CHAPTER 1
INTRODUCTION

“Motherhood is near to divinity. It is the highest and the holiest service to be assumed by mankind” Howard W. Hunter

1.1 Prelude

Mankind has managed to send rockets to the moon and to outer space, yet there are deep rooted problems on earth that continue to reduce the potential of half of the world’s population and deprive the human race of untold resources. Tragically, women are most often the ones whose human rights are violated and they will never gain full dignity until their human rights are truly respected and protected. The abuses have continued because the history of women has been a history of silence.\(^1\) Protection of our bodies is a basic human right, not a privilege. The most fundamental aspect of this right is control over our reproductivity. Most of the countries and various international instruments have denounced the forcible control of an individual’s reproductivity as an egregious violation of reproductive rights. Yet, deprivations of reproductive rights occur worldwide.\(^2\)

Without the ability to determine their reproductive destinies, women will never achieve an equal role in social, economic and political life and will continue to be politically subordinate and economically dependent on men.\(^3\) Whenever a woman is denied the right to determine whether her body is to be used to bear a child or not, it amounts to denial of equality and the highest form of derogation of her basic fundamental rights. The decision to bear or not to bear a child affects and alters every facet of her life. Her life style, standard of living, social life, social status, earning capacity, actual income level, family, friends, relationship with her husband and his family and all her other personal relationships are forever affected. Additionally, raising a

healthy and a well-cared child needs a high financial backing.⁴

Although international human rights law was not initially developed to address violations of women’s human rights and women were generally excluded from participating in the creation of international human rights law. But the adoption of Convention on the Elimination of All Forms of Discrimination against Women in 1979 and of the Declaration on the Elimination of Violence against Women in 1993 marked the placement of women’s rights on the human rights agenda and international legal discourse.⁵ However, these instruments only vaguely address sexual and reproductive rights. The protection and promotion of rights relating to reproductive and sexual health have gained momentum after the passing of United Nations (UN) Conference on Population and Development, held in Cairo, and the 1995 Fourth UN World Conference on Women, held in Beijing. Since then, women’s rights movements have strongly advocated to enforce the recommendations of Cairo Convention and hold States accountable for their international commitments towards the improvement of reproductive health services within their countries, as well as for the enforcement of human rights law to protect women’s reproductive choices.⁶ While these efforts have been successful in many respects, there are continuing conceptual and practical problems, including, not only the limitations of anti-discrimination law, but the danger that specific recognition of women’s rights violations may simply reduce women’s secondary status.⁷

1.2 The Concept of Freedom

The ‘right to freedom’ is one of the most fundamental rights of every human being. Since the very perception of any human being depends upon freedom, which in itself is prior to him. Freedom means emancipation of man from fear and want. The fundamental postulate of social freedom is the

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dignity of man. Freedom has always been the passion and inspiration, though not the inevitable destiny of mankind. Human struggle for the freedom to live a human life is an expression of the basic urge, common to all biological beings required to exist. Thus, freedom is deemed the most fundamental of all rights. It is looked upon as the quintessence of civilized and descent effulgent, for freedom is immanent and inborn in human nature. It is an inalienable birth right for which man has been striving and struggling at every step.\(^8\)

Freedom means the right to do or say what an individual wants without any body’s interference. It is the state of being entirely free. In other words freedom is simply freedom from undue interference. In the movement for the protection and implementation of human rights both at the national and international levels, the right to freedom has got paramount importance, for only a free man can govern himself, make decisions for himself, think and feel as he seems fit and have full and fair expression of his potentialities. In a free society, citizens should be able to engage in any activity as long as they do not infringe on another’s equal right to do the same. Many governments claim to guarantee freedom but often people do not, in fact, have the absolute freedom to act or speak without restraint.\(^9\)

1.3 Concept of Reproductive Freedom

Reproductive freedom has been a contentious issue in many societies around the world for eons. Reproductive freedom has been an issue of both property law and religious doctrine. It has been both a racial issue and a medical issue. It has been a sexual issue and a women’s right issue. Finally, it has been a biological issue and a legal issue. The problem with considering the issue of reproductive freedom primarily in the legal arena is that for the most part it should not be a legal issue at all. How can an issue that is simultaneously a medical, religious, racial, sexual, and woman’s right issue be resolved through a Constitutional law? But this dilemma is solved by articulating a new constitutional right i.e. right to privacy that protects

\(^8\) L.M. Singhvi (ed.), *Horizons of Freedom* xv (The Institute of Constitutional and Parliamentary Studies, New Delhi, 1969).

\(^9\) [www.vocabulary.com](http://www.vocabulary.com) (visited on February 6, 2015).
citizens from government interference in marital and childbearing decisions that take place in the bedroom.\textsuperscript{10}

Since it is the woman who bears all the pains, complications, stress and sometimes pleasure not only in pregnancy and delivery but also in rearing and bringing up the child so it should be the absolute arena of the women and to some extent to men also to decide upon the matters of procreation and conception. Hence it is desirable to give her autonomy in these matters. Giving women the power to control their own sexual and reproductive process, is just a way of assuring them — the basic right of self-determination.\textsuperscript{11}

The right to life which is supreme and indispensable right includes right to enjoy life with all limbs and facilities. It implies that right to procreation and right to control over reproductive organs are included in the broader concept of right to life as personal autonomy and physical integrity are integral to guarantee right to life. Therefore, every person including a girl has a right to marry and thereby to conceive a child which is absolute.\textsuperscript{12} Where both the parties are adults, the law does not prohibit them to love each other and getting married. Therefore, they have every right to take an independent decision in regard to the performance of their marriage. Moreover, marriage and childbearing have always been considered as an indispensable part of life and to reproduce is the strongest desire of human beings and having a child is the most innate thing in the world. It is natural instinct in every married person to propagate the species and to bear the responsibilities and enjoy the comforts of their own children.\textsuperscript{13}

Reproductive freedom signifies freedom in activities and choices related to procreation. Reproductive freedom is vital to humanity. It is even more vital than all the other form of freedom that we cherish such as freedom of religion, freedom of thought and speech, and the freedom to live our lives as we deem fit as successful reproduction is a biological necessity. After all,

\textsuperscript{11} Malik and Raval, \textit{Law and Social Transformation} 125 (Allahabad Law Agency, Faridabad, 2007).
\textsuperscript{12} Monica Chawla, “Law Relating to Abortion in India” \textit{III Pbi. ULJ} 159 (2009).
\textsuperscript{13} Paras Diwan, \textit{Dr. Paras Diwan on Hindu Law} 842 (Orient Pub. Co., New Delhi, 2005).
if our ancestors had not reproduced successfully, we wouldn’t have been here. It is the ability of any woman to determine her own reproductive destiny. To create and nurture life, she must have the right to get pregnant or not, give birth or not or when to choose to do so. These choices are the essence of human reproduction.¹⁴

Reproductive interests can be specified in the form of sexual orientation, sex education, family planning, privacy, physical integrity, health care services, medical assistance, safe and affordable medicines, access to health and hygienic resources, nutritious food, reliable transportation at the time of medical check-up and delivery, adequate housing and income, proper vaccination, elimination of hazardous process and activities at work place, child care, freedom from violence and humiliation.¹⁵

In an interview in October 1989, Faye Wattleton, the then President of the Planned Parenthood Federation of America, observed that ‘reproductive freedom is critical to a whole range of issues. If we cannot take charge of this most personal aspect of our lives, we cannot take care of anything. It should not be seen as a privilege or as a benefit, but a fundamental human right.’ She concluded her interview with the point that ‘all women, rich and poor, brown, yellow and white must be free to take charge of their lives and make their own personal decisions. We have to fight for fundamental human rights so that no woman can be denied this dignity, regardless of her station in life.’¹⁶

The Report of the United Nations International Conference on Population and Development describes the concept of reproductive rights as follows:

“[R]eproductive rights embrace certain human rights that are already recognized in national laws, international human rights documents and other relevant United Nations consensus documents. These reproductive rights rest on the recognition of the basic rights of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to

¹⁴ Supra note 10 at 70, 72.
have the information and means to do so, and the right to attain the highest attainable standard of sexual and reproductive health. It also includes the right of all to make decisions concerning reproduction free of discrimination, coercion and violence as expressed in human rights documents.”17

The World Health Organization opines “Reproductive rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. They also include the right of all to make decisions concerning reproduction free of discrimination, coercion and violence.”18

Dr. Halfdan Mahler, Secretary-General of International Planned Parenthood Federation (IPPF) and also an advocate and champion of reproductive health care, has spoken out for the recognition of planned parenthood as a basic human right world-wide. In his message as Secretary-General, he said:

“………………It is high time for the world to wake up from its lethargy on this issue: not just to save women’s lives and the lives of their children: not just for all the health and other benefits to both: not just because of the liberating value it can bring to family life and the life of women: but because it is a human right.”19

After analysing all the above stated views, the researcher observes that reproductive freedom does not only mean right to procreate or right to abortion but includes in its purview a variety of other rights like the choice of how many children to have, when to have and the choice of what kind of children to have, education about contraception and sexually transmitted infections, protection from gender based practices such as female genital mutilation (FGM) and male genital mutilation (MGM), freedom from coerced sterilisation, coerced abortion and coerced impregnation etc. Therefore, a woman’s body is her own; it does not belong to the state or any other person.

19 See the IPPF, Annual Report 1991-92 at 5.
The first step towards getting life, liberty or the pursuit of happiness for any woman is her decision whether or not she shall become a mother. Having a child is a fundamental life-altering decision, and it is for the woman to make this decision. With this background in mind it can be said that it is of utmost importance to recognize women’s access to legal abortion and safe abortion services as well as access to new techniques as they are considered as essential elements of human right already in force, such as the right to family planning and to found a family.20

1.4 Reproductive Freedom of Men

Undoubtedly, it is the woman who can conceive, get pregnant and deliver a child but the key question is whether even the man can have right to reproductive freedom? Reproduction for a female involves having intercourse, undergoing a gestation period and finally giving birth, but men’s involvement is limited to only the first stage of this process.21 So does it mean that this right should be restricted to the woman only who suffers all the pain or it should be extended to the man also as the man has a natural instinct to propagate the species and enjoy the comfort of his own children? This strong natural desire of every man of being a father can be fulfilled only through a woman. Therefore the spousal right to have children vis-à-vis woman’s right to personal liberty which includes the right to beget or to refuse to beget children is a debatable issue.22

Currently, if a woman opts to have an abortion, no husband or boyfriend can prevent her from doing so. Nor any law or government can restrain her from exercising this right i.e. to terminate an unwanted pregnancy as it is now accepted fact that the woman’s desire to be relieved of her pregnancy is a part of her fundamental right to life and personal liberty. So what is the role of male partner who expects to be a part of their children’s lives? Whether the prevention of child birth by the use of contraceptives, sterilization, surgery or termination of pregnancy by a wife without the consent of her husband amounts to invasion of the right of the latter to have a

21 Ibid.
family and consequently mental, physical or psychological stress?\textsuperscript{23}

As in most of the cases, it is the man who has to bear the financial burden of the child and ultimately the family, so would it not be wise to involve him in the decision-making process regarding contraceptive use, family size and abortion (if required).\textsuperscript{24} The issue needs to be viewed from the perspective of both the parties i.e. women’s right over her body and the right to make the choice, and the man’s desire to have progeny.\textsuperscript{25}

Therefore, the researcher observes that reproductive freedom should not be confined only to women’s right over her body but it should include both men and women as for any human freedom of choice is the utmost priority.

1.5 Reproductive Freedom of Same-Sex Couples

The opponents of same-sex marriages argue that the term marriage should be defined exclusively as the union of one woman and one man. In the era where many countries are legalizing the marriages between the homosexuals, the issue is what will be the outcome of these marriages? Procreation is one of the basic aims of marriage and medically the homosexuals cannot procreate a child naturally. These couples would have option to be a parent either by artificial means or by adoption. They further argue that a child has a natural and inherent right to its enjoyment of parenthood and the child born from artificial means will certainly be deprived of either the mother or father. The possible threat is that reproductions of human child for homosexuals will be taking form of business and the child will be reduce to a commercial product.\textsuperscript{26}

But the proponents of same-sex marriages argue that procreation argument cannot reasonably be used against same-sex marriages as we do not prohibit marriages between sterile opposite-sex couples or to women post

\textsuperscript{23} Ibid at 843.
\textsuperscript{24} Subhash Chandra, “Right to Abortion: A New Agenda” AIR Jour 130 (1997).
\textsuperscript{25} See Supra note 11.
menopause, so why this restriction for homosexuals? Proponents also consider these laws restricting marriage to be unconstitutionally over inclusive, as gay and lesbian couples can have children either through natural or artificial means or by adoption.

1.6 Role of State in Reproductive Freedom

The state has an obligation to provide reproductive health services and access to information and education so that the couples could responsibly make the reproductive decisions. There are three roles which the State can exercise in regard to reproductive freedom:

1. **Negative Role:** According to this approach the couples themselves decide on the number, timings and spacing of childbirth without state intervention. The right to bear or not to bear a child should be free from state’s control. A woman being a person, her health and wellbeing should take priority over the preservation of a foetus that might someday be a human being. So, if the state intervenes, it will hamper the fundamental value of self-determination that my body belongs to me and not to the state. It will also infringe upon the constitutional zone of privacy, right to physical integrity and gender equality etc.

2. **State Neutrality:** refers to a situation where the couple gets the liberty to make decisions regarding reproducing lives and their future without state’s interference. Under this aspect State is neutral and it will neither interfere nor protect the reproductive freedom of an individual. If there is a violation of reproductive freedom it will not take measures to protect it. This role is seldom practiced by the states because if the state remains silent on this sensitive issue then this will amount to gross violation of the human rights.

3. **Affirmative:** reproductive freedom rejects the notion that parenthood is an exclusive privilege of married heterosexuals, who are physically and

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mentally fit and biological fertile. Rather it also focuses on the problem of single individuals wanting to establish a family, homosexuals, infertile people, sexually inactive people and even HIV positive individuals. This type of reproductive freedom is not limited to the right to safe and legal abortion, spacing of children and pre and post natal care only. Its protective umbrella also covers the need for infertility treatment, legal and ethical issues involved in the use of new reproductive techniques and child health care etc.

1.7 Violence against Women and Reproductive Rights

Women world-wide suffer violations of their rights solely because of their sex. The causes and consequences may differ from country to country, but prejudices and discrimination against women continue to be widespread and involve a full range of human rights violations. Concerns over population size, economic development, and environmental conservation have given rise to state control of sexual and reproductive rights, which may even involve the gross abuse of women's rights. Therefore in the opinion of the researcher there is a need to guarantee reproductive and sexual rights as it is a pressing concern. Some of the broad areas where women’s reproductive rights are violated are discussed as follows:

1.7.1 Forced Pregnancy

The researcher is of the view that if we talk about equality then both man and woman should have equal rights. But this is not so, as in marital relationships the husband is the ultimate authority to decide everything whether the issue is household or to have babies. So sometimes the woman is coerced into pregnancy and unwillingly she has to conceive and give birth even though she is not physically or mentally prepared.

1.7.2 New Reproductive Technologies

Many feminists contend that the new reproductive technologies are a form of medical violence against women. If a person is violated medically in an experiment, in a prison, or for political reasons, person responds with outrage. But if a woman is violated medically, in the interests of helping her

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to reproduce, it is justified as therapeutic; people dismiss it as a benevolent treatment for infertility—her own or her partner’s. For the reproductive experts, infertility therapy covers a multitude of medical violations as the patient may have possible cysts, hyper stimulation of the ovaries or have to undergo a procedure to eliminate multiple ‘foetuses in utero’ after super ovulation. Technological reproduction creates an environment of medical experimentation in which virtually anything can be tried on women’s bodies.  

1.7.3 Women infected with HIV/ AIDS

To marry and found a family is a fundamental right of men and women irrespective of race, religion or colour. A family is a fundamental unit of the society and deserves protection from the State. But HIV/AIDS patients are discriminated and required to undergo mandatory testing before marriage including AIDS free certificates. The prenatal transmission of HIV is a cause of concern as one in every three infected persons is a woman. This all results in subjecting HIV-positive women to forcible abortion and sterilizations, therapy controlling their decisions about pregnancy, childbirth and fertility. Hence this is a gross violation of women’s fundamental rights and more specifically their reproductive rights which are recognized in various international human rights instruments including the CEDAW, ICCPR, and principles laid down in the National AIDS Prevention and Control Policy.  

1.7.4 Disabled Women

Across the globe including India, forced sterilization is performed on young girls and women with disabilities by both families and the State. The purposes vary from eugenics, menstrual management and pregnancy prevention resulting from sexual abuse. The reason given in defence for this practise is the women’s inability to maintain personal hygiene and danger of pregnancies arising from sexual assault. To acquire the consent of such women is not found important for the violators. Consequently human rights abuse continues without impunity across the country. 

1.7.5 Child Marriage

Child marriage is another form of human rights violation. Early marriages followed by multiple pregnancies can be detrimental to physical, mental and emotional health and can affect the health of women for life. Apart from the fact that it deprives the female children from the right to education, right to development, their right to have control over their body and reproductive health, it puts them in position of complete dependency upon their husband. Thus child marriages deny the right to life and right to live with dignity to young girls.34

1.7.6 Honour Killing

Another controversial issue of violation of women’s right is honour killing. It is the most grotesque and barbarous manifestation of gender discrimination in the male-dominated society. In such an ethos, woman is the commodity possessed by the male and the family’s honour is associated with her. The phenomenon of honour killing is worldwide and it is not new. Recently in the State of Haryana many couples who married against the wishes of their parents or who married within their gotras have been killed by their family members or by the members of khaps. Worryingly, ‘honour killings’ are also reported, whereby unmarried pregnant girls undergo forced abortion, to preserve the honour of the parents. Pregnant women are operated upon by amateur abortionists, or even some women turn to harmful vaginal preparations, which contain chemicals such as bleach or kerosene. Though infrequent, some reports exist of uteral inserts being used to induce abdominal trauma.35

1.7.7 Female Genital Mutilation

In some African countries, governments condone involuntary female genital mutilation or circumcision- which is carried out in part to suppress female sexual desire. Female Genital Mutilation is performed as a rite of passage from childhood to adulthood, concerning women to cultural traditions

and family values of present and past generations. The reason for the procedure is to reduce sexual desire of the girl, thus allegedly ‘saving’ the girl from temptation, and preserving her chastity before marriage and fidelity after marriage. In many situations, social pressure is created through social ostracism of uncircumcised girls and men’s refusal to marry them perpetuates the practice.\textsuperscript{36}

1.7.8 Violence against Women in Armed Conflict

Women experience the horrors of war in different ways from men. During armed conflict, women experience all forms of physical, sexual and psychological violence perpetrated by both State and non-State actors. These forms include murder, unlawful killings, torture and cruelty, inhuman or degrading treatment or punishment, abductions, maiming and mutilation, forced recruitment of women combatants, rape, sexual slavery, sexual exploitation, forced marriage, forced prostitution, forced abortion, forced pregnancy and forced sterilization. Sexual violence has been used during armed conflict for many different reasons, including as a form of torture, to inflict injury, to extract information, to degrade and intimidate and to destroy communities.\textsuperscript{37}

1.7.9 Custodial Violence against Women

Violence against women by the very people who are supposed to protect them – members of the law enforcement and criminal justice system is widespread. Women are physically or verbally abused; they also suffer sexual and physical torture. These abuses include forced vaginal, anal oral sex; inappropriate sexual touching and fondling; beating; excessive pat-downs and strip searches; and the use of vulgar, sexualised language by guards towards women prisoners.\textsuperscript{38}

\begin{flushleft}\textsuperscript{36} Rebacca J. Cook, Bernard M. Dickens, \textit{et.al}, Reproductive \textit{Health and Human Rights} 264 (Oxford University Press, New York, 2003).\\ \textsuperscript{37} Suman Rai, \textit{Law Relating to Protection of Women from Domestic Violence} 224 (Orient Publishing Co., New Delhi, 2008).\\ \textsuperscript{38} \textit{Supra} note 30 at 140.\end{flushleft}
1.8 Problem Profile

Women are treated as second gender in the whole world even today and are always under threatened from womb to tomb. They are not safe in their own home, neither at in-laws house and nor at the workplace. They are still illiterate, uneducated, exploited, under privileged, sexually abused and assaulted and not treated fairly because of traditional mind sets. Therefore, they are discriminated in every sphere whether the issue is marriage, children, abortion or inheritance. But most pathetically, they are even deprived to appreciate the joys of motherhood. As we all know that, by nature motherhood is a right of all women but they are deprived of this natural right either in the name of statute, politics or religion. There are so many places around the world where women cannot have full control over their reproductive lives, may be on account of socio-economic backwardness of the women, religious taboos, the prevalence of patriarchal dominance or control of males over family matters. A woman can be compelled due to aforesaid factors not to exercise her reproductive choices and meaning thereby having no control over her own body and mind too. This is so because a woman albeit “wife” does not enjoy autonomy of her person and she cannot exercise her full choice in reproductive matters because she is considered to be subordinate to man. Man is regarded as the head of the family and the authority to decide over wife’s fertility is on him, and therefore, he alone has reproductive rights. Hence husband is the main hindrance that interferes with women’s possibility to influence family planning matters. Married women are burdened with unwanted and frequent pregnancies because their husbands and spouses do not use contraceptives, may be because they are worried about the side effects or they do not enjoy sex with contraceptives.

Not only because of her status within her marriage that woman has much to say in the reproductive matters but sometimes national policies have also negatively interfered with people’s most private area of life. Aiming for improved welfare for the society, governments have often overlooked the

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welfare of individuals as population control and birth control have always been controversial issues. No doubt, the new human rights perspective has changed the attitude and approach towards sexual and reproductive health and rights throughout the world. However, still every six women cannot stop or space their births for various reasons viz. low status, limited knowledge about family planning, beliefs that they are not at the risk of getting pregnant etc. More so some women leave it to God to decide how many children they may have which means that they can have as many as their bodies allow them to.42

Women are not just prisoners of sex and their life is not limited only to child bearing, child caring and looking after their families. They are individual human beings with human rights, and therefore, their capabilities should not be measured through these phases of life only. They are efficient enough to do much more than this.43 But unfortunately they are valued because of their child bearing capacity only. For instance, newlyweds come under enormous pressure to bear their first child as soon as possible. In parts of South Asia and Sub Saharan Africa, a childless woman is subject to abandonment, abused and even murdered for not bearing a child.44

The State regulations for abortion perpetuates the gender discrimination, as it forces the women to suffer enormous burden of unwanted pregnancies and compels them to confront the risks of illegal and unsafe abortions. A Report says that more than one quarter of pregnancies worldwide, about 52 million annually, end in abortion. Many of these procedures are clandestine when performed under unsafe conditions. About 13 per cent of maternal deaths are attributed to unsafe abortions, coupled with lack of skilled follow-up. Every year 47,000 women die as a result of unsafe abortions and unknown numbers of women suffer from infections.45 Much of this could have been avoided if effective means of contraception were used for family planning. Over 25 per cent of Indian women do not have any idea of family planning and methods of birth control especially when adolescents.

According to UNFPA, around 16 million girls across world between the age

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42 Ibid.
43 See Supra note 4.
group of 16 to 19 give birth every year because most adolescent girls are not aware of reproductive health and mother and child care. Adolescent pregnancy causes major difficulties such as obstetric fistula, stillbirth and complicated teenage pregnancies. ⁴⁶ Though educated woman makes good uses of family planning and birth control devices but they have little bargaining power in the bedroom. It may be amusing but correct that ninety nine per cent of the contraceptives and research on contraception techniques are used for female contraception, in spite of the fact that female reproductive system is highly complex and consists of intricately balanced hormonal cycle, while the male reproductive system is comparatively less complicated. This is nothing but sex bias and male domination over female. ⁴⁷

There is still a wide gap between legal position and real attitude and practice in regard to women. In countries where abortion is legal and freely available to teenagers as well as adult women, abortion poses a minimum threat to women’s life but where it is illegal or severely restricted by law, abortion poses the maximum threat as many cases are handled by non-professionals in substandard and insanitary conditions, leaving scope for high incidences of complications resulting in maternal morbidity and often deaths. ⁴⁸ Reproductive freedom is also about abortion rights for poor women but they rarely have access to it because of their financial constraints. If abortion is prohibited and considered as illegal, it does not matter much to the wealthy women because they can get it done by paying hefty amount to the private doctors, but poor women have no other option except to accept the fate and give birth to the child or otherwise have an abortion under unsafe and unhygienic conditions thereby risking their lives which induces class bias to the problem. This raises another peculiar problem of balancing the life and liberty of the born and the unborn, more so, in the present day social structure where female- male sex ratio has deteriorated. On one hand, the modern educated woman cries for liberal abortion laws in the name of right to life and personal liberty on the other hand, the government has to impose restrictions in order to check female foeticide. The issue has therefore, become complex

⁴⁸ Supra note 24 at 131.
in the present day social structure. There appears a strong opposition between those who favour free abortions and the State, which wants to restrict and impose conditions on abortion.\textsuperscript{49}

1.9 Need of the Study

The aim of the study is to create awareness among individuals about their reproductive rights. There are still so many places in the world where women do not have the right to make decisions pertaining to their reproductive health. Instead the families, their spouses or the authorities decide whether and when a woman should or should not have a child. The women have to play a special role in reproduction, and therefore, are more affected by the Governmental policies. She has no control over the path her life will take. Everyone except the woman herself is able to decide what is in her best interest. She is considered as too young, too irresponsible, too incompetent or too poor to decide whether to end a pregnancy or to have a child. Even educated women do not have much say in reproductive matters as they have little bargaining power in their bedroom.\textsuperscript{50} So the need of the study is to caution the women about their rights especially the right over their own body.

In India, the existing legal framework has proved inadequate to recognize reproductive rights as there is no specific legislation in this regard. So there is a dire need to have specific legal provisions on this vital issue which can affect women’s life.

1.10 Objectives of the Research

The object of the research is to explore the extent to which freedom in the matters of reproduction is granted to the individuals. The issues arising out of reproductive freedom are not just legal but also social, religious and ethical. The area of the study would be to explore the problems and their solutions in the matters of reproduction especially in regard to right to conceive and right to abortion. The vastness of the subject would necessitate restrictions on the scope of study. It is proposed to restrict the scope of study

\textsuperscript{49} Supra note 12 at 159, 161.

mainly to human rights issues. The main objectives of the study are:

1. To create awareness among individuals about their rights.
2. To study the need and conceptual contours of reproductive freedom and its evolution through ages.
3. To study the scope of reproductive freedom as it not only includes right to conceive but also right to abortion and other allied matters.
4. To examine the existing international standards on reproductive freedom and their influence on Indian legal and policy framework.
5. To evaluate national policies, legislative and administrative measures in regard to reproductive rights in India.
6. To study the role of judiciary in recognizing reproductive freedom in India.
7. To discover various lacunae in the implementation and enforcement of the laws relating to reproductive freedom and to suggest various steps to make it more effective for achieving the desired results.

1.11 Research Hypothesis

For the purpose of present research work following hypotheses were formulated:

- The enjoyment of reproductive freedom is an indispensable condition for the attainment of substantial equality between men and women. So for the lasting peace, security and development in the society it is important that the women should be free in making reproductive decisions.

- While men may be concerned about reproductive freedom, their lives are not actually threatened by its absence. But women’s lives are very much affected by matters that involve reproduction. But the present legal framework on human rights is not adequately equipped to deal with the problems and their solutions in the reproduction matters.

- The scope of reproductive freedom is not limited to abortion only but it is much wider as it includes other allied areas also.
Many governments have not understood women’s right as a part of human rights law and few of them have been committed to women's equality as a basic human right. Therefore, it is imperative that the law in respect of reproductive rights be adequately formulated and reviewed so as to reflect a consistent and socially acceptable solution and one which will go a long way in promoting individual dignity and rights to the individuals, for the development of the society. Thus, if the reproductive freedom is provided then human rights of women will be strengthened which in turn leads to women empowerment.

1.12 Research Methodology

The quality and value of research depends upon the proper and particular methodology adopted for the completion of research. The methodology applied in the study is both doctrinal and analytical. To make the findings of the study and to reach a meaningful conclusion, an attempt has also been made to discuss, examine, analyze and critically evaluate different provisions of various legislations, which have been regulated under Indian Constitution, Indian Penal Code, 1860, The Medical Termination of Pregnancy Act, 1971, Prohibition of Child Marriage Act, 2006 and Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex-Selection) Act, 2003 and the problems and flaws therein are identified.

Greater emphasis, in this study, has been on secondary data. Various books, articles, reports, research papers, journals, decided cases etc. were collected, assembled and analysed to trace the development of the idea of reproductive freedom, the international standards and to access the impact on these international measures on India. The researcher visited different libraries in India to collect relevant material and information. After overall study the researcher has drawn a conclusion and has worked out suggestions regarding a viable legal frame to recognize reproductive freedom.

1.13 Plan of Study

For the purpose of systematic study, the present research work is divided into eight chapters.

The first chapter gives the Introduction of the topic, articulates the
problem, examines the importance of freedom and its meaning and analyses the definitions and concept of reproductive freedom. Some of the broad areas where there is violation of women’s reproductive rights are also highlighted in this chapter. This chapter also includes hypothesis, aims and objectives and research methodology of present study. It also includes scheme of chapters to have an overview of the thesis.

Chapter II seeks to contribute to the Conceptual understanding of the Human Rights which includes human dignity, privacy, equality, right to health, nutrition, rights of individuals infected with HIV/AIDS, rights of disabled person etc. It further describes the historical context in which reproductive rights have been framed as human rights in the international sphere. It also discusses the ground breaking law that has been passed because of the efforts of UNFPA that promotes better health for women and their families. In this part it discusses that the State has an obligation to provide reproductive health services and access to information and education so that the couples responsibly make the reproductive decisions. The middle part of the chapter deals with the concept of reproductive freedom and various facets of reproductive freedom like right to control birth, right to terminate pregnancy and right to access assisted reproductive techniques etc. are analysed here. In the last part of the chapter an attempt has been made to examine reproductive health, sexual health and child health. Hence this chapter presents the relationship between human rights and reproductive freedom.

Chapter III discusses Reproductive Right with Reference to Right to Conception and Found a Family. This chapter demonstrates that every individual has a right to choose a partner of his/ her choice and to lead a married life. It further explains that the right to make decisions about procreation is a basic human right. This chapter also highlights the right of the individuals to access assisted reproductive techniques for relieving infertility. Different procedures under assisted reproductive technology have been discussed in this chapter i.e. artificial insemination, in vitro fertilisation, embryo transplant and surrogacy etc. This chapter also stresses that in present scenario where live-in–relations are legalized and same-sex marriages are
given legal recognition it is imperative that the right to procreate should not be limited to married couples only but should be extended to gays, lesbian’s couples, single men or women. Finally barriers on access to ARTs are analysed.

Chapter IV discusses some conflicting issues like **Right to Abortion vis-à-vis Right of the Unborn to Live**. This chapter comprehensively brings into focus the moral and legal rights of the foetus. Discussion of the issue of abortion invariably gives rise to questions relating to the rights of the foetus as well as the rights of the woman and in case of conflict between the women’s right of autonomy and the right to life of the unborn, whose right will prevail is analysed in this study. Meaning of abortion and position regarding abortion in different countries is also discussed here. Further when does life come into existence is also analysed according to different viewpoints. Last but not the least arguments for and against abortion are studied.

Chapter V discusses the **International Standards relating to Reproductive Freedom** and includes international endeavours by different agencies with regard to the promotion of reproductive rights of the individuals. It laid stress that the couples should have a right to decide on the number and spacing of the children. Further International human rights norms should ensure women to make decisions in the matters of sexuality and reproduction, free from violence and sex discrimination. The history of reproductive rights and various Conventions and Conferences for the promotion of reproductive rights have been thoroughly discussed here. The various Regional Human Rights Treaties like ECHR, Inter American Commission, The African Commission on Human and People’s Right etc. also occupy an important place in this chapter. The approach of various national courts, regional human rights courts, quasi-judicial, tribunals and the role of NGOs and Non-State Actors towards reproductive freedom related issues have also been presented in this chapter. At the end of the chapter the factors which are responsible for human rights violation have been discussed.
Chapter VI elaborates more specifically on the Indian Constitutional, Legislative and Policy Framework. Constitutional framework provides that the personal liberty in Article 21 is of the widest amplitude and it covers a variety of rights. While expanding the horizon of the right to life and personal liberty, the Supreme Court added right to privacy in it and declared that Article 21 guarantees a person the freedom to take decisions about his/her personal life. This includes decisions about parenthood, right to complete or terminate the pregnancy i.e. reproductive rights. Legislative provisions include Indian Penal Code, 1860 where induced abortion is considered as an offence but there is one exception i.e. to save the life of the mother where abortion is permitted. Further the provisions of Medical Termination of Pregnancy Act, 1971 are discussed here that allows termination of pregnancy under specified circumstances and up to certain time period. Then the chapter proceeds by discussing Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 which provides for the regulation of the use of pre-natal diagnostic techniques in order to check the illegal and anti-social practices of pre-natal sex-determination. Prohibition of Child marriage Act, 2006 is also analysed and evaluated here. Various administrative measures which are taken by the Indian government to promote reproductive health are also evaluated in this part of the study. It also highlights the approach of the judiciary in recognizing the reproductive freedom of its citizens.

Chapter VII links various aspects of the Reproductive Freedom with the Ethical Issues. It examines physician-patient relationship in the light of medical ethics. Today technology has made tremendous progress in every field including medical science. The effect of various new scientific developments on human and ethical implications of contraception, abortion, assisted reproductive technologies, PGDs, sex selective abortions, foetal research has been analysed in this chapter. It also evaluates the responsibility of the mother towards the offspring and focuses on the liability for prenatal behaviour that poses risks to the foetus. Lastly, reproductive human cloning and its impact have been examined in this chapter.
Chapter VIII draws upon the Conclusion of the study and puts forward various suggestions for respecting the right of personal autonomy and the promotion and protection of their human rights. The chapter primarily suggests the measures which can be taken to strengthen reproductive freedom.