

PATRIARCHY VS REPRODUCTIVE EMPOWERMENT OF WOMEN: A FEMINIST APPROACH

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Delegation to the 1st International Congress on Human Rights & Duties
(Regd: 09ICHRD2015)

Abstracts:

Reproductive health and reproductive rights are life time concerns which are essential to women's empowerment and gender equality, nevertheless within patriarchal society women don't have control over their reproduction, or to use contraception, terminate pregnancy and prefer to girl child. Further patriarchy not only forces women to be mothers of sons, it also determines the condition of their motherhood. The scripting of reproductive rights into International Human rights law is a foremost achievement. The struggle over reproductive and sexual rights led to a progressive feminization of theory and practice of governance, development, human rights and global justice.

* In the presentation first I want to explain that what is the role of feminist groups regarding sexual and reproductive rights of women?

* Secondly it will be discussed that after implementation of PCPNDT how Indian mothers combat against patriarchy to save their girl child, which has been strengthening their reproductive choice

Keywords: *Women, Health, Reproductive, Human, Rights*

1. INTRODUCTION

The scripting of reproductive rights into International Human rights law is a foremost achievement. The struggle over reproductive and sexual rights led to a progressive feminisation of theory and practice of governance, development, human rights and global justice. It has also invented extraordinary patterns of global social action. It is remarkable that in the beginning of twenty first century women's movement is generated in a constructive way. One hand women movement energetically hypothesize the lack of concern with women's rights and as wellbeing in prior human rights diction and find to redress it by innovating general specific norms. Apparently women's movements also strengthen the presence of human rights formulation, the logic and the language of reproductive rights. Feminist

movement tries to establish the categories of right to live, invulnerability from torture or ill treatment, the rights to the highest attainable standards of health education, information privacy and dignity.¹

Primarily in 1968, at Teheran Conference of human Rights, documented the requirement of basic human right to decide independently and responsibly the number and spacing of children, right to enough education and information in respect.²

In 1970's with the spread of second wave of feminism in West the issue of reproductive rights of women was emerged. In the part of Europe and North America reproductive rights and abortion were

¹Connecticut journal of International Law 1999, p-83

² Final Act of International Conference on Human Rights at 14-15, UN Doc A/ Conf.171/13 para 7.2



merged in the political legal and cultural movements of women. In the mid of seventies the waves of the movement has stimulated the feminist interpretation in India. In the mid-seventies UN focused on the women issue. Asian countries also took part along with European and American countries. There was an increasing visibility in the presence of activists from the South at international conferences and as part of informal transnational frame work. They emphasized on four issues which were reproduction related oppression faced by women. Women from south Region highlighted oppressive family planning policies which were barriers of their reproductive freedom.

There pointed out that women's health movement associated with the philosophy of the reproductive rights. There pointed out that women should have the right to decide 'whether' 'when' and 'how' to have a children regardless of nationality, class, ethnicity, race, age religion, disability, sexuality or marital status in the social, economic, and political conditions that make such decision possible'. (WGNRR: 1993)³

From the feministic viewpoints in the conference it was explained that reproductive health has four dimensions. 1) The ability to enjoy sexual relations without fear of infections, unwanted pregnancy or coercion. 2) The ability to regulate fertility without the risk of unpleasant or dangerous side effects. 3)The ability to bear healthy children.' In the conference it was declared that reproductive health⁴ is the central to the idea of reproductive rights. The international women's movement emphasized the notions of rights of woman to have control over her own body, sexuality and reproductive life. The international Women's Year Conference 1975 noted that "...it should be one of the

principal aims of social education to teach respect for physical integrity and its rightful place in human life. The human body whether that of man or woman is inviolable and respects of it's a fundamental element of human dignity.'" (United Nations: 1976)⁵

The language of reproductive rights first matured in Cairo Programme which expanded the notion to include a right to reproductive health defined as a state of complete physical mental and social wellbeing.⁶ 1992 in Cairo conference the women's health movement was drafted. The declaration was planned to promote women's health movements stand on a variety of issues around development and reproduction in the third world countries. Between 1992 and October 1993 the declaration was modified and finalized by 100women's organization from 23 countries. Those organizations avowed that "[w]omen's fertility has been the primary objective of both pro-nationalist and anti-nationalist population policies. Women's behaviors rather than men's has been the focus of attention. Women have been expected to carry most of the responsibility and risks of birth control...but have been largely excluded from decision making "in personal relationships as well as in public policy... [p]opulation policies must be based on the principle of respect for the sexual and bodily integrity of girls and women..."⁷ The declaration was finally adopted in January, 1994, the singular achievement of the Declaration was that women from all over the world deliberated over it and supported the values and agendas it embodied. Apparently in the Beijing Platform had declared the notion reproductive health to women's right "to have control over ...matters relating to their sexuality...free of coercion discrimination and violence."⁸ In the Beijing Conference reproductive rights

³ WGNRR news letter, 1993

⁴ The Women's health movement adopted the WHO definition of reproductive health which was defined not in the negative as the absence of disease or infirmity. But as a condition to aspire to that is 'a state of complete physical, mental and social well being. WGNRR new letter, 1993

⁵ United Nations 1976: cited in Freedman Isaacs 1993, p-23

⁶ United Nations, Report of the international Conference on Population and Development, UN DOC.A/Conf. 171/ 13 para, 7.2

⁷ Cited in GermainNowrojiec and Pyne, 1994,p-32

⁸ United Nations Report of the Fourth World Conference on Women, UN DOC.A/Conf.177/20 para 96



entitled for all sections of women in society. It declared that a revolutionary transformation assuring equality of relationship between men and women.”⁹

After Cairo and Beijing conference feminist groups were advocated a set of principles regarding reproductive rights, their steps were undoubtedly revolutionary. Cairo and Beijing conference have made enormous effect on feminist movement in India. Feminist activists demand that with the strengthen of Reproductive and sexual rights it have also challenged to the artificial segregation between ‘public’ and ‘private’ spheres by implementing obligations on fathers, husbands, kin groups and local communities to respect women’s integrity and self-determination in aspect to their bodies, sexuality and fertility. Firstly, the definition of “‘privacy’” is always contestable, and feminists have defined it, for example, not as the familial or domestic sphere, but rather as the imaginary sphere of personal identity and self-realization.¹⁰ Nancy Fraser has argued that the feminist project is aimed not at the collapse of the boundaries between public and private, but rather “‘to overcome the gender hierarchy that gives men more power than women to draw the line between public and private,’” while also taking account of other dimensions to that power imbalance, not least those of race, ethnicity, and class.(Fraser: 1997)¹¹Kandiyoti emphasizes the major difference between privacy and patriarchy, arguing that feminists should be wary of ethnocentric definitions of the private and the public, and should acknowledge that the “‘private’” is often

problematically defined by the state. (Kandiyoti: 1991)¹²

Within the arguments of feminist organization it has reflected that ‘control over reproduction is a basic right for a woman. It is linked with women’s health, social status and as well as the powerful social structures of religion, state control and administrative apathy and private profit, it is from the perspective of the poor women thus this girl can best be understood and confirmed. With the influence of feminist movement women have tried to break the patriarchal obsessions and have explained that bearing of child is not social it is purely personal. Women have started to justify her reproductive rights thus women have carried foetus for 10months in her womb so they have primary right over their babies. They have also justified that if a woman cannot give birth of child then patriarchy is marked them as barren but men would not be responsible for that. With the influence of feminism also women have raised the issue that a man would also be a barren.

Feminist scholars and activists have fought to consider reproductive and sexual rights as individual’s right. According to the concept of Petchesky and Judd it has explained that for women of developing societies where an individualist concept of reproductive rights is contrary with their concept of body and self, and their alliance to their community and family the social rights perspective resonate closer to their understanding of their reproductive needs.¹³

Feminist arguments in support of abortion rights have necessarily engaged with broader debates over how to produce rights claims which minimise the risk of application or interpretation in unjust and unequal ways. This has, in turn, led to

⁹ ibid

¹⁰ Jean Cohen, for instance, offers the following definition: “Let me formulate the standard that underlies this aspect of privacy as the right not to have an identity imposed upon one by the state or third parties that one cannot freely affirm and embrace.” (original emphasis) (Cohen, 1996, p. 201).

¹¹ Fraser, Nancy (1997). Justice interrupts: Critical reflections of the “post socialist” condition. London: Routledge.p-119

¹²Kandiyoti, Deniz (1991). Identity and its discontents: Women and the nation. Millennium: Journal of International Studies, 20(3), 429– 443.

¹³Petchesky R. Judd K (1998), edsNegotiating reproductive rights: Women’s perspectives across countries , Zed Books, London, p-45



debates over whether rights claims can ever be a sufficient remedy for inequality and injustice. Petchesky(1986), in her influential consideration of its limits, defines choice as “a woman’s right to control her own body,” a version of bodily and decisional autonomy, while also arguing that such autonomy should be limited, because, as she puts it, recognizing women as the source of decision making over pregnancy “let’s men and society neatly off the hook” (Petchesky, 1986, p. 7). Specifically, the complex contexts of abortion decisions is left unexamined in making a claim for abortion access as an issue of “private” choice (Davis, 1981; Himmelweit, 1988). In other words, the emphasis on privacy prevents any consideration of the socio-political forces which produce both involuntary pregnancies and calls for abortion access, and constrain the “choices” of different women in different contexts. This construction of abortion as an issue of private choice trivializes abortion decisions, as well as endorsing the very mind/body dualism which feminism has consistently contested (Cornell, 1995, p. 33).¹⁴

The second problem with claiming abortion as a privacy right, however, is that this construction does not oblige the state to ensure access to abortion services (Petchesky, 1986). Treating abortion as a right to privacy is therefore insufficient to prevent the state from actively obstructing access (Cornell, 1995, p. 33).¹⁵ If the private sphere were officially defined not in the usual terms of possessive individualism, but in terms of personal identity and self-realization, then perhaps the state would be obliged to support abortion access (a point which will be considered in section three, on Feminist Rights Theory, below).

¹⁴ As Cornell puts it, “[t]he rhetoric of choice and control assumes the much criticized dualistic conception of the subject as the king who reigns over the body” Cornell, 1995, p. 33.

¹⁵For example, the current Irish Government’s policy of allowing women to travel abroad for abortions which are not available in Ireland, leaving those women without the means to travel who don’t have any recourse to the state, unless their lives are at risk from their pregnancy (Brennock, 2001).

Rights theory is based on the assumption of competing recognition claims. As already mentioned, the second major problem with the “right to choose” discourse has been that it has enabled the successful lobbying for both cultural and official recognition of foetal rights (McNeil, 1991). To evoke rights in the context of abortion would seem to affirm the construction of pregnancy in adversarial terms, between foetus and woman, rather than between woman and the state, or between women and men. In other words, constructing abortion access as a rights issue would appear to inevitably generate opposing claims on behalf of fetuses, as well as on behalf of men as fathers (Porter, 1996; Steinberg, 1991, p. 280). Foetal- rights advocates have necessarily constructed women in terms of the potentially dangerous foetal environment, in need of regulation.¹⁶

The example of this uncertainty over the advocacy of reproductive rights claims as a substantial alternative to the “right to choose” can be seen in Susan Himmelweit’s (1988) attempt to elaborate the parameters of that alternative. Her aim, as she describes it, is to work within, while also transcending the limits of, individual rights politics. She defines what she refers to as a ‘humanitarian’ alternative, which should enable the provision of abortion on demand to all women without medical authorization, a goal which, unlike Petchesky, she advocates unequivocally. However, her determination to avoid “individualizing” abortion decisions leads her to recommend a form of welfares as the basis upon which such decisions should be made, a move which seems to suggest a community-level interest in the making of those decisions: A recognition of the active involvement and interdependence of mother and foetus would provide a secure foundation for a humanitarian claim for abortion on demand,

¹⁶ Barbara Duden argues that women are present in this iconography only as the delicate and possibly dangerous ecosystem necessary for the survival of the usually male foetus (Duden, 1993, p. 2). Sally Sheldon (1997) provides an analysis of the foetal discourse legitimizing medical practice in cases of multiple pregnancy.



based on the welfare of both mother and foetus. (Himmelweit, 1988, p. 53) It seems to me that the uncertainty and limitations these articulations of “reproductive rights” exhibit suggest a confusion between providing explanation and producing political principles.

With the influence of feminist movement MTP act has implemented in India which has primarily strengthened to abortion choice of women. Act 1971(hereafter MTP Act) to control abortions and strategies like keeping a track of pregnant women. These are dangerous strategies as they seek to control all abortions even when no sex-selective diagnosis has taken place. The MTP Act allows abortion on several grounds, including failure of contraception.¹⁷ “A prospective mother who does not want to bear a child of a particular sex cannot be equated with a mother who wants to terminate the pregnancy not because of the foetus of the child but because of other circumstances laid down under the MTP Act.”¹⁸ Some feminist groups have demanded that these grounds should be expanded to allow abortion to a woman if she chooses not to have a child.

Social activist SudhaSundaraman has explained that if women’s powerlessness can increase their urge for having children (especially sons), then steps towards their empowerment could most probably have the opposite effect. Now women can understand that if they will educated, financially independent then they will control over their reproduction. The physical hardship of repeated pregnancies, closely spaced, can

exact a terrible toll on a woman’s health, especially if she is undernourished. In developing countries as estimated 20 to 45 percent of women of child bearing age does not consume. They are suffering anemia due to frequent pregnancy and iron deficiency. Though MTP has negative effect nevertheless it is terminated unwanted pregnancy and to be empowered women’s reproductive choice.¹⁹

Though MTP Act has strengthened the reproductive rights of women nevertheless due to son phobia and pressure of patriarchal families, medical professionals have miss used to MTP as license of sex selective abortion. After Nairobi conference in1968 Indian social activists and feminist organization have fought to legalise Medical Termination of pregnancies but when it would use as profit earning methods and female sex ratio is gradually decline due to practice of female foeticide, then women activists and feminist organization have moved to prevent illegal practice of sex selective abortion. They have argued that Sex-selective abortions of female fetuses should be sharply distinguished from the right to abortion, which every woman should have, as it is a blatant and extreme form of discrimination against the girl child and is fuelled by and fuels further discrimination. After long term battle of social activists and women organization Prohibition of Sex Selection Act has introduced in India (after it is well known as PCPNDT). After implementing PCPNDT Indian mothers get legal strength to save their girl child, which has been strengthening their reproductive choice. Indian parallel films have also visualized the battle of women against female foeticide.

The 1994 Act has proceeded by the Maharashtra PNDT Act in June 1988 by which time it has become clear that pre-natal sex determination tests to abort female fetuses had become an easy way of getting

¹⁷ Vijay Sharma v UOI AIR 2008 Bom 29

The Bombay High Court in this case dealt with the MTP Act and observed that “It (MTP Act) seeks to liberalize certain existing provisions relating to termination of pregnancy as a health measure - when there is danger to the life or risk to physical or mental health of the woman, on humanitarian grounds - such as when pregnancy arises from a sex crime like rape or intercourse with a mentally ill woman, etc. and eugenic grounds - where there is substantial risk that the child, if born, would suffer from deformities and diseases . It does not deal with sex selective abortion after conception or sex selection before or after conception.”

¹⁸ Ibid, Para 17

¹⁹SudhaSundaraman Former General Secretary of All India Democratic Women’s Association has given me the interview on 11.7.2014 at AIDWA office, New Delhi-7



rid of daughters²⁰. The fact that the central legislation has come about six years later than the state Act showed the lack of political will in controlling this dangerous trend. Even though the law has been enacted in 1994, it “came into force” only on first January, 1996. This lack of political will has continued till date and has manifested itself in the manner in which the PCPNDT Act has, or rather has not, been implemented and enforced by the Central and State governments. In some states the Act did not get notified till very recently.²¹ In one case conviction could not take place as the Act has not even been notified in the gazette²².

The PCPNDT Act is a comprehensive and strict legislation. Though earlier this Act had only dealt with pre-natal diagnostic techniques it was amended in 2003 to also prohibit pre-conception diagnostic techniques as well. The introduction to the Act acknowledges that pre natal diagnostic centres had sprung up in the urban areas in the country and stated that the law has been proposed “to prohibit pre-natal diagnostic techniques for determination of the sex of the foetus leading to female foeticide.” The law therefore provided for the following;

- 1) Prohibition of the misuse of pre-natal diagnostic techniques for determination of the sex of the foetus, leading to female foeticide.
- 2) Prohibition of advertisement of pre-natal diagnostic techniques for detection or determination of sex.
- 3) Permission and regulation of the use of pre-natal diagnostic techniques for the purpose of detection of specific genetic abnormalities or disorders.
- 4) Permitting the use of such techniques only under certain conditions by the registered institutions; and
- 5) Punishment for violation of the provisions of the proposed legislation.²³

²⁰PatelVibhuti, A Long Battle for the Girl Child, Economic and Political Weekly, VOL XLVI NO 21, 18

²¹Maharashtra, Haryana, etc.

²²GauravGoyal v State of Haryana; in the High Court of Punjab and Haryana at Chandigarh; Civil Writ Petition No.15152 of 2007

²³Statement of Objects And Reasons (Act No57 of 1994)

The first landmark case to highlight the non-implementation of the PCPNDT Act is the CEHAT v UOI²⁴ in which the Supreme Court lamented the fact that the law to prevent the practice of sex-selection has not been implemented and that Appropriate Authorities at State and district levels had not been appointed. The CEHAT’s petition has also pointed out that the Central Supervisory Board is not meeting as stipulated and that no action has been taken against advertisements about facilities for pre-conception determination of sex or pre-natal sex-selection. The Court has observed that it is “apparent that to a large extent, (that) the PNDT Act is not (being) implemented by the Central or the State governments.” It has issued detailed directions to the Central and State governments, including directions to hold regular meetings, review and monitor the implementation of the Act and to see that Appropriate Authorities furnish regular quarterly reports on the registration of clinics and on the action that is taken against non-registered clinics and other complaints received by them. It has stated that these quarterly reports The Court also has directed the Central and the State governments to create public awareness against the practice of sex-selective abortions of female foetuses. The Court has issued pointed directions to Appropriate Authorities to take prompt action against advertisements in violations of the Act; against persons who are, and bodies which are operating without a valid registration and to give reports on actions taken by them. The Court also has pointed out²⁵ that they has learnt that Appropriate Authorities were only issuing warnings to unregistered clinics and that this is not proper as the AAs should take actions as per Section 23 of the Act. It further has stated that AAs are not only empowered to take criminal action but are supposed to search and seizes documents, records and objects, etc. according to Section 30 of the Act.²⁶

²⁴ (2003) 8 SCC 398

²⁵ Order dated 19.09.2001



CPIM Politburo Member Miss. Brinda Karat has pointed out the women organizations like AIDWA, NFYW, CWDS, YWCA, FORCES, Jagori etc they have found in the aspect of female foeticide that the PCPNDT Act is not being implemented by the Centre and by the State Government and the strong lobbies of medical professionals who justify the female foeticide in the name of free choice as the good way to control population like many Medical Association have used their influence to ensure the criminal cases are not field against those violating Act. It is common experience of the activists of women organization that because of the collusion between family members and doctors it has very difficult to identify cases of female foeticide. Further the collusion is not limited to doctors alone. The Indian medical Association should issue a circular calling for a strict action against those who violated PCPNDT act. There should be general sensitization courses for the medical community and coordinated country wide campaign must be launched against unscrupulous practitioners.²⁷

Justice K.S. Radha Krishnan and Deepak Mishra have also given emphasize to proper monitoring of PCPNDT Act for prohibiting sex selective abortion. The bench has said that “we have gone through the court as well as the data made available by various states, which depict a sorry and alarming state of affairs. Lack of proper supervision and

²⁶The Court issued directions to Central government to frame rules so that no ultrasound machines were sold to unregistered clinics. An important issue which has arisen in various fora including in courts is how to safeguard a woman’s right to abortion while campaigning and fighting for an end to sex-selective abortions of female fetuses. This is because some groups and individuals who support the prohibition of sex-selective abortion are against all abortions and are “pro-life” supporters.

VinodSoni&Anr. v UOI 2005 (3) MLJ 1131

A Division Bench of the Bombay High Court in this case held the PCPNDT Act as constitutionally valid and held that “The right to personal liberty cannot expand by any stretch of imagination, to liberty to prohibit coming into existence of a female foetus or male foetus which shall be for the Nature to decide... Right to bring into existence a life in future with a choice to determine the sex of that life cannot in itself to be a right.”

²⁷Brinda Karat’s interview is published in AIDWA’s Commission paper, 2006-07

effective implementation of the Act by various states is clearly demonstrated. ...cases have booked under the Act are pending disposal for several years in many courts. Nobody takes any interest in their disposal and hence seldom do those cases end in conviction and sentences a fact well known to the violators. Many of ultra-sonography clinics seldom maintain any records as per the rules and in respect of the pregnant women, no records are kept for their treatment, and the provisions of the Act and the rules are being violated with impurity.”²⁸ (Hindu: 2013)

Nawanshahr campaign was the one of important high profile women’s movement against female foeticide. The rebounding accusations between medical, social activists and a government for enforce the law after the ratification of the PNDT Act resulted in a series of responses ranging from indifference to an almost militaristic style of operation in eliminating the of menace of female foeticide. Nawanshahr represented the latter response. Primarily the district administration was criticised in the media for what was characterized as a misdirected approach in the manner of which it targeted women undergoing sex selective abortions rather than the Medical personnel who conducted the procedures. Soon after the launch of the campaign, cases were filed against six women who were arrested for undergoing the ultrasound scan and then having abortions. The outcome and message that spread was that women whether under conditions of duress or choice who undergo sex selective abortions were punishable.

Government of India also takes progressive and effective steps to save girl child and to prohibit sex selective abortion. In 2006-07 women and Child Development Minister Renuka Chaudhury first introduced ‘Palna or cradle scheme in rural part of South and North India. Under the proposed ‘palna’ or cradle scheme, the government plans to open a centre in each district where parents

²⁸ Hindu, 5.3.2013



can leave their girl children if they do not want to bring them up themselves. “We want to put a cradle or ‘palna’ in every district headquarters. What we are saying to the people is have your children, don’t kill them. And if you don’t want a girl child, leave her to us,” Minister of State for Women and Child Development RenukaChowdhury said in an interview.²⁹

*The ‘palna’ scheme has been proposed to be put in place during the 11th Five Year Plan as part of a slew of measures to fight the menace of female foeticide. Now at least the unwanted girl child will have a chance to live and perhaps some lucky ones will even find a new home and a new life somewhere else rather than ending up in the garbage dump in the backyards of hospitals across the country. In spite of all this and other problems that we fear might bedevil this scheme going forward. This scheme is WORTH it. And it deserves to be fully supported. Because it gives these unfortunate children the most basic right of any human being that is being denied to them most often in the wombs of their mothers itself- **The Right to Live.***³⁰

After published of 2011 provisional Census Report the Government has recognized that the problem of declining child sex ratio in India is not an isolated phenomenon but must be seen in the context of the low status of women and the girl child as a whole, within the home and outside. While its immediate reasons can be traced to increasing son preference as well as advances in technology that has encouraged sex selective abortions, concern of safety and security of the girl child along with the practice of dowry are no less responsible for it.

Accordingly, the Government has undertaken a number of measures to improve survival and status of girl children in the country. While programmes for improvement of nutrition benefit all children

including girl children, like the Integrated Child Development Scheme, National Rural Health Mission, Mid-day meal scheme etc., specific interventions for girl children include implementing the Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, pilot cash transfer scheme of ‘Dhanlakshmi’, setting up a Sectoral Innovation Council for improving child sex ratio, and the pilot scheme ‘Sabla’ for a comprehensive Intervention for adolescent girls in the age group of 11-18, with a focus on out of school girls in select 200 districts of the country. Of the above, ‘Dhanlakshmi’ provides cash incentive, and the scheme does not discriminate on the basis of caste and creed.

I have completed the chapter with reference of the case study of Indar Singh who has fought against patriarchy to save her girl child. Indar Singh Bharti and his wife, who initiated a change before twenty seven years, when they literary gifted life to their new born baby girl. While everybody instructed them to kill their daughter, the couple decided to let their child live. He told “I don’t remember what we were thinking them but it was my wife who took this decision. I only supported her. ...we were often taunted people talked in front of our babies. We have fought a lot...at last we are won. One of my daughters is civil servant and one of them is doctor. Now villagers told to us that they have to feel proud for our daughters...”³¹

²⁹ Times Of India. 2.7.2007

³⁰ ibid

³¹TOI-6.5.8