THE SIGNIFICANT CHALLENGES AND REPRODUCTIVE HEALTH RIGHTS FOR IMPROVING DEMOGRAPHIC OUT COMES

Dr. Tarun Tiwari
Senior Medical Officer,
Institute of Public Health - RUHS,
Jaipur.

Abstract

Reproductive rights as human rights have gradually been recognised since the International Conference on Human Rights Declaration in 1968 and by the International Conference on Population and Development in 1994. The International Covenant on Economic, Social and Cultural Rights, 1996 (ICESCR) and the Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW) also fore-ground the focus on reproductive rights as necessary in realising the human rights of women. The realisation of reproductive rights is interrelated with, and dependent on, the protection and fulfilment of various human rights like the right to life, the right to health, the right to non-discrimination, and the right to protection from gender-based violence. In India, the reproductive rights of individuals and couples can be located in a constellation of laws and policies relating to health, employment, education, provision of food and nutrition, and protection from gender-based violence.

Introduction

The World Health Organization defines sexual health as a state of physical, emotional, mental and social well-being related to sexuality; it is not merely the absence of disease, dysfunction or infirmity. Sexual health requires a positive and respectful approach to sexuality and sexual relationships, as well as the possibility of having pleasurable and safe sexual experiences, free of coercion, discrimination and violence. For sexual health to be attained and maintained, the sexual rights of all individuals must be respected, protected and fulfilled.

Making universal access to sexual and reproductive health and rights a reality can make a difference in the lives of people across the globe. With persistent efforts on all fronts, we can foster societies where all people can express their sexuality safely, positively and with dignity, including the inalienable right for people to decide if, how and when to have children. The health and human rights imperatives are clear: it is time for the global health community to unite around a bold agenda to affirm and secure sexual health as part of sexual and reproductive health and rights for all.

Sexual and reproductive health and rights (SRHR) are critical to people's health and well-being, as well as economic development and global prosperity. Governments have committed to investment in SRHR through international accords. However, progress has been impeded by a lack of political will, insufficient resources, continued discrimination against women and girls, and a refusal to address sexuality issues openly and thoroughly. Underprivileged women, especially from developing countries are affected by unintended pregnancies which lead to maternal death and disability, sexually transmitted infections including HIV, gender-based violence and other problems related to reproductive system and sexual behaviour. The inclusion of SRHR in SDGs and its enshrinement in international policy instruments obligates countries to ensure its

fulfilment and mandate the recognition of sexual and reproductive health within the framework of human rights. India, being signatory to the declaration on the 2030 Agenda for Sustainable Development and home to one-sixth of all humanity is obligated to ensure implementation of policies and laws that look after the sexual and reproductive health rights. The national laws and policies relevant to SRHR in India leave much scope for action in this direction and exhibit huge gaps. There have been extreme violations of autonomy and sexual and reproductive rights especially of women belonging to marginalised communities.

Sexual and Reproductive Health Rights (SRHR)

Sexual and Reproductive Health Rights (SRHR) refers to human rights related to sexuality and reproduction that include civil and political rights as well as economic, social and cultural rights, all of which are essential to ensure that both women and men have equal right to enjoy the maximum attainable standard of sexual and reproductive health and make decisions concerning their sexuality and reproduction, including the number, timing of birth and spacing of their children, free from discrimination, coercion and violence. This right to SRHR is granted to everyone including children and adolescents and is a crucial part of the universal health coverage, which includes the lack of diseases and also physical, mental, emotional and social well-being.

"Sexual and reproductive health is a state of physical, emotional, mental and social well-being in relation to all aspects of sexuality and reproduction, not merely the absence of disease, dysfunction or infirmity… Achievement of sexual and reproductive health relies on the realization of sexual and reproductive rights, which are based on the human rights of all individuals to:

- have their bodily integrity, privacy and personal autonomy respected;
- freely define their own sexuality, including sexual orientation and gender identity and expression;
- decide whether and when to be sexually active;
- choose their sexual partners;
- have safe and pleasurable sexual experiences;
- decide whether, when and who to marry;
- decide whether, when and by what means to have a child or children, and how many children to have;
- have access over their lifetime to the information, resources, services and support necessary to achieve all of the above, free from discrimination, coercion, exploitation and violence."

Need for Sexual and Reproductive Health Rights (SRHR) in India

Several shocking events of rape across country of late have led to scores of public protests, demands for better laws, and calls for swifter enforcement of laws throughout India pointing towards less politically cautious discussions and disregards of sexual violence on national platforms in the country.

India has numerous reproductive health concerns which have to be addressed as a means to improve the reproductive health status of people. "78% of the 15 million abortions in India take place outside medical facilities". Over 30 million married women in their reproductive years are unable to use contraception, according to evidence.

According to a fact sheet, in India, 2 million adolescent women lack access to contemporary contraception; 52 percent of adolescents who give birth attend the recommended minimum of four antenatal care appointments; and 78 percent of abortions performed on adolescents are unsafe, putting them at risk of complications. Also, after an unsafe abortion, 190,000 adolescents do not receive the treatment they require.

NATURE AND SCOPE OF HUMAN RIGHTS WITH RESPECT TO REPRODUCTIVE HEALTH AND WELL-BEING

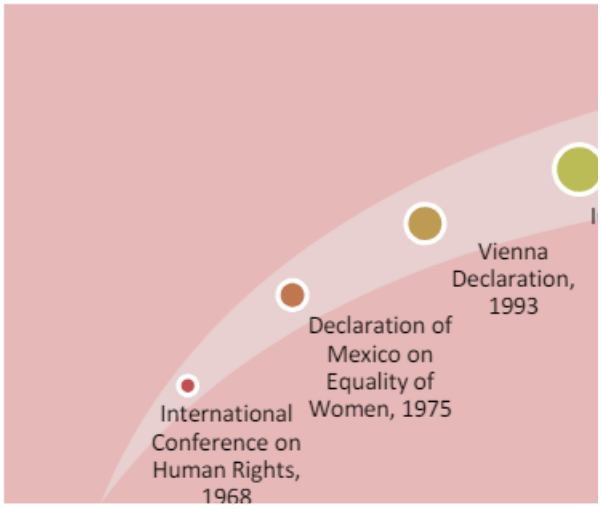
Reproductive rights are enshrined in the United Nations (UN) human rights treaties and in the consensus conference documents to which India is a party, and are protected by the Constitution of India. These treaties and documents point to the obligations of the State to respect, protect, promote, and fulfill rights related to reproductive health, with particular attention to vulnerable and marginalised population groups, without any discrimination. This chapter analyzes how reproductive rights were addressed in international frameworks and in the Constitution of India and identifies the compliance and gaps.

First formulation of reproductive rights

The first formulation of reproductive rights as human rights is found in the International Conference on Human Rights, which was held in Tehran in 1968 to further the principles and aims of the Universal Declaration of Human Rights (UDHR). India was part of the preparatory committee and participated in the conference. The outcome of the conference was the Proclamation of Tehran, Final Act of the International Conference on Human Rights, 1968. Section 16 of the Final Act recognises the human rights of couples to decide freely and responsibly on the number and spacing of their children and to have access to the information and education to do so. Principle 12 of the Declaration of Mexico on the Equality of Women and their Contribution to Development and Peace reiterates this right of couples and individuals to decide freely and responsibly whether to have children and when to do so, and to have access to information and education that would enable them to make these decisions. The Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in 1993, emphasised the right of women, on the basis of equality with men, to access the widest range of family planning services and to have adequate health care.

Following the Millennium Summit in 2000 in New York, the General Assembly of the United Nations adopted the Millennium Declaration with the vision of eradicating poverty and ushering in development for all. Eight Millennium Development Goals (MDGs) were established to realise this vision by 2015 and to guide the implementation of the Declaration. Several goals of the MDGs relate to reproductive health and rights. However, the MDGs

came under criticism because they created silos of intervention in development strategies and plans. The MDGs completely avoided a health systems approach and ignored the deepening crisis within health systems, including underfunding of public health, weakening of the public health system, commercialisation of health care, and the role of the drug industry. Instead, the 'verticalised' approach to complex and systemic problems, far from making the necessary linkages with the social determinants of health, did not even consider the determinants of the health system. The focus was on attaining lower infant mortality rates (IMR) and maternal mortality rates / ratios (MMR), and on reducing tuberculosis (TB), malaria, and HIV/AIDS, based on the assumption that these goals could be achieved in isolation, while ignoring the larger systemic issues. The MDGs did not take into account the diversity of women's backgrounds, experiences, needs, demands, and realities: women with disabilities, women from religious minorities, female adolescents, indigenous women, lesbians, and others who generally belong to the poorest groups and who have limited or no access to health, education, and other services.



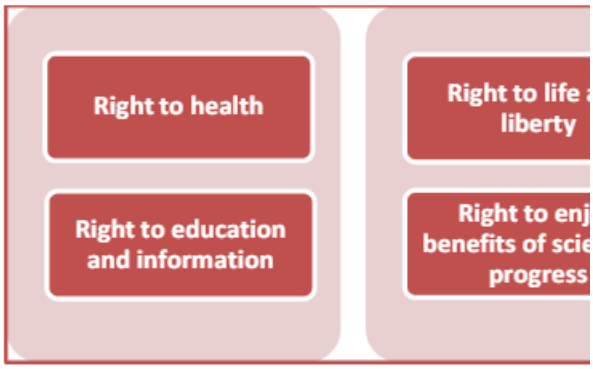
Reproductive Rights through International Treaties and Commitments

Like their predecessor MDGs, the Sustainable Development Goals (SDGs) are a statement of aspirations that are sought to be achieved in a 'targeted' fashion and are measured on the basis of particular indicators. Among the 17 goals, it is important to particularly treat SDG5 on gender equality as integral to all the other goals and not as a stand-alone goal. Ending poverty (SDG 1), ending hunger (SDG 2), and education (SDG 4) impact health-seeking behavior, water and sanitation (SDG 6), clean energy (SDG 7), decent work (SDG 8), reduction of inequality, promotion of peace (SDG 10 and 16 respectively), safe industrialisation and sustainable production, safe settlements and cities, combating climate change, sustainable ecosystems (SDG 9, 12, 11, 13, 14, and 15 respectively). All these SDGs are interlinked, having implications for reproductive health and rights. However, the targets and the indicators are neither exhaustive, nor do they present any transformative potential apart from identifying piecemeal changes that are meant to be achieved in the course of 15 years. The call to 'leave no one behind' distracts from the need to emphasise equity and the redistribution of resources for the benefit of the most marginalised sections.

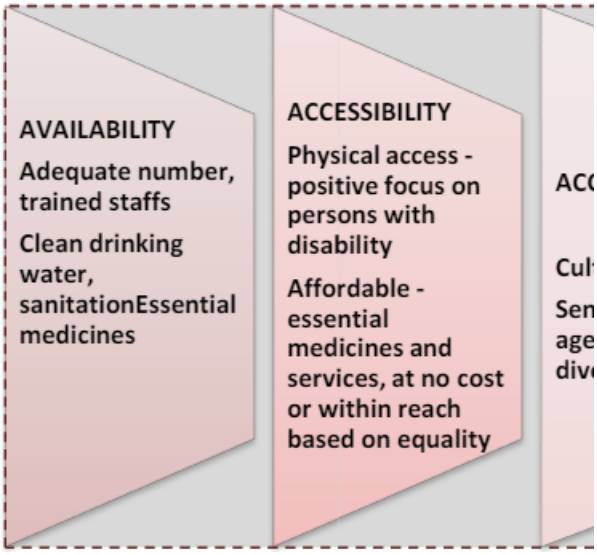
Locating reproductive health rights: Acknowledging and embracing different human rights

The various human rights that intersect with reproductive rights, and that give form and content to these rights, are examined below. The legal basis of these rights is described

and their relevance to reproductive rights and health are discussed.



Different Human Rights obligations linked to Reproductive Rights



Right to Health

Several provisions in Part IV of the Constitution (Directive Principles of State Policy) are related to issues of health. Vide Article 47; it is among the primary duties of the State to raise the level of nutrition and the standard of living of its people and to improve public health. Article 39(e) proclaims that the State should direct its policy towards ensuring that the health and strength of both men and women workers, and of children, are not abused and that citizens are not forced by economic necessity to enter vocations unsuited to their age or strength. Article 39(f) provides that States must take steps to ensure that children are given opportunities and facilities to develop in a healthy manner. Article 42 provides that the State shall make provisions for securing just and humane conditions for work and for maternity relief. Article 45 states that the State shall endeavor to provide early childhood care and education for all children until they complete the age of six years. These provisions are not enforceable in any court, but the State is obligated to apply these principles in making laws and policies because they are fundamental to the governance of the country.

According to a country case-study based on research, the Indian state's approach to reproductive rights has historically prioritised population control over promoting individual autonomy and removing structural hurdles to reproductive health services. This has turned the focus away from universal access to abortion and contraception and other SRHR initiatives and toward reaching top-down population control targets.

Further, as per a country assessment on sexual and reproductive health and well-being undertaken on behalf of the National Human Rights Commission, despite international mandates and well-established health repercussions, Gender Based Violence has remained a marginalised issue inside India's public health system, where it is primarily viewed as a law-and-order issue.

In India, there is an unmet demand for safe abortion services due to high rates of unwanted fertility and maternal death. Every day, 13 women in the country die as a result of unsafe abortion-related causes, making it the third leading cause of maternal death.

- Sexual and reproductive health and rights (SRHR) are essential for sustainable development because of their links to gender equality and women's wellbeing, their impact on maternal, newborn, child, and adolescent health, and their roles in shaping future economic development and environmental sustainability.
- Everyone has a right to make decisions that govern their bodies, free of stigma, discrimination, and coercion. These decisions include those related to sexuality, reproduction, and the use of sexual and reproductive health services.
- SRHR information and services should be accessible and affordable to all individuals who need them regardless of their age, marital status, socioeconomic status, race or ethnicity, sexual orientation, or gender identity.
- The necessary investments in SRHR per capita are modest and are affordable for most low-income and middle-income countries. Less-developed countries will face funding gaps, however, and will continue to need external assistance.
- Countries should incorporate the essential services defined in this report into universal health coverage, paying special attention to the poorest and most vulnerable people.
- Countries must also take actions beyond the health sector to change social norms, laws, and policies to uphold human rights. The most crucial reforms are those that promote gender equality and give women greater control over their bodies and lives.

This report proposes a comprehensive and integrated definition of SRHR and recommends an essential package of SRHR services and information that should be universally available. The package is consistent with, but broader than, the sexual and reproductive health targets of the 2030 Agenda for Sustainable Development. Our recommended package includes the commonly recognised components of sexual and reproductive health—ie, contraceptive services, maternal and newborn care, and prevention and treatment of HIV/AIDS. Additionally, the package includes less commonly provided components: care for STIs other than HIV; comprehensive sexuality education; safe abortion care; prevention, detection, and counselling for gender-based violence; prevention, detection, and treatment of infertility and cervical cancer; and counselling and care for sexual health and wellbeing. Recognising that many countries are not prepared to provide the full spectrum of services, we recommend that governments commit to achieving universal access to SRHR and to making continual and steady progress, regardless of their starting point.

Our assessment of the costs of the major components of sexual and reproductive health services for which cost data are available shows that meeting all needs for these services would be affordable for most countries. The cost of meeting all women's needs for contraceptive, maternal, and newborn care is estimated to be on average US$9 per capita annually in developing regions. The investments would also yield enormous returns; evidence shows that access to sexual and reproductive health

services saves lives, improves health and wellbeing, promotes gender equality, increases productivity and household income, and has multigenerational benefits by improving children's health and wellbeing. These benefits pay dividends over many years and make it easier to achieve other development goals.

The means and knowledge—in the form of global guidelines, protocols, technology, and evidence of best practices—are available to ensure that all people receive the confidential, respectful, and high-quality sexual and reproductive health services they need. Successful interventions have been piloted in many low-income and middle-income countries, some of which are highlighted in this report, but many effective approaches have not been implemented on a wide scale. Thus, civil society groups and others committed to advancing SRHR must work across sectors, and they must hold governments accountable to their commitments not only to improve health but also to uphold human rights.

Conclusion

Further, the public health system in India is challenged by a range of issues including low public investment, poor infrastructure including medicines, diagnostics; inadequate skilled human resources, etc. Additionally, the past decades have witnessed increased privatisation and corporatisation of health care, and an absence of robust regulation. All of this has caused deterioration in the accessibility, affordability and quality of healthcare, including for reproductive health needs, creating further social, economic and geographical distances particularly for girls, women and marginalised communities. Inequities in access to reproductive healthcare and health outcomes in India are apparent for vulnerable groups, as well as between and within states. Even in states where overall averages are improving, marginalised communities and poorer economic quintiles of the population, and among them the women and girls, continue to fare poorly.

References

- *United Nations, Beijing Declaration and Platform of Action, adopted at the Fourth World Conference on Women, 27 October 1995.*
- *UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant), 11 August 2000, E/C.12/2000/4.*
- *UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 22: The Right to Sexual and Reproductive Health (Art. 12 of the Covenant), 2 May 2016, E/C.12/GC/22.*
- *"Defining Sexual Health". 2006. Geneva: World Health Organisation. http://www.who.int/reproductivehealth/publications/sexual_health/defining_sexual_health.pdf. 6 Ibid.*
- *https://nhrc.nic.in/sites/default/files/sexual_health_reproductive_health_rights_SAMA_PLD_2018_01012019_1.pdf*