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Reproductive Justice for Women with Cognitive Disabilities: A Critical Analysis

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Introduction:

In India, women with cognitive disabilities face numerous challenges due to their gender and impairment, including lack of identity, femininity, sexuality, and companionship. They are often denied the opportunity to become mothers and face obstacles in their lives such as menstrual hygiene training, sex education, marriage and reproduction, contraception, pregnancy planning, prenatal care, breastfeeding instruction, the mother's role, child safety, and permanent sterilization. Women with CDs also face obstacles while exercising their sexual rights, including privacy, bodily integrity, competence, consent, autonomy, and non-discrimination.[1]

The World Health Organization (WHO) defines disability as a multifaceted phenomenon that includes activity constraints, participation limits, and impairments. Young women and teenage girls with physical or mental challenges may find it difficult to access healthcare services, particularly reproductive health care.[2] According to World Health Organization guidelines, people with disabilities have primary unmet sexual and reproductive health needs and should be able to make informed decisions. However, poor health education has hampered progress toward this aim. Gynaecologists struggle to select medications to suppress menstruation in females with significant intellectual impairments. Women with intellectual impairments face double stigma and prejudice, both because of their condition and their gender. Raising awareness of CD women's human rights can help make those rights a reality.[3]

[1] Violation of Sexual and Reproductive Health Rights (SRHR): Where are the Women with Disabilities, Violation of Sexual and Reproductive Health Rights (SRHR): Where are the Women with Disabilities?
[2] Disability and Health Overview, https://www.cdc.gov/ncbddd/disabilityandhealth/disability.html.
3.Promoting sexual and reproductive health for persons withdisabilities,https://www.unfpa.org/sites/default/files/pub-pdf/srh_for_disabilities.pdf.

The rights to sexual orientation and reproduction are essential human rights that are safeguarded by legislation and treaties at national, regional, and global levels. However, discussions around the United Nations Convention on the Rights of Persons with Disabilities (CRPD) demonstrate how sensitive these topics remain. Member states must ensure the full enjoyment of women 's sexual and reproductive wellbeing and human rights, including entrée to safe and legal abortion care and modern contraception.[4]

This article covered numerous issues in puberty and pregnancy, as well as reproductive justice for women with cognitive limitations.

Different Obstacles Cognitively Disabled Women Face during Reproduction:

1. Women with disabilities face barriers to accessing reproductive health care, including inaccessible facilities and resources, unaccommodating physical infrastructure, and inadequate equipment. These barriers can be exacerbated by federal laws shielding the rights of people with disabilities and preventing discrimination. Additionally, accessible transportation, particularly in rural areas, is a significant challenge, as lack of infrastructure and limited public transit systems make it difficult for disabled individuals to access healthcare services.[5]
2. The text emphasizes the need for improved accessibility of health systems, facilities, and services for women with Cognitive Disabilities, including public health education, domestic violence shelters, drug and alcohol intervention programs, home-based care, community outreach, health worker training, and reproductive services.
3. The article addresses sexual education and empowerment for CD sufferers. Before the 1970s, women with CD resided in institutions and received medical care only from physicians. However, the transition from institutionalization to community living has favourably influenced CD's behaviour and quality of life. Currently, most women with CD get primary care in the community, but primary care education may not have kept up

[4] Convention on the Rights of Persons with Disabilities (CRPD), https://social.desa.un.org/issues/disability/crpd/convention-on-the-rights-of-persons-with-disabilities-crpd
[5] Barriers in access to healthcare for women with disabilities: a systematic review in qualitative studies, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7847569/.

with this cultural transition. Primary care practitioners should be exposed to women with CD and include it in medical education.

4. Sex education is crucial for individuals with Chronic Disease (CD) as they may lack knowledge about sexuality and health. Successful education includes gender differences, safer sex, basic reproductive physiology, and communication about intimacy and sexuality. It helps women identify and report abuses and is essential for practical planning and decision-making abilities.[6]
5. Women with intellectual disability face challenges in procreation and motherhood rights, often forced to undergo hysterectomy in state-run shelter homes. They struggle with understanding physiological changes, risking sexual exploitation, unplanned pregnancy, and medical termination. Training in menstrual hygiene is also challenging.[7]
6. Women with cognitive impairments often face limited reproductive healthcare access, with Medicaid being a crucial insurance source. They require precise disability information for abortion services, contraceptives, and health insurance.[8]

Capacity to give consent:

1. Capacity to consent refers to an individual's ability to give informed consent for medical procedures. It involves understanding the procedure, its consequences, and the decision-making process. Mental health professionals must assess this capacity through the status, outcome, or functional approaches. The RPwD Act does not explicitly address the capacity to consent, but the MHCA defines it as consent given without force, undue influence, fraud, threat, mistake, or misrepresentation.

[6] The Importance of Access to Comprehensive Sex Education, https://www.aap.org/en/patient-care/adolescent-sexual-health/equitable-access-to-sexual-and-reproductive-health-care-for-all-youth/the-importance-of-access-to-comprehensive-sex-education/.

[7] Reproductive rights of women with intellectual disability in India, https://ijme.in/wp-content/uploads/2022/07/Reproductive-rights_53.pdf.

[8] Challenges in Providing Reproductive and Gynecologic Care to Women With Intellectual Disabilities: A Review of Existing Literature, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9287117/.

Assessing capacity to consent can result in finding capacity present, capacity doubtful, or capacity absent.[9]

2. The capacity to give consent assessment for women with cognitive disability through psychiatrists who empower them through training to achieve the required level of capacity. The assessment process includes referral documentation, clinical status evaluation, and formal Intelligence Quotient assessment. If a woman with a cognitive disability can consent, a certificate can be prepared, and inpatient care can be considered for further evaluation. Psychiatrists must understand Article 12 of UNCRPD to guarantee equal recognition for persons with disabilities. Supporting the right to reproduction includes appropriate consent for caesarean delivery, breastfeeding training, and new mother roles.
3. Caregivers play a crucial role in education and post-delivery support. CDs may struggle with basic childcare knowledge and inconsistent interactions, making it difficult to provide an age-appropriate environment. Prenatal education is essential for infant care, and post-delivery interventions should focus on more straightforward activities. Positive reinforcement and training in handling crying babies can be helpful for these mothers.[10]
4. Women with intellectual disabilities often struggle with managing menstrual hygiene due to their understanding and mental development. Education should be tailored to the girl's understanding and explain hygiene issues clearly. Support from caregivers and healthcare professionals can be helpful. Therapeutic interventions include DMPA, OCs, GnRH analogues, oral progesterone, and surgical options like implantation, tubal sterilization, and hysterectomy. Hormone replacement therapy may be effective but may have side effects. Education about puberty and menstruation can enhance knowledge, communication, and confidence, improving self-esteem and self-confidence.[11]

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9 Consent in psychiatry - concept, application & implications,https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7055160/.

10 Supporting Caregivers in Pregnancy: A Qualitative Study of Their Activities and Roles,https://journals.sagepub.com/doi/10.1177/2374373518785570.

11 Menstrual issues for women with intellectual disability,https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4917628/.

5. Supporting the right to reproduction among Women with Indigenous Pregnancies (WID) involves consent, breastfeeding training, and new mother responsibilities. Obstetricians may suggest delivery but are not legally responsible for refusals.

Reproductive Justice for Cognitive disabled women:

Women have the right to make decisions about their children, maintain high standards of sexual and reproductive health, and make reproductive decisions without discrimination or violence. They also have the right to equality in reproductive choices, including marriage and sexual and reproductive security. They also have the right to safe and affordable family planning, safe motherhood, and the right to survive pregnancy. These rights should be the foundation for government and community-based policies.

Every individual has the right to control their sexuality and reproduction without discrimination, coercion, or violence, as well as access to a wide range of facilities, services, commodities, and information. These services include contraceptive counselling, education, prenatal care, safe delivery, post-natal care, infertility prevention, safe abortion services, HIV/AIDS prevention, as well as sexual and reproductive health information, education, and counselling.[12] A few of the rights discussed as below:

- The UNCRPD lacks a dedicated provision on reproductive rights and marginally addresses it in terms of health and respect for home and family provisions. Article 25 requires States Parties to deliver persons with incapacities with the similar range, value, and standard of free or reasonable healthcare and programs as other persons, including in sexual and reproductive health and population-based public health programmes. The right of persons with disabilities to access reproductive and family planning education and

12 Sexual and reproductive health and rights, https://www.ohchr.org/en/women/sexual-and-reproductive-health-and-rights.

decide freely and correctly about the number and spacing of children is recognized in Article 23(1)(b), UNCPRD.[13]

- The Special Rapporteur's report on the rights of persons with disabilities on sexual and reproductive health and girls and young women with disabilities outlines reproductive rights, including the right to control sexuality and reproduction decisions without discrimination, coercion, and violence, and access to various health facilities, services, goods, and information..[14]
- Sexual and reproductive health services include contraceptive counselling, information, education, communication, and services; education and services for prenatal care, safe delivery, and post-natal care; the prevention and appropriate treatment of infertility; safe abortion services; the prevention and treatment of sexually transmitted and reproductive tract infections; and sexual and reproductive health information, education, and counselling.[15]
- The UNCRPD does not have a dedicated provision on reproductive rights and marginally addresses it in provisions related to health and respect for home and the family. Article 25 requires States Parties to provide persons with disabilities with the same range, quality, and standard of accessible or affordable health care and programs as other persons, including in sexual and reproductive health and population-based public health programs.[16]
- The Committee on Reproductive and Family Planning (CRPD) has adopted a protectionist and medical view of sexual and reproductive rights, focusing on violence

[13] Department of Economic and Social Affairs Disability, https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-25-health.html.

[14] Forms and Manifestations of SRHR Violations against Women & Girls with Disabilities, https://womenenabled.org/wp-content/uploads/Women%20Enabled%20International%20Facts%20-%20Sexual%20and%20Reproductive%20Health%20and%20Rights%20of%20Women%20and%20Girls%20with%20Disabilities%20-%20ENGLISH%20-%20FINAL.pdf.

[15] Forms and Manifestations of SRHR Violations against Women & Girls with Disabilities, https://womenenabled.org/wp-content/uploads/Women%20Enabled%20International%20Facts%20-%20Sexual%20and%20Reproductive%20Health%20and%20Rights%20of%20Women%20and%20Girls%20with%20Disabilities%20-%20ENGLISH%20-%20FINAL.pdf.

[16] Convention on the Rights of Persons with Disabilities, https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities.

and force and restrictive solutions such as sex education and medical information. This view is based on an analysis of 40 concluding observations by the CRPD.[17]

- The Committee on RPD (CRPD) has a protectionist and medical view of sexual and reproductive rights, focusing on violence and force. Based on 40 observations, it has endorsed prejudices equated with disability, failing to acknowledge the experiences of persons with disabilities with different sexual orientations and gender identities.[18]
- Reproductive rights are intertwined with the right to exercise legal capacity and protection from violence, particularly in the context of bearing and raising children. Article 23(1)(c) of the UNCRPD emphasizes that persons with disabilities (PWDs) retain their fertility on an equal basis with others but does not make any reference to forced sterilizations. The Committee on the Rights of Persons with Disabilities observed the pervasive violation of the right to legal capacity of women with psychosocial or intellectual disabilities. Forced contraception and sterilization can result in sexual violence without the significance of pregnancy, especially for women with cognitive or intellectual disabilities, women in psychiatric or other institutions, and women in custody. Section 10(2) of the RPD Act protects PWDs from being subjected to medical procedures leading to infertility without their informed consent. Despite the rampant violation of reproductive rights, the irreversible effects of forced sterilization are not proportionate to the gross violation of bodily integrity and human dignity.[19]
- The MH Act prohibits the sterilization of men or women for mental illness treatment. First, infringement can result in fines of Rs 10,000 or both, and subsequent violations can result in penalties of Rs 50,000 or both. This provision is restrictive as sterilization may be carried out for convenience and non-medicinal reasons.
- The CRPD has been chastised for its narrow focus on health problems and failure to consider the experiences of people with disabilities of every sexuality and gender

17 The Committee on the Rights of Persons with Disabilities and its take on sexuality, https://www.tandfonline.com/doi/full/10.1080/09688080.2017.1332449.

[18] The Committee on the Rights of Persons with Disabilities and its take on sexuality, https://www.researchgate.net/publication/317146920_The_Committee_on_the_Rights_of_Persons_with_Disabilities_and_its_take_on_sexuality.

[19] rights of women with disabilities
Under indian legislations, http://docs.manupatra.in/newsline/articles/Upload/7102F404-0902-4EEC-BA55-F8EFC25DA6D4.pdf.

identity. The RPD Act, in particular, has been attacked for its lack of concern for the rights of people with disabilities and the potential for forced sterilizations and abortions to breach the provision of 'equal protection before the law' as written forth in the MH Act.

- The Mental Health Act (MH Act) does not separately recognize the vulnerability of women with mental illness to violence. Section 20(2)(k) provides the right of a person with mental illness living in a mental health establishment to be protected from all forms of physical, verbal, emotional, and sexual abuse.[20]
- The Indian Supreme Court (SC) has issued a decision on abortion for all women, confirming reproductive rights for women and people of all gender identities. The verdict relies on progressive government efforts to acknowledge Indian women's physical and reproductive autonomy, beginning with the legality of abortions under the MTP Act of 1971. The amendment increased the abortion time restriction from 20 to 24 weeks and included new categories of women eligible for abortions, such as rape survivors and people with disabilities.[21]
- Violations of reproductive rights disproportionately affect women because of their ability to get pregnant, and legal protection of these rights as human rights is crucial to achieving gender justice and women's equality. Many of these same rights are recognized as fundamental rights by the Indian Constitution, including the right to equality and non-discrimination (Articles 14 and 15) and the right to life (Article 21), which is understood through jurisprudence to include the rights to health, dignity, freedom from torture and ill-treatment, and privacy.[22]

Reproductive Rights, Case Study:

Reproductive rights are crucial for human rights, encompassing health, life, equality, non-discrimination, privacy, and information. India's Constitution recognizes these rights as

[20] Ibid

[21] Equality and individual autonomy in reproductive rights: India shows the way, https://india.unfpa.org/en/news/equality-and-individual-autonomy-reproductive-rights-india-shows-way.

[22] https://www.unwomen.org/en/news-stories/statement/2022/06/statement-reproductive-rights-are-womens-rights-and-human-rights

fundamental rights, and the government has a constitutional obligation to uphold them. India is a signatory to international conventions and has a constitutional obligation to ensure legal remedies for violations of these rights.[23]

In 2017, the Supreme Court of India consistently declared privacy as a fundamental right under the Constitution, recognizing it as an inalienable right rooted in values like dignity. Privacy encompasses personal autonomy related to the body, mind, choices, and informational privacy. Reproductive rights, as recognized by the 1994 UNPIN, are vital to this autonomy. These rights include access to contraception, legal and safe abortion, the right to make decisions about reproduction free of discrimination, coercion, and violence, the right not to be subjected to harmful practices, and equal entitlement of disabled and LGBTQ persons to the same sexual and reproductive health services as all other groups.[24]

The Supreme Court has made significant progress in women's reproductive rights:

The Puttaswamy judgment recognized women's constitutional right to make reproductive choices as part of personal liberty under Article 21 of the Indian Constitution. The Puttaswamy judgment acknowledged the constitutional right of women to make reproductive choices as part of personal liberty under Article 21 of the Indian Constitution. This decision was based on the three-judge bench's position in Suchita Srivastava v Chandigarh Administration (2009). It emphasized reproductive rights as part of a woman's right to privacy, dignity, and bodily integrity, including carrying a pregnancy to its full term. [25]

The Suchita Srivastava case arose in the context of the Medical Termination of Pregnancy Act, 1971 (MTP Act), which governs abortions in India. Enacted two years before the landmark judgment of the US Supreme Court in Roe v Wade (1973), the MTP Act allows for legal abortions only if certain conditions are met. Under Section 3, only registered medical practitioners can terminate a woman's pregnancy if they believe in good faith that continuing the

[23] Reproductive Rights for Women in India, https://www.legalserviceindia.com/legal/article-3372-reproductive-rights-for-women-in-india.html#google_vignette.

[24] A Womb of One's Own: Privacy and Reproductive Rights, https://www.epw.in/engage/article/womb-ones-own-privacy-and-reproductive-rights.

[25] ibid

pregnancy would involve a risk to the woman's life or gravely injure her physical or mental health or that physical or mental abnormality would seriously handicap the child. If the woman has been pregnant for under 12 weeks, permission from one medical practitioner is required. If the pregnancy is between 12 and 20 weeks, the authorization of two medical practitioners is mandatory. Beyond 20 weeks, Section 5 of the act applies, which permits abortion only in situations where the medical practitioner believes that abortion is immediately necessary to save the woman's life.[26]

The act places these restrictions to balance a woman's right to privacy against the state's legitimate interest in protecting the woman's health, as well as the potentiality of human life. Another commonly-advanced justification is that restricting abortions is necessary to prevent sex-selective abortions. However, the 46-year-old act has met rising opposition over the years for its restrictive nature and failure to keep up with technological advancements in medicine. The privacy judgment significantly strengthens calls for reform, opening further avenues for Sections 3 and 5 to be challenged.[27]

The Independent Thought v. Union of India case highlighted the human rights of girls, regardless of marriage. These judgments have a significant impact on women's sexual and reproductive rights, including the right to safe abortion, which is essential for their right to bodily integrity, life, and equality[28].

Conclusion:

Reproductive justice for women with cognitive disabilities requires a comprehensive analysis that considers the interconnected factors of disability, gender, and reproductive rights. This includes an intersectional perspective, which acknowledges the interplay of disability, gender, race, and socioeconomic status in their experiences. A rights-based approach is essential, emphasizing autonomy, dignity, and self-determination. Women with cognitive disabilities face

[26] ibid
[27] supra
[28] supra

numerous challenges, such as limited access to information, social stigma, and healthcare barriers, which are further complicated by systemic inequalities and ableism.[29]

Intersectional advocacy efforts should adopt an intersectional approach, focusing on diverse individuals' unique needs and experiences. This includes incorporating women's voices in policy-making and advocacy initiatives. Policy and practice initiatives should remove structural barriers and promote inclusive, accessible, and rights-affirming approaches to reproductive healthcare and decision-making. This may involve implementing legal protections, providing comprehensive sexuality education, ensuring access to healthcare services, and fostering supportive environments that respect women's autonomy and agency.

Ethical considerations are crucial in discussions of reproductive justice for women with cognitive disabilities. Upholding principles of dignity, autonomy, and respect for individual choices while recognizing safeguards against exploitation, coercion, and harm is essential. Achieving reproductive justice for women with cognitive disabilities requires a nuanced understanding of their experiences, needs, and rights and a commitment to addressing systemic inequalities.

29 Reproductive Rights, Reproductive Justice: Redefining Challenges to Create Optimal Health for All Women, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9930478/.