



A Human Rights analysis of right to reproductive rights

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Abstract

The purpose of this writing is to discuss the women's reproductive rights as human rights by laying stress on Indian and International laws and practices. By this paper I would like to put light on how reproductive rights and right to health are interrelated and how they are essential part of human rights. I will be laying stress on Laxmi Mandal v. Deen Dayal Harinagar Hospital and Ors. For looking at its reading and understandings with International Human Rights law. This paper is constructed on reading, "Gable, L.' reproductive Health as Human right' and Laxmi Mandal v. DeenDayal Harinagar Hospital andors.

Keywords: women's reproductive rights, human rights, international laws

Introduction

The world health Organization defines health in its constitution "as a state of complete physical, mental and social well being and not merely the absence of disease or infirmity." Reproduction and health have a close and profoundly embedded connection. Reproduction and its process have direct and immensely deep impact on women's health. As per Gable "Reproductive health broadly encompasses health conditions and social conditions that affect reproductive functioning, whether a woman seeks to reproduce or to avoid reproduction [2]."

Right to health, has been given a broad meaning by the CESR committee, this right includes features for good health food, sanitation, safe drinking water and a healthy environment. The CESR committee puts forward four features, which are crucial for right to health, these four features being Availability, Accessibility, acceptability and quality.

Right to health is also a part of Article 12 of The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW). It does not safeguard the all-over health of the women, but it only limits and puts obligations on the state in particular to reproductive health. Article 12, basically lays down obligations on state parties to take all measures to eliminate discrimination against women in the area of health care and also imposes confirmatory obligation on the state to ensure access to reproductive health care services.

For women's freedom and dignity and for achievement of equality, gender reproductive rights were established with the help of national and transnational women right's movement [3]. As, In earlier days, It was considered that the sole duty of a women was only to bear children and serve the families and hence their health was not taken on a serious note or as a priority. Women's cost of health while discharging the baby or when undergoing labor were not even recognized as in earlier days deliveries took place at home with the help of the ladies residing near by. Bad health due to reproductive process such as due to premature child bearing and premature death during labor or weakness were not considered important to be

controlled by health services and were in fact reasoned by fate and god's will. Nowadays even though the government has created laws, they are hardly implemented and the manner in which they are drafted clearly show that protection of women's reproductive health is not of much importance for the government. Hence protection of women's freedom and dignity were of much importance.

With time, reproductive rights were considered to be important human rights that supported women's reproductive health, inclusive of rights such as ability to choose whether or at what time to reproduce, access to suitable health services and all the rights related to it [4]. But even now, the international human rights law did not clearly mention about the right to reproductive health. Whereas, distinct feature of this right can be gathered from various human rights principles which are applicable to reproductive health of a women.

Universal Declaration of Human Rights (UDHR) aims to safeguard women's reproductive rights which are inclusive of rights like, right to privacy [5], right to be free from discrimination and right to consent [6]. Whereas Article 25 lays down the rights very clearly, Article 25 states "Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection [7]." In this article we can conclude that motherhood means reproductive rights. This particular article lays down positive obligation on the state and clearly mentions that motherhood and childhood require special care and it does not discriminate in giving protection between any type of children whether born in or out of wedlock.

The various human rights principles related to reproductive health of women do not only lay down positive obligations, but there are several principles which lay down negative obligation such as Article 12 of International Covenant on economic, social and political rights (ICESCR), it prohibits government from making any restrictions on an individual which restricts their ability to exercise the rights guaranteed, this Article guarantees right to everyone to the enjoyment of

the highest attainable standard of physical and mental health. It clearly lays down the states obligation and duty to recognize everyone's right. As compared to this Article UDHR is a broader piece, as Article 12 mostly lays emphasis on health consequences but fails to state the basic causes of health. Whereas Article 12(2)(a) lays down provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child^[8].

India does not have a direct right to health, whereas the Indian courts have always seen right to health as an essential part of the right to life under article 21 of the Indian constitution. The Indian courts have held that the right to health is inclusive of right to health care services, to get basic standard of treatment and care, the implementation of reproductive rights of the mother and right to proper medical care to the new born^[9]. India has been a significant part of all the mentioned international conventions on right to health and women's right on reproductive health. Whereas there are several other international conventions of which India is a significant part. In *Laxmi Mandal v. Deen Dayal Harinagar hospital*, Delhi high court conveyed the ground breaking judgment, it recognized maternal morality as a human rights issue, court stated that women are the masters of their bodies and they can wish as to when and whether to conceive or not, and it also laid down that no pregnant women should be denied access to medical treatment on basis of any grounds, like social and economical status, like it happened in the case of *Laxmi Mandal*. It was also asking the state to comply with the CESR feature of accessibility.

The case of *Laxmi Mandal* was against the health care facilities and the government of Delhi, due to their failure to cater proper health care facility to Shanti Devi. Shanti Devi was a women, who was below the poverty line and she resided In Delhi. With her there were thirty other families who stayed in the same building and all of them shared one single washroom. While Shanti Devi was pregnant for the fifth time, she fell down from stairs in her building. She along with her husband went to a local dai as they could not afford to go to see a doctor, whereas the local dai directed them to go to the government hospital and seek medical care. Whereas Laxmi could not go to the hospital, as they did not have sufficient money. It was only after two weeks that Laxmi raised money and went to the hospital, at this point neither shanti nor the dai could feel the baby moving, the hospital they went to discovered that the baby was not alive any long and referred her to different hospital as there she could receive free treatment due to her economic status. The recent hospital did not give any medicine to Laxmi neither did they remove her fetus and there was no transport made available for Laxmi to go to the other hospital. Whereas when she went to the other hospital, they did not remove her fetus as they did not have a vacant bed in the icu, they kept her admitted for 3 days and gave her blood. This hospital also referred her to the next hospital for removal of fetus; the resident of the same hospital took her to the next hospital and showed her documents to prove her bpl status. As soon as the resident of the hospital left, the hospital demanded her 3 lakhs for removal of her fetus and they also said they would not treat her without the payment they demanded, declaring that she did not fall under bpl. Laxmi was sent back to the earlier hospital and her fetus

was removed, after a few weeks shanti was discharged without giving any advice or word related to family planning, method of contravention or any other follow up care. A few months later after she was discharged she was pregnant the 6th time and as soon as she gave birth she died.

This case very evidently uncovers the health inequality faced by women and breakdown of the government to apply the several governmental schemes made specially to help and benefit the pregnant women especially for the ones who live below the poverty line and do not have adequate resources or are not economically stable to access health care institutes and it shows unconcern of the hospitals to focus on the poor patients who cannot afford such costly services^[10].

There is a huge space between the formal approval of ICESCR and CEDAW and domestic application of the right to health and reproductive rights to women.

In India maternal deaths and maternal sickness are not due to the medical reasons or the lack of health services by the State whereas there are several other reasons which are responsible for this such as poverty, illiteracy, gender inequality. In the case discussed above Shanti died because of her bad social and economical condition. All these factors play a very important role in maternal health consequences. The situation is even worsened by socio-cultural factors such as discrimination on various grounds such as caste, gender etc. as all these factors also control women's admission to health care services. We could see in the present case how shanti devi for being a schedule caste was deprived of public health care services.

It is the obligation of the Indian government to protect the rights of its people under the constitution. Therefore the government should take all the possible steps to advance the health condition in India. Proper health services should be provided so that women are at least given basic rights.

Hence we can reach on a conclusion that the problem is not due to absence of medical health institutes but due to the laziness and lack of government actions to comply and take the steps, which are necessary. It is high time to bring the schemes, which are on paper to reality.

The state in order to fulfill its obligations which being respect, protect, fulfillment^[11]; It should provide health care facilities available to all at reasonable rates.

References

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