

Reproductive Rights in Egypt: What Can Egypt Learn from South African Experience to Promote Millenium Development Goals

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Abstract: Thirty years ago, different members of the global community of states flocked to Egypt where they attended the International Conference on Population Development (ICDP). Since this big international event took place in Cairo, the capital city of Egypt in 1994, there is a huge expectation from Egypt to be the one of the leading countries in protecting and promoting reproductive rights. The ICPD adopted a paradigm shift from a crime and punishment model to a reproductive health model with an aim of protecting and promoting reproductive rights. The ICDP recognized that access to contraceptives and abortion services is a special need for women and it should be given priority in any developmental program that has an intention of empowering women. The conference also made it clear that reproductive rights cannot be implemented in a vacuum, but individual circumstances of each woman must be taken into consideration in the process. This means that the rights in question must be exercised within the cultural, social, economic, and political context. A woman who feels that her economic situation does not permit her to have a child, her wish must be granted. On the contrary, Egypt criminalizes abortion through the provisions of article 260-264 of the Penal Code of 1937 but abortion is permitted only if the continuation of pregnancy will endanger the life of the mother. A lot can be learned by Egypt from the South African legal framework that champions the rights of women together with the Millennium development goals. The theoretical framework underpinning this study is reproductive justice which is achieved, “when, each person will have the power to make their own informed decisions about their body, sexuality, and future regardless of race, income and class, sexual orientation, immigration status, or other factors.”

Keywords: Reproductive Rights in Egypt, millennium development goals

Introduction

Many domestic laws of numerous countries of the world used crime and punishment model when comes to the regulation of abortion. Abortion was punishable because of the three main reasons: firstly, due to the lack of developments in medical science, it was not safe to abort the pregnancy without suffering its severe consequences and many women died because of undergoing an abortion. Secondly, abortion was perceived as a procedure that is contrary to religious morality, a sin and continues to be viewed as such by some segments of the community. Thirdly, abortion was disapproved to protect the sanctity of human life which naturally begins at conception when there is a fusion of a male and a female gamete to form a zygote (Francis 2007, 17). As far as the law makers are interested in protecting the sanctity of human life by forbidding induced abortion, the interests of the mother of the unborn fetus ought to be taken into consideration also and be balanced with that of the unborn fetus. In a quest to protect the life of the mother of the unborn child, law makers are gradually shifting from crime and punishment model to the reproductive health model. In the punishment model abortion is a criminal offence and anyone who contravenes the law is guilty of a criminal offence. This makes some women to resort to other measures of terminating their pregnancy that are usually not safe and practiced by unskilled people. No wonder the World Health Organization (WHO) reported that 13 % of worldwide maternal deaths are because of unsafe abortion (WHO 2005). Thirty years ago, different members of the global community of states flocked to Egypt where they attended the International Conference on Population Development (ICDP). Since this big international event took place in Cairo, the capital city of Egypt in 1994, there is a huge expectation from Egypt to be the one of the leading countries

in protecting and promoting reproductive rights. The ICPD adopted a paradigm shift from a crime and punishment model to a reproductive health model with an aim of protecting and promoting reproductive rights (Ngema 2023, 583). The ICPD recognized that access to contraceptives and abortion services is a special need for women and it should be given priority in any developmental program that has an intention of empowering women. The conference also made it clear that reproductive rights cannot be implemented in a vacuum, but individual circumstances of each woman must be taken into consideration in the process. In a similar vein, the reproductive justice framework was developed in 1994 by a group of Black women who attended a national pro-choice conference sponsored by the Illinois Pro-Choice Alliance in Chicago. The women felt that the mainstream reproductive rights movement did not fully address the needs and experiences of women of colour, low-income women, and other marginalized groups. They subsequently formed the organization Sister Song Women of Colour Reproductive Justice Collective, which has played a central role in defining and promoting the framework. The reproductive justice framework of based on the following four fundamental principles:

Right to Have Children: Every person has the right to decide if, when, and how to have children, and to have the necessary resources and support to do so in a safe and healthy environments.

Right to Not Have Children: Every person has the right to decide if, when, and how not to have children, including access to contraception, abortion, and sterilization.

Right to Parent the Children We Have in Safe and Healthy Environments: Every person has the right to parent their children in safe and supportive environments, free from violence and oppression.

Intersectionality: Recognizes that people's experiences and needs are shaped by multiple and intersecting identities, including race, gender, sexuality, class, ability, and more. Reproductive justice addresses these intersecting factors to ensure that all individuals have the resources and opportunities to make the best decisions for themselves and their families.

Reproductive justice extends beyond traditional reproductive rights to include social justice issues such as economic inequality, racial discrimination, and access to health care, housing, and education. It emphasizes the importance of addressing systemic inequalities and ensuring that all individuals can make informed and autonomous decisions about their reproductive lives. This means that the rights in question must be exercised within the cultural, social, economic, and political context. Paragraph 7.2 of the Programme of Action of the ICPD defines reproductive rights as “a state of complete physical, mental and social wellbeing... in all matters related to the reproductive system.” Moreover, it was agreed that 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.” In order to put our views in a proper perspective, this paper is divided into four parts. The first part of the paper intends to discuss the international legal framework on the protection of reproductive rights. The second part of the paper would discuss the South African legal framework on the issue of the protection of reproductive rights. The third section of the paper would discuss the position in Egypt and the fourth part would look at the best practices that both countries should learn from each other. The following section would discuss the international position on the issue of reproductive rights.

Historical Background of Reproductive Rights in South Africa

The struggle for the true liberation of women is a long journey and indeed a difficult one, it commenced many years ago. Women have been subjected to many forms of humiliation and denial of human rights. They were treated worse than second class citizens. This brings back the ugly memory of the marital power of a husband which downgraded the status of women to that of a perpetual minor for the rest of their days. Women were practically treated as people who are feeble minded and thereby not in a position to take important decisions in our society. This is so because according to the marital power of a husband, a woman had no capacity to litigate on her own without being assisted by her husband or male relative. They had no contractual capacity and were not even allowed to hold certain influential positions in the public domain. This shows clearly the plight of women in our society that continues to be male dominated despite the advancement in human rights for all. The inequalities between men and women were also visible on the allocation of the right of guardianship. As already mentioned earlier, women were treated as perpetual minor children regardless of their age and had no right of guardianship over their children. This had been the position in South Africa until the enactment of the Guardianship Act 192 of 1993. The Guardianship Act was little bit innovative because it accorded equal guardianship status to both parents and now both parents can be regarded as guardians of their children. This shows that women were excluded from enjoying certain rights and from partaking in decision making. Reproductive rights fall under that category of rights that were denied to women

for many years. South African women had no access to reproductive rights such as abortion services within the country and rich white women had an alternative of flying abroad to access such services. On the contrary, many black women, more especially in rural areas had to resort to back street abortion services that were offered by unqualified personnel (Gutmacher, Kapadia, Naude and Pinho 1998, 191). The fear of prosecution made many women to seek help from unqualified people and thereby risking their lives in the process. The increase in the number of pregnancy related complications that come as a result of abortion, pushed the government to enact the Abortion and Sterilization Act 2 of 1975 with an aim of reducing illegal abortions. However, the Abortion and Sterilization Act never achieved its purpose of reducing illegal abortions, but it was an opposite of that. In fact, the latter mentioned Act made it difficult to obtain abortion services and it provided the following conditions:

- If it is proven that the continuation of pregnancy will threaten the life of the pregnant mother, her physical or mental health;
- If the continuation of pregnancy will cause severe handicap to the child;
- If pregnancy was a result of rape; and
- If pregnancy was a result of incest.

In addition to the above, a woman who seek abortion services had to obtain an approval from a qualified medical doctor, a psychiatrist or a magistrate. The Abortion and Sterilization Act was finally abolished by the enactment of the Choice on Termination of Pregnancy Act (CTPA).

Current Legal Framework on Reproductive Rights in South Africa

The reproductive rights are regulated by the Choice on Termination of Pregnancy Act (CTPA) of 1996 and came into effect in February 2007. This is a huge departure from the previous Act and the new Act permits termination of pregnancy upon a woman's request within the first trimester of pregnancy. It is no longer a prerequisite to commence by seeking the approval of magistrate, psychologist or doctors. This Act has made it easier to access health services if a woman wants to terminate her pregnancy by removing the stringent measures that requires some approval from certain officials. Minors are also permitted to seek for abortion services without getting the consent of a guardian or a parent. However, such a minor who intend to commit abortion is advised to inform her parent or guardian. Socio-economic conditions of a woman are also taken into consideration and if a woman is of the view that the continuation of pregnancy would have a negative effect on her economic condition, she has a right to access abortion services at a state expense. Sexually violated women such as those who are the victims of rape and incest are allowed to seek for abortion services without any stringent measures such as the provision of certain documentation. According to the Act it is not permissible to have an abortion after 20th week of pregnancy because it is believed to be dangerous to do so. A woman can only be legally allowed to commit an abortion after 20th week of pregnancy if the qualified medical doctor is of the view that the continuation of pregnancy will endanger the life of the mother or the life of a fetus.

Reproductive Rights in Egypt

The reproductive rights in Egypt are currently regulated by the provisions of article 260 to 264 of the Egyptian Penal Code of 1937. The Penal Code is highly restrictive when it comes to reproductive rights of women. A woman is only allowed to terminate pregnancy if the continuation of such pregnancy might endanger her life. The Egyptian legal system is highly influenced by the Islamic norms and general way of life. A pregnant non-married maiden may not be allowed to access reproductive health services because having sexual intercourse outside the confines of a lawful marriage is regarded as a *haram* (forbidden). Sexual intercourse is highly discouraged between the unmarried lovers and is regarded as a serious offence that attracts the penalty of 100 lashes to the culprit. This shows clearly that the unmarried maidens who find themselves in an unfortunate situation of being pregnant outside wedlock would not merely attract a severe punishment but would not get any help from health institutions regarding reproductive health. The socio-economic situation in the country makes it difficult for an unmarried woman to come forward and seek reproductive health services if she falls pregnant. The difficulties associated with pregnancy are experienced by women more if compared to men. The biological and natural reality is that a woman is the one who carries pregnancy for a duration of 9 months before she put to bed. This is accompanied by other challenges such as morning sickness and other related illnesses. A woman ought to be able to freely exercise her reproductive rights free from coercion or any form of violence. She suppose to be free to decide when to have sex, when to have children and also decide on their spacing in between.

Best Practices that the countries can Learn From each other

The Egyptian government can learn some few things from the South African experience which is more likely assist it to promote the millennium development goals. One of the millennium development goals is to achieve an egalitarian society where all members of humankind would be allowed to enjoy their rights to the fullest. The tendency of some countries to restrict reproductive rights of women has an effect of encroaching upon numerous rights of women such as freedom and security of a person, human dignity, equality and the right to life.

The protection of the right of the mother is commended because Egypt permits a woman to terminate pregnancy if its continuation would endanger her life. This is in line with the international trends, however, the failure of the government of Egypt to allow women to exercise their right to terminate pregnancy when other compelling circumstances confronts them. One of the lessons that can be learned from South Africa is that in situation where a woman is a victim of rape, or incest a woman is allowed to choose between keeping or terminating the pregnancy and such decision is not linked to the views of her husband or boyfriend. If the continuation of pregnancy would pose risk to the life of the fetus it is justifiable for a woman to choose termination of that pregnancy.

Women in South Africa have full freedom to exercise their reproductive rights and there are given access to reproductive health services upon request. This is commendable because it enables women to be able to fully apply and enjoy their reproductive rights.

Conclusion and Recommendations

As already argued earlier, the reproductive rights of women are severely restricted in Egypt, and this has an impact on delaying the achievement of the millennium development goals. The failure to provide women with full access to reproductive rights has the detrimental consequences on the socio-economic conditions of women. If abortion services are only available when pregnancy poses danger to the life of the mother and ignore other legitimate situations where it may be necessary is not a solution at all. Women who need abortion services may resort to other measures whereby they end up using the services of unregistered service provides and put their lives at risk. Research shows clearly that many women died because of the criminalization of abortion and restrictions to the accessibility of contraceptives (Ngema, 2023). It recommendable for Egypt to permit women who need all reproductive health services on request. The marital status of a woman need not to be used as a yardstick in offering such reproductive health services. Moreover, this would enable women to freely exercise their reproductive rights without any fear of prosecution and develop up to their maximum potential.

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Legislation

Abortion and Sterilization Act
 Choice on Termination of Pregnancy Act
 Egyptian Penal Code of 1937
 Guardianship Act 192 of 1993