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REPRODUCTIVE RIGHTS AND GENDER JUSTICE: A COMPARATIVE LEGAL ANALYSIS OF POLICY FRAMEWORKS IN INDIA.

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ABSTRACT:

In human rights and gender justice, reproductive rights play a significant role. They give people the freedom to make good and smart choices about their reproductive health. This paper discusses a close look at India's laws on reproductive rights, focusing on contraception which is birth control, safe abortion, and maternal health. The paper also discusses about various acts and how they can tackle gender inequalities. Those acts are the Medical Termination (MTP) Act[1], the Pre-conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, and the Surrogacy Act. There is also a comparative analysis done between the countries Sweden, Canada and India to show how different acts play different roles in different countries and to show the limits of India's strict policies. Case laws based on the right to abortion and reproductive autonomy, surrogacy and assisted reproductive technologies, and maternal health and reproductive rights will also be discussed. In the end, the paper discusses on gender justice by promoting access to reproductive healthcare and upholding fundamental rights.

Keywords: Reproductive rights, gender justice, human rights, contraception, safe abortion, maternal health, MTP Act, PCPNDT Act, Surrogacy.

INTRODUCTION:

Reproductive health is not a matter of personal health alone, but also society's development at large. Reproductive health encompasses the individual's capacity for making decisions over their body when they are informed, for instance, access to family planning, safe abortion, and maternal care. These rights are central to the provision of gender justice, where all individuals are given equal opportunity and protection despite their gender identity. Reproductive rights in

[1] Bordoloi, D. (2015). Medical Termination of Pregnancy in India: Challenges and Future Prospects. Journal of Gender Studies, 4(1), 112-126.

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India are determined by a combination of law, judicial rulings, and international treaties. Despite these legal documents present, however, numerous barriers continue to hinder individuals, particularly in the rural parts of the country with few medical centers, from accessing reproductive health. The reproductive rights argument is indistinguishable from the broader ones of gender justice and human rights. Gender justice ensures equality and non-discrimination so that a person can enjoy control over reproductive life. Regrettably, in India, the application of such rights is weak and social stigma, as well as legal barriers[2], prevent women from receiving full and safe reproductive health care. While India has attempted to advance reproductive rights through legal changes and court decisions, there are still enormous gaps in achieving healthcare policies that include both sexes. A comparison of India's reproductive rights status with Sweden and Canada can provide useful lessons in best practices. Sweden and Canada have adopted the rights-based approach that prioritizes reproductive autonomy, whereas India has maintained medical control and controls. The central issues which are being addressed in this paper are the role of contraception, abortion, and maternal health and how various societies react towards these. Through an examination of paradigmatic case law and judicial decisions like Suchita Srivastava v. Chandigarh Administration (2009), Baby Manji Yamada v. Union of India (2008), and Meera Santosh Pal v. Union of India (2017) this article critically examines India's trajectory on reproductive rights and suggests reforms that can put it on the international standards for gender justice and reproductive autonomy.

RESEARCH METHODOLOGY:

This study uses a doctrinal research methodology, also by using secondary data sources, including articles, journals, and case laws. A comparative analysis has been used between the countries Sweden, Canada, and India.

LITERATURE REVIEW:

The discourse of reproductive rights and gender justice continues to get attention at the global level and India, being a developing country, attracts women’s rights issues through its sociocultural, legal, and political lenses. The sociocultural context, policy structure, and judicial system interact in such a way that there exists a striking gap between women’s autonomy and their access to reproductive healthcare in India. This review focuses on the literature that

[2] Rao, S. (2018). Reproductive Rights and Health in India: A Legal and Policy Perspective. Asian Journal of Women's Studies, 24(4), 87-103.

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analyze judicial systems, policies and mostly, gaps in gender justice and reproductive rights from an Indian perspective and compares it with other international policies.

In India, the restorative rights of women improved greatly with the enforcement of the Medical Termination of Pregnancy Act (MTPA) in 1971. Despite being forward-looking, criticism of the MTPA emanates from its harsher provisions like the 20-weeks timeline for abortions which has made it impossible for many women in advanced stages of pregnancy to access abortion services (Rao, 2018). Kapoor (2019) argues that reproductive care remains unequally accessible, even after legal reforms, because of inadequate healthcare facilities and lax law enforcement along "with" women's lack of awareness about the law. Furthermore, as cited by Sen (2015), the gaps within the aid for maternal health, the absence of adequate sex education, and the banning of abortion under specific conditions are also aspects that aid the fight for gender justice.

The power to make decisions regarding one's own body which includes reproduction and termination of pregnancy is part of the prerogative provided in Article 21 of the Constitution which is made bare in judicial decisions such as Suchita Srivastava & Anr. v. Chandigarh Administration (2009). Particularly in cases involving mental health and disability, judges have relaxed the time limits for legal abortion, thereby enabling a more liberal approach towards women's rights (Ramaswamy, 2020). Nair (2018) points out that although the judiciary has made headway in certain cases, there is confusion and unequal access to services due to the absence of a consistent and transparent national policy on reproductive rights.

ANALYSIS AND DISCUSSIONS:

Reproductive health influences overall health, well-being, and societal progress[3], which is crucial for individuals and communities. There are rights that come under reproductive health, which are termed as reproductive rights. These rights are meant to ensure any individual has their right to make informed, free, and responsible decisions about their bodies and reproductive health. These come under the fundamental rights of human beings.

Reproductive rights are an essential component of the fundamental rights of human beings and gender justice. Gender rights are a well-known and discussed topic. Gender rights mainly mean that all individuals, regardless of their gender identity or expression they are entitled to equal rights, opportunities, and protections. Core principles such as equality and non-discrimination,

[3] Nair, S. (2017). Gender Justice in India: Legal Frameworks and Socio-cultural Challenges. Oxford University Press.

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equal rights and opportunities, and freedom from violence define Gender Justice more broadly. Gender justice matters because it is essential for upholding the worth and dignity of all individuals. It helps in achieving social progress and economic growth, which will eventually help in achieving security and peace. In India, the regulation of reproductive rights is shaped by a combination of statutory laws, court rulings, and international commitments. The discussion on reproductive rights is central to gender justice and human rights. These rights cover access to contraception, safe abortion, and maternal health. This paper provides a critical analysis of India's legal framework[4] regarding reproductive rights, assessing how effectively it addresses gender inequalities.

Contraception, Safe abortion, and Maternal Health.

Reproductive rights, which encompass three major topics, are access to contraception, safe abortion, and maternal health. Contraception allows a woman to control her reproductive health. It is an act of preventing pregnancy. This can be in the form of a device, a medication, or a behaviour. In India, the methods of contraception are facilitated through government programs like the National Family Planning Programme. But there is limited access to the facilities, especially in rural areas. Abortion, on the other hand, means termination of pregnancy. It can be an unplanned or unwanted pregnancy. Safe abortion, according to WHO, is performed through the appropriate methods that are allowed by the WHO that are suitable for the length of the pregnancy, and it is performed by those who have the necessary skills. Safe abortion is a crucial component of reproductive health and rights, which are included in human rights. Globally, unsafe abortion is a major cause of public health problems that has contributed to many maternal disabilities and maternal deaths. Maternal health is the health and well-being of the mother, not only during the pregnancy but also during childbirth and the postpartum stage. Maternal health covers both the physical and mental aspect of the mother.

Legal Framework In India

The significant acts which will be discussed here are the MTP Act, PCPNDT Act, and Surrogacy Act. The Medical Termination of Pregnancy (MTP) Act 1971 allows termination if the pregnancy causes a risk to the pregnant woman's life or health. The act protects the privacy of women and also protects the action taken in good faith. In 2021, the MTP Act was amended to increase access to safe abortion services. This act especially helps the survivors of sexual

[4] Sen, M. (2015). Reproductive Justice: Bridging the Gap in India's Policy Frameworks. Journal of Indian Law and Society, 16(2), 99-115.

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violence and vulnerable women. However, the law does not provide complete independence to women for making abortion decisions since it requires medical approval. The Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act was enacted in 1994 and was amended in 2003, which aims to prevent female foeticide by prohibiting sex determination tests and sex selection before or after conception. The main benefit of this act is to prevent the misuse of prenatal diagnostic techniques for sex determination and to protect gender balance in India. India has a Surrogacy (Regulation) Act, 2021, which protects the rights of all the parties involved in a surrogacy. Surrogacy is an arrangement where a woman agrees to become pregnant and give birth to a child on behalf of another couple (or a person), who will then become the child's legal parents. This act bans commercial surrogacy and allows only altruistic surrogacy. Altruistic surrogacy is a selfless act where the surrogate will not receive any financial compensation beyond her medical expenses and legal expenses.

Comparative Legal Analysis

Countries like Sweden and Canada opted for a rights-based approach, which ensures unrestricted access to abortion and reproductive healthcare. In Sweden, abortion is legal on request until 18 weeks of pregnancy and after that, it requires approval from the National Board of Health and Welfare, with exceptions for the health of the mother or the fetus. In Canada, abortion is legal and safe, and it does not criminalise or restrict abortion. One barrier which is there is access to abortion services. There is limited access in some areas[5]. Unlike Sweden and Canada, India's abortion laws don't give women complete control over their bodies. Abortion is only allowed within time limits, and a doctor's permission is needed.

Getting good reproductive healthcare in India is difficult, especially in rural areas, and social stigmas make it even harder for women to make their own choices.

CASE LAWS

1. **Suchita Srivastava v. Chandigarh Administration (2009)[6].**

   This case law comes under the right to abortion and reproductive autonomy. The facts of the case are that Suchita Srivastava is a mentally challenged woman residing in a government-run- run welfare institution in Chandigarh. The Chandigarh Administration sought permission from the Punjab and Haryana High Court to terminate her pregnancy,

[5] Kapoor, S. (2019). Reproductive Rights and Gender Justice: A Case for Comprehensive Reform in India. Indian Journal of Law and Policy, 23(3), 145-161.
[6] (2009) 9 SCC 1

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as she had been sexually assaulted and became pregnant. The High Court allowed the termination of pregnancy, stating the victim's mental incapacity in taking care of a child and this order was challenged before the Supreme Court. The Supreme Court highlighted that a woman has a fundamental right to make reproductive choices under Article 21 of the Constitution, which states Right to Life and Personal Liberty. Also stated under the MTP Act, that pregnancy can be terminated only with the consent of the woman, except in cases where she is a minor or mentally ill. So the final decision was that the Supreme Court overturned the High Court's decision and allowed the woman to continue with her pregnancy.

2. **Baby Manji Yamada v. Union of India (2008)[7].**

This case comes under Surrogacy and Assisted Reproductive Technologies. The facts of the case are that a Japanese couple, Dr. Ikufumi Yamada and Yuki Yamada, opted for surrogacy in Gujarat, India. The couple divorced before the baby (Baby Manji) was born in July 2008. Yuki Yamada (the intended mother) refused to take the baby, leaving her in legal limbo. The biological father, Dr. Ikufumi Yamada, wanted to take the child to Japan, but the Indian laws on surrogacy were unclear, and since Japan did not recognize surrogacy, they refused to grant the baby a passport. An NGO (SATYA) and India's child rights commission got involved, raising concerns about the baby's welfare. The court ruled no legal issues were preventing Baby Manji from leaving India. Authorities were directed to issue necessary papers for the baby to travel. Japan gave Baby Manji a one-year humanitarian visa. The baby was taken to Japan under the care of her paternal grandmother. This case impacted on exposing the legal gaps in surrogacy and contributed to discussions in regulating surrogacy in India.

3. **Meera Santosh Pal v. Union of India (2017)[8].**

This case comes under the Maternal Health & Reproductive Rights. The facts of the case are that Meera Santosh Pal, a pregnant woman, approached the Supreme Court seeking permission for an abortion. She was 24 weeks pregnant, but Indian law (Medical Termination of Pregnancy Act, 1971) only allowed abortion up to 20 weeks unless the mother's life was at risk. A medical board examined her and found that the fetus had severe abnormalities and would not survive. The doctors also stated that

[7] 2008 (13) SCC 518
[8] (2017) 3 SCC 462.

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continuing the pregnancy could harm the mother's physical and mental health. The judgment was that the Supreme Court allowed Meera Santosh Pal to terminate her pregnancy, despite crossing the 20-week legal limit. The court ruled that a woman's right to life and health is more important than the 20-week restriction in cases of fetal abnormalities. This case set an important precedent for allowing abortion beyond 20 weeks in exceptional circumstances.

SUGGESTIONS:

In India, to make reproductive rights a reality, the first important step is to enhance access to contraception and reproductive healthcare. This is possible through increasing awareness campaigns and governmental programs, particularly in rural areas where healthcare facilities are scarce. To further close the gap in accessibility, we can improve the infrastructure by making more contraceptive methods available at local clinics and by employing community health workers. Additionally, making reproductive health education part of the school curriculum and public campaigns can help remove myths and decrease stigmas about contraception. Legal adjustment and modification are needed to give women complete control over their reproductive lives.

The legislation should be in a way that assists people. By the MTP Act, the need for medical sanction for abortion should be reassessed to give power to women to make decisions on their own regarding their bodies. The number of sanctioned medical practitioners who are doctors and nurses, who are funded for this, should be boosted. And further, the abortion clinics should be easily accessible even in rural regions. By knowing the comparative-based analysis[9], it can be said that India must embrace a more rights-oriented approach like Sweden and Canada, where abortion is not a restricted procedure but a healthcare service. Maternal health services must be improved by enhancing medical infrastructure, primarily in underserved areas. The government can assist by investing in the training of well-qualified healthcare professionals so that hospitals and primary healthcare centres are equipped to render quality maternal care.

Maternal health can be greatly enhanced by offering mental health care and nutrition counselling in prenatal and postnatal conditions. Society's stigmas can also be combatted through campaigns and education so that women do not hesitate to get healthcare services due to the fear of discrimination or judgment.

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CONCLUSION:

The policy context in India with regard to reproductive rights and gender justice is a complex legal context where rights are written on the piece of paper but frequently hindered by social stigmas, legislative barriers and cultural norms. Serious barriers are still intact even after having legal frameworks like the MTP Act and PCPNDT Act as the pillars of reproductive autonomy. From the comparison of Sweden and Canada, India requires a rights-based and universal approach with greater access to reproductive healthcare across the globe. Actions such as infrastructure development for health, challenging the stigma of society, and adding legal protection are required to achieve gender justice for reproductive rights. From the comparative law study, one can learn that India must focus on autonomy, accessibility, and integration of care for healthcare. The most crucial challenges India must address in providing gender justice are the prohibitively expensive abortion and surrogacy conditions, and the socio-cultural. By learning and borrowing from international knowledge, India can enhance its practice and mechanism for achieving a more equal system of reproductive healthcare. Based on the above-discussed case laws, there is a better understanding of the right to abortion and reproductive autonomy, surrogacy and assisted reproductive technologies, and maternal health and reproductive rights. The policy reforms must be directed towards the enhancement of reproductive healthcare facilities and legal certainty.

Based on these deliberations, there will be an establishment of how to achieve not only gender equality but also work towards higher societal and economic growth. This research entails a wide-ranging process of discussing legal reform, health progress, and social consciousness that must be achieved to achieve the real reproductive rights and gender justice in India.

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