through the Ministry of Law and Justice and Ministry of Health and Family Welfare, the court says that foeticide of girl child is a sin; such tendency offends dignity of women. It undermines their importance. It violates women’s right to life. The Delhi High Court, in a first –of-its kind judgment in the world, said maternal mortality is a human right violation and has directed the government to create shelters for destitute pregnant women. The court emphasized that the cases demonstrated a complete failure of the public health care system and a failure in implementation of government schemes designed to reduce maternal and neonatal mortality by encouraging institutional delivery for poor pregnant women.

<sup>54</sup> Writ Petition No. 196 of 2001.

<sup>55</sup> (2000) Cri. L.J, 671

<sup>56</sup> (2005) Cri. L.J. 3408.

<sup>57</sup> AIR 2008 Bom. 29.



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In *Surjit Singh Thind v/s Kanwaljit Kaur*,<sup>58</sup> the Punjab and Haryana High Court has held that allowing medical examination of woman for her virginity amounts to violation of her right to privacy and person liberty enshrined under Article 21 of the Constitution. In this case where the wife filed a petition for a decree of nullity of marriage on the ground that the marriage has never been consummated because the husband was impotent. In order to prove that the wife was not virgin the husband filed an application for her medical examination. The court held that allowing the medical examination of a woman’s virginity violates her right to privacy under Article 21. The virginity test cannot constitute the sole basis, to prove the consummation of marriage. In *State of Haryana v/s Smt. Santara*,<sup>59</sup> the Supreme Court awarding compensation to Mrs. Santara, who gave birth to a daughter in spite of a sterilization operation carried on her earlier. This is one of the cases of negligence during sterilization operations. A poor labourers woman, who already had many children and had opted for sterilization became pregnant and gave birth to female child in spite of sterilization operation that obviously had failed. In *State of Punjab v/s Mohinder Singh*,<sup>60</sup> the Court held that right to health is integral to right to life and that government had constitutional obligations to provide health facilities. Thus, the Judiciary, especially the Supreme Court, has been playing an effective and meaningful role towards protecting reproductive rights of women.

## **VII. CONCLUSION AND SUGGESTIONS:**

The observation reveals that right to reproduction is the basic and essential right and it must not be a target of any discrimination. Reproductive health and right to reproductive health is not only women issue it is a family health and social issue. A focus on the health needs of women, their nutritional status, maternal mortality, the risk of early marriage and childbearing is sensitive issue of concern and require urgent attention if condition of women has to be improved. Freedom and rights of women cannot be ensured without making them aware about their reproductive rights. Women’s right to health and reproductive health in

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<sup>58</sup>AIR 2003 P&H 353.

<sup>59</sup>AIR 2000 SC 1888.

<sup>60</sup>AIR 1997 SC 1225.

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particular, is essential for gender equality and women empowerment. Approach to acceptable health care services decreases women’s morbidity, sustains their health and ensure their continued productivity. The officials can also change their viewpoint on the reproductive health standards of women by fully empowering and widening the important health services by repeated counselling on safe sex, knowledge on nutrition and education on gender-based violence. Keeping in view the increasing number of HIV/AIDS cases in the country and the greater threat to the innocent women and girls there is lot of need on government, non-government organizations, educational institutions and other agencies to take up awareness generation activities about HIV/AIDS prevention. Women face high risks of malnutrition so the main target would be to give maximum nutrition help to the women in all phase of their life cycle. Nutritious food should be provided to the pregnant women for the safety of the health of infant and mother. Right to reproductive health and choice become an issue early in women’s lives, as the women do not have adequate knowledge and awareness about these. Indian women are given different types of rights and freedoms for example freedom of speech and expression, right to equality and mainly right to education. But sex- selective abortions, domestic violence, and harassment are still there in the society.

Hence, the prevailing environment calls for enactment of suitable laws and their proper implementation and enforcement to ensure the well- being of women and granting them equality in society. For the main progress of the nation, it is important that the physical as well as mental wellness of women especially special focus on the reproductive system of ladies should be taken in serious note by the government because if there will be healthy mother automatically there will be birth of healthy baby. Right to reproductive health should be treated as inherent dignity, equality and inalienable right of all females of the society. It is a need of hour to have proper legislation in order to protect and promote reproductive rights of women and look after the issue of the reproductive health of women.