

Protection of Women's Maternity: Comparative-Legal Analysis of Provision of Reproductive Rights

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ABSTRACT

The article analyzes the protection of women's motherhood, their reproductive health and legal guarantees of reproductive rights, reproductive rights are inextricably linked with women's motherhood, the medical services provided in the implementation of these rights, the obligations of medical service participants, and the experience of foreign countries.

KEYWORDS: *women's reproductive rights, motherhood, artificial termination of pregnancy, maternity protection, reproductive health, medical service, medical service participants, legal guarantee, equality.*

The issue of women, who make up almost half of the world's population, is as urgent as ever. Today, ensuring the rights and interests of women, improving working and living conditions, protecting motherhood and childhood is considered a priority of state policy [15].

In our country, effective use of medical services is of great importance in protecting the health of mothers and children, ensuring the reproductive rights of women. Although 49% of the population of the republic are women, about 64% of them are reproductively active women under the age of 30.

Article 40 of the Constitution of the Republic of Uzbekistan stipulates that everyone has the right to use qualified medical services.

According to the Law of the Republic of Uzbekistan dated March 11, 2019 "On Protection of Reproductive Health of Citizens", protection of women's reproductive health includes the following - obtaining reliable and complete information about their own reproductive health, methods of infertility treatment and contraception; ensuring access to services in the field of reproductive health care; to receive confidential medical advice and services on reproductive health issues [2].

A woman has the right to be treated for infertility, to maintain her reproductive health using modern methods of treatment until pregnancy, during pregnancy, childbirth and postpartum, and to receive social support from the state.

Medical intervention during pregnancy is carried out with the written consent of the husband and wife, with the consent of the woman in the absence of the husband, or with the consent of her parents, or with the consent of other legal representatives if she is a minor or incapacitated. The fact of refusal of medical intervention is recorded in the medical documents with possible consequences and is confirmed by the pregnant woman, in the absence of this possibility, by her husband or relatives in writing, and in the absence of a possibility to receive a written answer about the refusal of medical intervention, it is confirmed by the conclusion of the council of doctors. A woman cannot be forced into pregnancy, artificial termination and contraception.

O. Khazova, who was the first to study the reproductive rights of citizens in the CIS countries. A. according to his opinion, reproductive rights are citizens' ability to independently and freely decide on the issue of childbearing, to receive complete information about reproductive health, and to use medical services necessary for childbearing [4].

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Also G. According to Romanovsky, the elements of the right of women to independently solve the issue of motherhood include:

- the right to artificial termination of pregnancy (artificial termination of pregnancy at the initiative of medical personnel is not allowed);
- the right not to get pregnant, this right should not be limited by the legislator (the law should not force a woman to procreate) or by the spouse;
- the right to choose contraceptives [5].

Perevozchikova E. A. according to his opinion, reproductive rights are the rights of people related to having children, the right to get pregnant, the right to determine the number of children and the period between their births, the right to use reproductive technologies when pregnancy cannot be carried out naturally [6].

Vorontsova M.A. according to his opinion, errors should not be allowed in the provision of medical services used in the implementation of human reproductive rights. Otherwise, the consequences of such mistakes can lead to the death of people or the loss of the function of having children [7].

Based on the above points, it can be said that reproductive rights are mainly related to a person's ability to conceive and have a child, and these rights are inextricably linked with the maternal function of women. In many countries of the world, legal guarantees of women's maternity protection and their reproductive health have been adopted.

Therefore, in order to maintain their reproductive health, women as consumers should know in which cases they should receive free medical care within the guaranteed amount. For example, maternity hospitals provide free medical services. However, in most cases, the maternity hospital administration gives an argument to the applicant that these services are provided free of charge based on the principle of territorial affiliation.

Our legislation does not clearly define the scope and procedure of free medical care. Or the monitoring of the medical service provided to citizens, the compensation of damage caused by the poor quality of the service is not fully regulated in the legislation.

Also, according to information on social networks, mothers died in some maternity hospitals as a result of untimely first aid, untrained doctors or poor quality medical services.

According to the information service of the Senate, in 2020, the number of infant deaths in our country was 6,860, and the number of maternal deaths was 155. In 2019, these figures were 6,432 and 145, respectively [14].

The Law of the Republic of Uzbekistan "On Protection of Citizens' Health" consists of ensuring the state guarantee of citizens' rights to health care, forming a healthy lifestyle and legally regulating the activities of state bodies, enterprises, institutions, organizations, public associations in the field of protection of citizens' health [3]. This law also defines the rights of citizens to use medical services. In particular, when citizens become ill, lose their ability to work, and in other cases, preventive, diagnosis-treatment, restoration of strength, sanatorium-spa, prosthetic-orthopedic assistance and other types of assistance, as well as social measures related to feeding and caring for incapacitated and disabled people. activities, including receiving medical and social assistance, including the payment of temporary disability benefits, as well as additional medical and other services at the expense of the funds of enterprises, institutions and organizations, their own funds and other sources not prohibited by law, on the basis of voluntary medical insurance have the right to use.

According to WHO, in 2017, maternal deaths due to pregnancy and childbirth complications were 810 per day. The percentage of teenage girls in these maternal deaths was high. Almost 75% of maternal deaths occurred as a result of pregnancy and postpartum complications and unsafe abortion

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[13].

It should also be noted that in accordance with the decision of the President of the Republic of Uzbekistan No. PQ-2863 of April 1, 2017, private medical institutions are exempted from paying all types of taxes and mandatory allocations to state special funds until January 1, 2022, and the freed funds, including the population's social it is determined that it should be directed to the provision of free medical services to vulnerable groups. Today, the private system occupies a significant place in the field of health care. In the conditions of a market economy, the healthcare system cannot be imagined without the private sector. It's like that all over the world. Private medicine is also developing widely in our country. In 1991-2016, there were 50 types of medical specialties performed by private medicine on the basis of a license, and in 2017-2020, they were 129.

Also, in accordance with the President's Resolution No. PQ-4513 of November 8, 2019 "On improving the quality and further expansion of the scope of medical care provided to women of reproductive age, pregnant women and children", the World Health Organization's "Safe Motherhood" strategy private medical institutions that can ensure compliance with the requirements were allowed.

All over the world, countries have adopted strategic programs to prevent maternal and child deaths, rational family planning, women's reproductive health, and maternity protection. Norms related to these social relations are established in national legislation, especially in constitutions [8].

In particular, **the German** constitution According to Article 6 every mother has the right to social protection by the society. According to article 76 of the **Venezuelan** constitution motherhood and childhood are protected by the state, guaranteed medical services during pregnancy, childbirth and postpartum are provided. Also, the husband and wife have the right to independently plan the family and the number of children [9].

Women in foreign countries are allowed to exercise their reproductive rights freely. In particular, the right of a couple to freely determine the birth of children is enshrined in Article 4 of the **Paraguayan** Constitution [10], Article 41 of the **Macedonian** Constitution [11] and Article 55 of the **Slovenian** Constitution [12].

Another effective system of protection of maternity, protection of women's reproductive rights is the **French** system. This system includes several directions. One of the most important aspects of the system is mandatory medical insurance to compensate for damages caused by poor quality service provided by medical personnel. The "National Compensation Service" of the French Ministry of Health compensates 24% of the damage caused (no-fault damage) when it is not possible to identify the person who caused the damage (medical worker).

Disciplinary chambers of professional associations of medical workers have been established, and citizens can complain to these chambers about the quality of medical services provided to them. Complaints are submitted to regional, interregional and national disciplinary chambers, which are investigated by specialists in the medical field. Commissions for regulation of relations with patients and control of the quality of services provided (des commissions des relations avec les usagers et la qualité des services, CRUQPC) are established in each health care institution. includes review and development of proposals for improvement of the current situation to the supervisory board of the medical institution.

Article 223-1 of the French Criminal Code provides for imprisonment of up to 1 year or a fine for putting another person at risk of death or incapacitation in gross violation of security and precautionary measures.

In Great Britain, the system of protection of women's health and reproductive rights consists of various governmental and non-governmental organizations.

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A special State agency is *The National Patient Safety Agency, NPSA* , whose mission is to support, inform, and influence individuals and organizations operating in the healthcare sector.

The agency consists of three components:

National Reporting and Learning Service) , which operates to ensure the safety of users of medical services and to reduce risks for them ;

National Clinical Assessment Service) , which evaluates the activities of doctors in terms of health risks posed to users of medical services and resolves misunderstandings ;

National Research Ethics Service) is responsible for protecting the safety, rights, honor and dignity of persons participating in medical research .

The Independent Complaints Advocacy Service (ICAS) operates in Great Britain, which helps people who are dissatisfied with medical services to file complaints .

Care Quality Commission is responsible for monitoring the quality and safety of medical services .

This commission is an independent body that regulates the quality of provided medical services and their (services) compliance with demand standards and citizens' health safety requirements. Since 2009, the commission has been carrying out its activities at the expense of state grants and non-state funds.

In the system of dealing with complaints about the errors of doctors and the quality of medical services provided, there are also the services of " *Health Service Ombudsman* " and " *Parliamentary Ombudsman* " .

"Ombudsman on health issues" carries out independent investigations (inquiries) when complaints are received about the wrong and unfair actions of health care institutions and their employees, as well as the quality of the provided medical services.

Usually, the Ombudsperson accepts complaints for processing after discussing the measures of peaceful (alternative) dispute resolution with the relevant health care institution and/or doctor and receiving their response.

The main task of this service is to summarize the received complaints and make proposals to the government and the country's parliament regarding measures to be taken to avoid the problems reflected in the complaints.

Unlike the "Health Ombudsman", the service of the "Parliamentary Ombudsman" serves to consider complaints at a higher level, to bring the activities of state bodies to a new level in terms of quality in the provision of medical services, and to inform the public about health issues.

The parliamentary ombudsman considers complaints about the wrong and unfair actions of state bodies, organizations and institutions, as well as the medical services provided by them.

In Great Britain, the role and role of the public in protecting women's reproductive rights is implemented by " *Community Health Councils* " and " *Local Involvement Networks, LINKs* " .

The tasks of local participation networks are as follows:

1. Studying and summarizing the opinions of users of medical services regarding the services provided and the work being carried out in the field of health care;
2. Identifying and solving problems in this field;
3. Bringing relevant services to account.

Local participation networks (LINKs) operate at the expense of local government bodies, but all

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interested parties (activists, experts, representatives of public associations and interest groups) can participate in its work.

Action against Medical Accidents (AvMA) " organized in Great Britain in the field of detection and control of medical errors is of particular importance.

Sweden , there is a "Confidence Committee" in the healthcare sector, which serves to resolve disputes and establish communication between patients and healthcare professionals.

Finland, New Zealand, and Australia , the "Voluntary social insurance" system is being actively implemented, and according to it, it is not required to prove the fault of the person causing the damage to receive compensation payments for the damage caused to the patient.

Greece , a doctor who harms the health of citizens due to his poor treatment can be sentenced to 15 years in prison.

It is worth noting that articles 114 and 116 of the Criminal Code of the Republic of Uzbekistan provide for measures of responsibility of medical workers.

In conclusion, in order to introduce a more effective mechanism of protection of women's reproductive rights and interests protected by law, it is proposed to adopt the law "On Protection of Motherhood" in our country.

It is appropriate to regulate the following in this law:

1. To clearly define the rights and obligations of the participants of medical service relations during pregnancy and childbirth;
2. Introduction of mandatory civil liability insurance system of doctors and medical personnel involved in medical procedures;
3. Establishing the obligation to create a maternal medical database and to include information such as medical history, diagnosis, personal condition, medical recommendations, prescribed drugs;
4. Establishment of the Agency for the Protection of Women's Reproductive Health and its regional departments in the regions;
5. Empowering the agency to receive all information and documents from any treatment institution, as well as explanations from the manager and other employees, including the involvement of specialists, to conduct service inspections and conduct inquiries regarding each complaint, regardless of the form of ownership;
6. To establish an independent expertise center under the Agency in order to provide an impartial assessment of the situation in conflict situations arising on the quality of medical services and its negative consequences;
7. To introduce a system of reporting the information on maternal deaths caused by each doctor's error to the Oliy Majlis of the Republic of Uzbekistan, and to the people's deputies of the regional and Tashkent city councils of the regional departments according to the quarterly results of the agency;
8. On the basis of the principle of voluntariness, it is necessary to provide free legal assistance to women in the preparation of their complaints against the actions and inactions of medical institutions, doctors and medical personnel, including the task of assisting them in submitting appropriate lawsuits to the courts.

List of used literature:

1. Constitution of the Republic of Uzbekistan // National database of legal documents, 03/06/2019, No. 03/19/527/2706;

<https://cejsr.academicjournal.io>

2. Law of the Republic of Uzbekistan "On Protection of Reproductive Health of Citizens" // National base of legal documents: No. 03/19/528/2741;
3. The Law of the Republic of Uzbekistan "On Health Care of Citizens" // National database of legislative information, 04/21/2021, No. 03/21/683/0375;
4. Khazova O. A. Reproktivnye prava v Rossii: predely zakonodatelnogo regulirovaniya // Konstitutsionnoe pravo: vostochnoevropeyskoe obozrenie. 2000. No. 4. S. 16.
5. Romanovsky G.B. Legal protection of motherhood and reproductive health: Monograph / A.N. Prorokov. - Nauchnoe izd. - M.: Prospect, 2016. - 216 p.
6. Perevozchikova E. V., Pankratova E. A. Konstitutsionnoe pravo na zhizn i pravovoy status embriona cheloveka // Meditsinskoe pravo. -2006. - No. 2. - S. 16–23.
7. Vorontsova M. A. //Realization theory of constitutionalism and pravoprimeritelnoy practice of the Russian Federation. sbornik statey po materialam Mejdunarodnoy nauchno-prakticheskoy conference. Severo-Zapadnyy branch FGBOUVO "Rossiyskiy gosudarstvennyy universitet pravosudiya". St. Petersburg, 2021. S. 74-79.
8. E. S. Plotnikova /K voprosu o konstitutsionnom zakreplenii reproductivnykh prav i svobody reproductivnogo samoopredeleniya v zarubejnyx stranax: sravnitelno-pravovoy analiz/ <https://cyberleninka.ru/article/n/k-voprosu-o-konstitutsionnom-zakreplenii-reproductivnykh-prav-i-svobody-reproductivnogo-samoopredeleniya-v-zarubezhnyh-stranah/> -2022 g.
9. Constitution of the Bolivarian Republic of Venezuela 1999. URL: https://www.constitutionproject.org/constitution/Venezuela_2009.pdf?lang=en.
10. Constitution of Paraguay 1992. URL: https://www.constituteproject.org/constitution/Paraguay_2011.pdf?lang=en.
11. Constitution Republic of Macedonia 1991. URL: <http://worldconstitutions.ru/?p=113> .
12. Constitution of the Slovak Republic 1992 URL: <http://worldconstitutions.ru/?p=110> .
13. <https://www.who.int/news-room/fact-sheets/detail/maternal-mortality>
14. <https://senat.uz/uz/lists/view/2748>
15. Anvarova D.A. // Ensuring Women's Social Rights is a Factor in Poverty Reduction // Middle European Scientific Bulletin 18, 30-32
16. Анварова Д. «Фейк» хабарларга қарши курашишнинг қиёсий-ҳуқуқий таҳлили //Правовые вопросы противодействия мошенничеству и киберпреступлений. – 2021. – Т. 1. – №. 1. – С. 51-53.
17. Анварова, Д. (2021). «Фейк» хабарларга қарши курашишнинг қиёсий-ҳуқуқий таҳлили. *Правовые вопросы противодействия мошенничеству и киберпреступлений*, 1(1), 51-53.
18. Anvarova, D. A. (2021). Ensuring Women’s Social Rights is a Factor in Poverty Reduction. *Middle European Scientific Bulletin*, 18, 30-32. <https://doi.org/10.47494/mesb.2021.18.839>
19. Anvarova, D. A. “Ensuring Women’s Social Rights Is a Factor in Poverty Reduction”. *Middle European Scientific Bulletin*, vol. 18, Nov. 2021, pp. 30-32, doi:10.47494/mesb.2021.18.839.