RIGHT TO SEXUALITY EDUCATION AS A HUMAN RIGHT

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The word “Sexuality Education” is highly inhibitory and repulsive to many educated individuals, moreso after sexuality education was proposed a few years ago by the Central Government of India. It came under criticism with many State governments such as Gujarat, Madhya Pradesh, Maharashtra, Karnataka, Rajasthan banning sexuality education for adolescents or their refusal to incorporate it into the school curriculum, stating that the study material was too explicit or was against the social and moral values of the country.¹

A few educationists, medical personnel and other advocates of Sexuality Education representing reputed NGOs, such as the FPAI, IPPF, etc., have in subtle ways, introduced sexuality education, with considerable criticism to their efforts, under the title “Gender Education”, “Health Education”, “Life Education” or a broader term “Reproductive Rights”, which includes:

- The right to education and access in order to make reproductive choices free from coercion, discrimination and violence.
- The right to access quality reproductive health care.
- The right to receive education about contraception and sexually transmitted infections,
- The right to legal or safe abortion.
- The right to birth control.
- Freedom from coerced sterilization, abortion, and contraception,
- Protection from gender-based practices such as female genital cutting and male genital mutilation.

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Sexuality education is the process of acquiring information and forming attitudes and beliefs about sex, sexual identity, relationships and intimacy. It aims at reducing the risks of potentially negative outcomes from sexual behavior, like unwanted or unplanned pregnancies and infection with sexually transmitted diseases, and to enhance the quality of relationships.

Sexuality education includes but is not limited to the following topics:

- The human sexual anatomy
- Sexual reproduction
- Reproductive health
- Reproductive rights and responsibilities
- Emotional relations
- Contraception and
- Other aspects of human sexual and non-sexual behavior

The skills young people develop as part of sexuality education are linked to more general life-skills. Being able to communicate, listen, negotiate with others, ask for and identify sources of help and advice, are useful life-skills which can be applied to sexual relationships. Effective sexuality education develops young people’s skills in negotiation, decision-making, assertion and listening. Other important skills include being able to recognise pressure from other people and to resist it dealing with and challenging prejudice, and being able to seek help from adults - including parents, care givers and professionals - through the family, community and health and welfare services.²

The need for sexuality education has been expressed from time to time some researchers³,⁴,⁵,⁶ have observed that 87.2 percent of adolescent girls from high school and junior college wanted sexuality education to be a part of the regular high school curriculum. Similarly, a survey done with 959 adolescent girls on issues of sexuality shows that regardless of age and education all the respondents expressed the need for introducing sexuality education into the academic curriculum.⁷ Easter Thamburaj et al⁸ also found that students in public (63.06%) and private schools (48.80%) felt that sexuality education should be included in the curriculum.

Sexuality education programs have been found to have beneficial impact. Thakor and Pradeep⁹ found that the sex education program resulted in knowledge gain and desired change in attitudes. The need for sex education has been perceived by various NGOs as well as international organisations working in the field of human health and education. Majority of school teachers (73%) were found to be in favour of imparting sex education to school children.¹⁰

The adolescents are quite inquisitive about the changes taking place in their body and want to know about sex and sexuality. Social taboos associated with the topic restrain them to ask their parents or elders. In such a situation it is difficult for them to get correct information about the anatomy of the human body and sexuality. They often depend on their peers who are equally ill-informed. The absence of proper knowledge makes them even more curious towards sexuality and the opposite sex. Many of them try to find out about sexuality through experimentation which further worsens the situation due to incorrect knowledge. If they are given proper information regarding their body, sexuality and HIV, they would be able to take care of their health and body in a better way. Their decisions would be more mature and rational. By denying sexuality education young children grow up being ashamed, confused and uninformed about themselves and their bodies. They are also rendered far more vulnerable.
Some figures worth considering that highlight the need for sexuality education are:

- 16% women aged between 15-19 years are mothers. (National Family Health Survey (NFHS – 3 (2007).)
- Over 35% of AIDS cases reported are below 25 years of age and 50% of new infections are between 15 and 24 years old. (UNICEF, 2010).
- Around 2.27 million people are currently living with HIV (UNGASS, 2010).
- In India the rate of teenage pregnancy is anywhere between 8% to 14 % (Bhalerao et al 1990, Mahavarkar, Madhu, Mule, 2008).
- Incidence of Breast Cancer, Cervical Cancer, gynaecological disorders, skin disorders are increasing among the youth. One in 22 women in India are likely to suffer from breast cancer during her lifetime. Breast cancer is the most common cancer in women in India (Khan et al 2010).
- A quarter to a third of India’s young people indulge in premarital sex. (Sharma, R, 2001).
- Myths regarding sexuality issues, even among the elderly and educated people, can be seen by going through some of the popular columns in the newspapers, such as Dr. Mahendra Watsa’s column in Mumbai Mirror.

With easy access to internet resources, mobile and other telecommunication gadgets information about sex, sexuality and related topics is easily accessible without censorship. This information, in many cases, is misleading, unorganised, incomplete and unscientific leading to health issues and socio-legal problems. Hence, sexuality education is needed in such changing times.

Sexuality education is a human rights issue as it impacts general health, adaptation to environment, quality of life and helps to live optimally by choice. It would not be an exaggeration to state that the right to life includes the right to sexuality education as well as reproductive rights. Hence, it is a human right which needs to be enshrined. Sexuality Education is a basic requirement as lack of information and/or knowledge related to sexual anatomy, its functioning, and other related details can endanger human life and health.

Sexuality education is also needed to understand the impact of environment on human sexual health. A review study by Kumar and Kumar has pointed out the influence of environment on human sexual and reproductive health and highlighted the need to include the topic of “Environment and Sexuality” in courses on Environment Education and Sexuality Education in India.

Though the Government of India and its agencies have advocated sexuality education and prepared a program for its implementation, the inhibition associated with the word “sex” as well as preconceived irrational fears and increasing resistance from political opponents have scuttled the said programme. Twelve Indian State Governments had gone against the Adolescent Education Programme introduced by the Central Government in association with the National AIDS Control Organization (NACO) and the United Nations Children’s Fund (UNICEF), which provoked the Minister for Women and Child Development, Renuka Chaudhary, to term India ‘a nation of hypocrites’.

One of the main reasons for banning sexuality education was that the contents of the sexuality education programme, prepared by the Government was explicit and contrary to Indian culture and morality. Critics of the programme opined that sexuality education in schools will increase risky behaviour amongst adolescents and young people. It would encourage
promiscuity, experimentation, and so on. However, such fears are irrational and far from reality. It has been observed that sex education does not encourage young people to have sex at an earlier age or more frequently. (Grunseit & Kippax, 1993). On the contrary, the study revealed that sexuality education delays the start of sexual activity, reduces sexual activity among young people and encourages those already sexually active to have safer sex. Published reports of United Nations Children’s Fund (UNICEF), United Nations Population Fund (UNFPA), United Nations AIDS, support the effectiveness of sexuality education programmes in the US and other parts of the world.

The Central Government in India has not taken any further action with respect to states banning sexuality education program proposed by it. The Central Government has justified its inaction by pointing out that under the federal structure of the Indian Constitution, Education and Health are both subjects that can be exclusively legislated upon and executed by State Legislatures and Governments. However, the Central Government has forgotten that under international law, federalism or any other such argument is not an excuse for the violation of international commitments. This rule has been codified by the 1969 Convention on the Law of Treaties and the 2001 Draft Articles on State Responsibility prepared by the International Law Commission. Further, the Indian Constitution empowers the Central Government to make any laws or take any executive action if it is in furtherance of its international commitments – regardless of whether such a matter is a State subject under the federal structure.

Lack of compulsory comprehensive sexuality education in schools, according to the Report of the United Nations Human Rights Council Report, violates the human rights of Indian adolescents and young people as recognized under international law.

Broadly interpreted the right to sexuality education is enshrined in the Indian constitution as well as the international covenants and agreements. Article 21 which deals with right to life or personal liberty and Article 21–A of the Constitution dealing with ‘free and compulsory’ education, as well as the Directive Principle of State Policy under Article 45 of the Constitution can be interpreted as covering the right to sexuality education. Furthermore, Article 51–A (k) imposes a ‘fundamental duty’ on parents to provide educational opportunities to their children in the age group of six to fourteen years, which can also be interpreted as including the opportunity to have sexuality education.

Two case laws with regard to court judgments on sexuality education are worth noting. The first is the judgment of the Supreme Court of India which decided that sexuality education in schools cannot be brought under the ambit of fundamental rights by making it a part of the right to education, while dealing with a Public Interest Litigation, which had suggested making sexuality education in schools compulsory. The NGO, Nari Raksha Samiti, had submitted that sexuality education in school curricula could play a role in checking the rise of rape cases. Though agreeing with the suggestion, the bench said it cannot be given the status of a fundamental right on the same footing as the right to education itself.

The second judgment is that of the European Court of Human Rights in the case of Kjeldsen, Busk Madsen and Pedersen v. Denmark (popularly known as the Pedersen Case, 1976). The applicants were parents of children who were going to State primary schools in Denmark. As per the Danish Constitution, all children have the right to Free Compulsory Education in State primary schools. The State had introduced compulsory sexuality education in State primary schools as part of the curriculum. This change in curriculum
was introduced by a Bill passed by the Parliament. There were guidelines and safeguards against:

- Showing pornography.
- Teachers giving sexuality education to pupils when they were alone.
- Giving information on methods of sexual intercourse.
- Using vulgar language while imparting sexuality education.

The applicants, who were parents of school going children, gave several petitions to have their children exempted from sexuality education in concerned State schools. However, these requests were not met and all of them withdrew their children from the said schools. The applicants argued that the Denmark Government had violated Article 2 of Protocol No. 1 to the European Convention on Human Rights, which states: “No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religions and philosophical convictions.” The State argued that Article 2 would cover only religious instruction and not all forms of instruction. The Court rejected this argument and held that any teaching should respect parents’ religious and moral convictions. However, the Court also held that Article 2 would be violated only if while imparting sexuality education, the teachers advocated sex at a particular age or particular type of sexual behaviour. Moreover, the parents still had the freedom to educate their children at home to instill their own religious convictions and beliefs and therefore, imparting sexuality education per se was not a violation of Article 2.

International conventions and legal instruments, to some of which India is also a signatory, have strongly advocated the right to sexuality education as one of the important human rights. The International Conference on Population and Development (ICPD) and Programme of Action (PoA), 1994 (often known as the Cairo Declaration) - The ICPD PoA - was the first and most comprehensive international document to embody concepts of reproductive and sexual health and rights. India is one of the signatories to the 1994 United Nations International Conference on Population and Development (ICPD). At this conference, “Five Year Review member states” of the UN, including India, affirmed the Sexual and Reproductive Rights (SRRs) of adolescents and young people. Therefore, as a part of their commitments under the ICPD agenda, governments, including India, are obliged to provide for free and compulsory comprehensive sexuality education for adolescents and young people.

Article 24, 28 and 29 of the Convention on the Rights of the Child, has important provisions related to education of children which can include the right to sexuality education. General Comment No.3 on HIV and AIDS of ‘The Committee on the Rights of the Child’ states that effective HIV/AIDS prevention requires States to refrain from censoring, withholding or intentionally misrepresenting health-related information, including sexual education and information, and that, consistent with their obligations to ensure the right to life, survival and development of the child (Article 6), State parties must ensure that children have the ability to acquire the knowledge and skills to protect themselves and others as they begin to express their sexuality.

The Committee on the Elimination of Discrimination against Women (CEDAW), has called on state parties to take steps under the right to health, in particular to “prioritize the prevention of unwanted pregnancy through family planning and
sexuality education and reduce maternal mortality rates through safe motherhood services and prenatal assistance.” CEDAW further recommends that sexuality education be “widely promoted” and “targeted” at adolescent girls and boys.

The Committee on Economic, Social and Cultural Rights (under the International Covenant on Economic, Social and Cultural Rights) in its General Comment No. 14 on ‘the right to the highest attainable standard of health’ has specifically recognised the obligation of the government to provide sexuality education and information and have discussed the issue of sexuality education as a component of the rights to life and health.27

What sexuality information should be given to young people as well as to the elderly? When should sexuality education start? Who should provide sexuality education? How effective is the school-based sexuality education, are important issues that need to be scientifically discussed and consensus on these issues should be arrived. Appropriate balance between the eagerness and ambitious proposals of the NGOs to implement varied sexuality education in schools and restrictive approach of the politicians needs to be arrived at so that the process of imparting sexuality education to stakeholders is well regulated and less controversial.

REFERENCES


