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AN ANALYSIS OF REPRODUCTIVE RIGHTS & LAWS OF WOMEN IN INDIA

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ABSTRACT

Our society comprises of both men and women. Where both the gender has an equal contribution towards the human sustainability on the earth. But a history of women facing oppression and loss of human rights can not be denied. With the evolution the women rights has been given values and now it is one of the primary matter which a country prioritize over and makes laws to secure them. The developed nations has strong laws upon the same and the developing ones are trying to match it with the developed one. The article given below discusses the rights and laws a women has during her reproductive stage. The article is being written with the sole purpose to make a women aware of her rights and laws so that there could not be any act by the the society which infringes human rights or works as an oppression for the women.

The paper given below provides a detailed and analysed information about the reproductive rights given under the Indian constitution and the laws which benefits the women. The act throughly discusses the rights secured by acts such as The maternity benefit act, The surrogacy act, and the medical termination of pregnancy act. The aforementioned acts secure and regulates the women rights during the phase of pregnancy as well as prevents the illegal use of surrogacy and the medical termination of pregnancy.

Keywords: society, gender, oppression, human rights, women, maternity benefit, surrogacy

INTRODUCTION

Women and children had always been considered as the weaker section of people in society. Women had a history of oppression and deprivation from basic human rights as compared to men. Whether, be it right to vote, right to education, right against discrimination such as Right to get paid equally for equal work, etc. women all around the world had to fight almost a battle in order to get equal human and political rights. The NCRB (national crime record bureau) reported 56.5 as rate of total crime against women in the year 2020.¹In India women and children had always been a subject to exploitation. Children on the other hand, are a very vulnerable section of our society. Children often become an easy target for criminals due to their easy manipulative mind. The amount of crime rate increasing towards women and children are one big issue in our society. Crimes such as rapes, domestic violence, child labor,

¹ National crime report bureau, crime against women. <https://ncrb.gov.in>.

prostitution, child trafficking, child pornography etc are one of the severe crimes which show up a bitter side of society and mortify the humanity. There arises the requirement of utmost significant laws made to secure the rights of women and children.

REPRODUCTION DEFINED

Reproduction is a biological process by which an offspring or a young one of any living being comes into existence. Simply, Reproduction can be defined as the process of having babies, producing young ones or producing new plants. Reproduction is one of the key features of living organisms which is useful for regular existence of living organisms on earth. Reproduction can be further explained as a method through which living organisms gain immortality by creating a replica of their own. During the pregnancy phase a women have to go through various mental and physical challenges and it is often suggested by the doctors to take good care of a pregnant lady. Excess mental or physical stress can lead to health risk of a woman and the unborn child. Hence it is of utmost need to protect women in pregnancy phase from any mental or physical stress. Our hectic routine life and stress leaves severe effects on the fertility of human beings, where the involvement of technology comes to the rescue as an assisted reproductive technology (ART). With the involvement of ART (assisted reproductive technology) into medical science, new methods of reproduction have been introduced into the field of medical science. These modes and methods include IVF (in vitro fertilization), GIFT (gamete intra fallopian transfer), ZIFT (zygote intra fallopian transfer) and surrogacy technique etc. the termination of pregnancy or abortion in India had been abused a lot. The abuse of abortion process often comes into light in cases of Female Foeticide (the practice of killing an unborn female at fetus through abortion) either surgically or with the use of medicines. There was an utmost need to regulate all these reproductive practices through strong laws governing them.

REPRODUCTIVE RIGHTS OF WOMEN IN INDIA

Our constitution is the most basic law which a citizen has to follow and is protected within. The constitution enshrines the rules and regulations one has to follow in order to enjoy its citizenship in a peaceful environment and getting protection and security over their fundamental rights. The fundamental rights enshrined under article 12-35 of the constitution includes article 21 which ensures the right to life and personal liberty to the citizen of India.² The right to life and personal liberty under article 21 has a wide scope as it include the right of enjoying a dignified and peaceful life. This means that anything which adversely effect's either

² Constitution of India, article 21

the dignity of anybody's life can be rightfully challenged and get ridden off. As stated in the case of **Suchita srivastava and another vs. Chandigarh administration** by Supreme Court that the reproductive anatomy is a matter of personal liberty as guaranteed under article 21 of the constitution.³

Therefore, it becomes a responsibility of a government to pass certain laws in facet of women, positively discriminating them on the basis of the challenges they face during pregnancy.

ACTS AND LAWS

The laws in India which ensures proper health, fitness and human rights of women comprises of the below given laws. These laws ensures health, economy, human rights, dignity and prevention of gender discrimination during the phase of pregnancy, the challenges faced during it, the regulation of ART (assisted reproductive technology) and regulates termination of pregnancy.

- Maternity benefit (amendment) act, 2017
- Surrogacy regulation act, 2021
- Medical Termination of pregnancy (amendment) act, 2021

With the evolution of gender equality and gender neutrality all over the world, it came into picture that the women workers in certain establishment were burdened with works which either effect's health or the financial situations of women. Working class women either have to prevent maternity in stipulation of remaining employed or either had to suffer financially, here the maternity benefit (amendment) act, 2017 comes to the rescue as the act aims 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.⁴ The act contains 30 sections in itself.

The Maternity Benefit Act, 2017 concerns benefitting a women working in certain given establishments under Sec 2(e) of the act itself. The act defines establishments in the sec 2(e) of the act. The act moreover makes certain rules and regulations for the employment of women during pregnancy phase, right of the women to get paid during pregnancy phase, provides for procedures to claim maternity benefits with cases such as death of women or miscarriage, the act concerns payment of medical bonus (sec 8), leave for miscarriage (sec 9), nursing breaks etc. The act strictly prohibits any dismissal or deduction in paid monetary terms made during

³ Suchita Srivastava & anr vs Chandigarh Administration (2009) (civ) 570 SCC Online SC 1562

⁴ Maternity Benefit Act, 1961.

the pregnancy phase of a female worker on the ground of her absence from work. The act also provides for certain penalties imposed on the employers contravening the provisions of the act.

ART

Assisted reproductive technology abbreviated as ART can be defined as a method which cures infertility involving technology. ART includes artificial methods of fertilization subsequently resulting in reproduction in human beings. ART includes all fertility treatments in which either eggs or embryos are handled.⁵ In general ART procedures involve surgically removing eggs from a women ovaries combining them with sperm in the laboratory, and inserting in back them to the women's body or donating them to another women.⁶

The transfer of fertilized human germ cells into the womb of a surrogate mother is specifically termed as surrogacy. Surrogacy technique of reproduction can be defined as a method through which the fertilization of male and female germ cell takes place in laboratories and then injected into the womb of an other women commonly called a surrogate mother who agrees to deliver the child after completion of gestation period (9 months) to the actual mother or the owner of the female egg cells eventually as an alternative of natural reproduction. The fertilization technique involved in surrogacy known as In-vitro fertilization often abbreviated as IVF. IVF can be better understood as the fertilization which takes place In-vitro (out of the human body). The fertilization of human gametes or somatic cells

INTRODUCTION TO THE SURROGACY ACT, 2021

The surrogacy act of 2021 is an act which regulates surrogacy in India.⁷ The act sets out certain eligibility criteria for the intending couple, the surrogate mother, medical practitioner who executes or supervises the surrogacy. The Surrogacy act received the assent of the president on the 25th December 2021, for becoming a fully-fledged act. The act contains 8 chapters and 54 sections into it.

The surrogacy regulation act, 2021 aims the prevention and reduction of commercial surrogacy in India. Commercial surrogacy refers to the definition given in the sec 2(g) of the Act.⁸ Almost everything on earth has a bright and a dark side, same applies to the Surrogacy technique which was intended to cure infertility among couples who intend to become parents. Surrogacy is a treatment which proves to be a boon for the couple of same sex. Surrogacy somewhere is a

⁵ 'What is Assisted reproductive technology. <https://www.cdc.gov>

⁶ 'What is Assisted reproductive technology <https://www.cdc.gov>.

⁷ The Surrogacy (Regulation) Act, 2021

⁸ The Surrogacy (Regulation) Act, 2021, s 2 (g)

way of completing the family for the same sex couple. It's a boon for the women suffering any kind of womb anomalies.

Whereas, the dark side of assisted reproductive technology specifically in surrogacy came into the light through the commercialization of surrogacy technique. Commercialization of surrogacy means using the method of surrogacy in exchange of any monetary benefits and using the surrogacy technique for providing reproductive services to the intending couples. The use of commercial surrogacy and the abuse of surrogacy in India made India a hub of cheap and easily accessible country for surrogacy since always.⁹ The sole reason of India turning into a hub for surrogacy was the technique of surrogacy which was not under regulation.¹⁰ There were neither any statute governing the surrogacy technique nor securing it from abuse. The landmark case of **Baby Manji Yamada vs Union of India** could be counted as a case which preserved the requirement of regulation of surrogacy in India.¹¹ The 2021 broadcast 'MIMI' depicts the dark side of commercial surrogacy explicitly. This feature is based on the contract based surrogacy which later gave rise to a difficult situation for the protagonist.

The surrogacy act, 2021 is an act which sets out certain eligibility criteria and restrictions for the intending couple, surrogate mother, and the medical practitioner executing surrogacy. The act promotes the altruistic surrogacy (sec 2b)¹² and demotes the commercial surrogacy (sec 2g) under itself.¹³ The act mandatorily instructs the surrogacy clinics to be registered, and prohibits any other surrogacy clinics to perform surrogacy without registration. The act makes it compulsory to avail a certificate of recommendation from the board specifically state board for ART (assisted reproductive technology) under this act. Moreover, the act prohibits the intending couple from abandoning the child born through surrogacy,¹⁴ the act states that the child born out of surrogacy would deemed to be a biological child of intending couples and is entitled to all the rights and privileges same as the natural child.¹⁵ According to the act an intending couple would be restricted from performing surrogacy in case they do not possess a written consent of surrogate mother informant about all the effect and procedures she has to undergo during surrogacy.¹⁶

⁹ The Baby Factory: Surrogacy, the blooming business in Gujrat, India Today(August 23, 2013)

¹⁰ Bhavyajyoti chilukoti (2014, October 18) *India is the international surrogacy hub due to low cost and unregulated laws*. The Health Site.Com <https://www.thehealthsite.com>

¹¹ Baby Manji v Union of India (2008), Sec onLine SC 1470.

¹² The Surrogacy (Regulation) Act, 2021, s 2 (b)

¹³ The Surrogacy (Regulation) Act, 2021, s 2 (g)

¹⁴ The Surrogacy (Regulation) Act, 2021, s 7

¹⁵ The Surrogacy (Regulation) Act, 2021, s 8

¹⁶ The Surrogacy (Regulation) Act, 2021, s 6

MEDICAL TERMINATION OF PREGNANCIES ACT, 1971

Any women have all the rights to decide her pregnancy and to decide if she wants to bear or raise the child or not.¹⁷

Abortion means killing a fetus in its unborn state specifically in the womb of the mother. Abortion had always been a subject to controversy as there can be different aspects and situation where abortion is executed. Abortion sometimes can be used as an abusive tool to execute gender discrimination through female feticide which effect's the health of women and infringes her right to decide over her pregnancy. Abortion can be a useful tool in protecting a women's health and in some cases her dignity as well.

Therefore, it was of great significance to regulate the abortion procedure for women in India. The Medical Termination of Pregnancy Act was an act of 1971(principal act) which later got amended in the recent year of 2021(amendment act). The act contains five sections in itself.¹⁸

The act defines termination of pregnancy as 'a procedure to terminate a pregnancy by using medical or surgical methods' as per the Act.¹⁹ The act makes termination of pregnancy to be mandatorily executed by a registered medical practitioner.²⁰ The number of practitioners may vary according to the length of pregnancy which is to be terminated.²¹ The state purposes to constitute a medical board in every state and UTs. The act also prescribes the powers and functions of the medical board. The act concerns the mental and physical health of the pregnancy caused by rape. The act properly evaluates the termination and the aftermath of termination of pregnancy on the mental health of women. The information and particulars of any women is under strict confidentiality according to this act and any revelation contravening the provisions of the act would be punishable for doing the same. ²²

CONCLUSION

Conclusively, all these act and laws enacted with a sole aim to reduce the sufferings of women and children who got affected until the regulation of these sectors and contributed majorly in increasing crime against women and children. With the enactment of these laws the aggrieved women or children would now have a chance to raise their voice against the suppression.

¹⁷ PTI, women have the right to decide on pregnancy: SC judge, *The economic times* (New Delhi, 11 Feb 2017)

¹⁸ Medical Termination (amendment) Act, 2020

¹⁹ Medical Termination (amendment) Act, 2020, s 2 (e)

²⁰ Medical Termination (amendment) Act, 2020, s 3

²¹ *R and Anr v state of Haryana & ors* (2020), 5 KLT 583

²² Medical Termination (amendment) Act, 2020, s 4