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Reducing reproductive rights

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EDITORIAL

Reducing reproductive rights: spousal consent for abortion and sterilisation

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A recent Supreme Court judgement is unwelcome and regressive for the women's movement, especially for reproductive rights. When hearing an appeal in the Ghosh vs Ghosh divorce case, the court ruled on March 26, 2007: "If a husband submits himself for an operation of sterilisation without medical reasons and without the consent or knowledge of his wife and similarly if the wife undergoes vasectomy (read tubectomy) or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty." (1)

The court also ruled that a refusal to have sex with one's spouse and a unilateral decision to not have a child would also amount to mental cruelty. Considering the circumstances of the case, the court granted a divorce. The judgement has serious implications for reproductive health services in India, because it mandates spousal consent for induced abortion and sterilisation.

The right to reproductive autonomy

The right to make free and informed decisions about health care and medical treatment, including decisions about one's own fertility and sexuality, is enshrined in Articles 12 and 16 of the Convention on the Elimination of all Forms of Discrimination Against Women (1978) (2). Autonomy, the right to informed consent, and confidentiality are considered the fundamental ethical principles in providing reproductive health services. According to the convention, national norms, standards, and regulations should reflect these principles (3).

Autonomy would also mean that when a mentally competent adult seeks a health service, there is no need for an authorisation from a third party (4). According to recent ethics guidelines in reproductive health research, even use of the term "consent" has been restricted only to the person who is directly concerned; in circumstances where partners are involved it is termed a "partner agreement" (5).

India, as a signatory to the International Conference on Population and Development, 1994, has committed itself to ethical and professional standards in family planning services, including the right to personal reproductive autonomy and collective gender equality (6). Indian policies and laws so far seem to reflect this understanding, at least on paper. The National Population Policy, 2000, affirms the right to voluntary and informed choice in matters related to contraception (7). With respect to third party authorisation, according to the standards for male and female sterilisation published by the ministry of health and family welfare, government of India (8), the prior consent of the spouse is not required for performing a sterilisation on a woman. Both The Medical Termination Of Pregnancy Act, 1971 (amended in 2002 and its rules framed in 2003) (9), and the ministry of health and family welfare's guidelines for medical termination of pregnancy (10) also specifically state that third party consent is not required unless the woman is a minor or mentally challenged, and both documents stress the need to maintain confidentiality.

Violations of the process of informed consent

The extent to which existing reproductive health services respect the woman's right to independently take decisions on fertility can be gleaned from studies that look at women's as well as the providers' experiences. Studies have shown that the insistence on spousal consent often prevents women from accessing safe abortions and sterilisations (11, 12). In a study among rural women by Gupte et al, women said that the most important criterion in abortion services was that the husband's permission not be insisted upon. Married as well as unmarried women resented doctors asking for the husband's signature before they could have an abortion. In a community-based survey in Rajasthan, 80 per cent of the women said that their provider had asked for the husband's consent (13). In a study on the process of informed consent in sterilisation services in Chennai done by this author, 73 per cent of the clients reported that third party signatures were procured, of which 53 per cent were from husbands. The study found that the process of informed consent violated the autonomy of women by ignoring the woman herself and taking consent from her husband or other family member (14).

Studies on the behaviour and perspectives of providers reflect the extent to which health care workers are sensitive and willing to support the woman to exercise her reproductive rights. In the Rajasthan abortion study, 55 per cent of providers incorrectly believed that the law requires the husband's consent (13). In the Chennai study (15), health care providers were aware that spousal

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consent was not necessary, but providers in private practice preferred to ask the husband or a close relative to counter-sign the consent form. The providers in the public sector were more willing to perform a sterilisation without spousal consent because they felt government norms did not require such consent. Even then, they took third party signatures for sterilisation when the newborn was premature, or when a woman had only one child or two daughters, or if the sterilisation was decided based on the sex of the second-born in a Caesarean delivery. The providers said that they did not want the spouse or family members to later threaten them or question their authority. The providers justified their actions as 'helping' the woman to preserve her marriage.

A contentious judgement

Evidence thus shows that even before the recent Supreme Court judgement, health care services were not necessarily gender-sensitive and health care providers were not always willing to respect the self-determination of women. Worse, the judgement conflicts with the existing guidelines for medical practice, and it is likely to confuse those who are seeking as well as offering these services. Although the judgement does not have a direct bearing on the process of informed consent, it implies that when a woman seeks abortion or sterilisation on her own and if her husband is not informed or does not consent, the very act of the woman could be cited by her husband as mental cruelty and grounds to seek a divorce. The judgement thus hits at the very core of reproductive rights: taking a decision and seeking a service without fear of coercion or violence. It is likely to set a wrong precedent and put many providers on guard, because they would not want to be involved in legal tangles. Many clinics may start using this ruling to impose a requirement of spousal consent. Even providers in the public sector may insist on a spouse's signature to avoid legal problems.

When many women go through repeated pregnancies due to a lack of power to make decisions about their sexuality and fertility, one hopes that the highest judiciary in the nation will demonstrate a better understanding and commitment to human rights, especially women's rights.

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