

# Biomedical processes and its impact on the formation of women's reproductive rights in Kyrgyzstan

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**Abstract.** The advancements of contemporary science and technology, particularly within the realm of medicine, find extensive application across various facets of societal engagement. These circumstances, in turn, give rise to the establishment of novel domains within public relations, thereby shaping their legal framework. Questions of human rights and freedoms occupy the core of legal science. Simultaneously, the intricacies of public relations within this domain have given rise to the development of new branches of law, with the process of their distinct delineation being articulated in several scholarly works. The domain of women's reproductive rights, relatively nascent and necessitating thorough examination, has engendered one of the most urgent challenges of our era. In recent decades, the exploration of women's reproductive rights has extended beyond the purview of medical science to encompass the realm of legal scholarship. Hence, a comprehensive exploration of reproductive rights facilitates the enhancement of legal governance within this domain. The article delves into an analysis of the reproductive rights of women, focusing on their incorporation into the national legislative framework of Kyrgyzstan. An endeavor is undertaken to scrutinize the conceptual framework of women's reproductive rights within the context of legal scholarship. A comparative assessment of the incorporation of conceptual elements within national legal statutes is conducted. Women's reproductive rights are examined within the broader context of human rights and freedoms, elucidating certain shared aspects and distinctive characteristics.

## 1 Introduction

In the realm of legal scholarship, reproductive human rights, encompassing women's reproductive rights, began to captivate the interest of researchers during the latter half of the previous century. The emergence of such interest is accompanied by a number of objective and subjective reasons.

The exploration of reproductive rights, in particular, is influenced by various factors, including the advancement of scientific knowledge, developments in biomedicine and biotechnology, ongoing social transformations encompassing women's rights, the impact of

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environmental factors on public health, environmental pollution, declining living standards among the populace, and the absence of consistent state policies within the realm of public health. Conversely, these circumstances have resulted in a decline in the effective exercise of reproductive rights, thus engendering a significant societal issue at the governmental level.

It is worth highlighting that the demographic situation is intricately linked to the reproductive rights of individuals, including women, exerting an influence on population dynamics and, in certain instances, precipitating a demographic crisis in particular nations.

It is important to underscore that the infringement upon women's reproductive rights is exacerbated by a persistent rise in domestic violence against women. Hence, in the year 2020, a total of 6,758 women who had experienced domestic violence sought assistance from crisis centers and elder courts.

Therefore, the necessity for this research is substantiated by the tangible challenges pertaining to the protection, realization, and guarantee of the reproductive rights of individuals, with a primary focus on women, within the context of Kyrgyzstan.

These dynamics within public life did not escape the attention of scholars and spurred the continued evolution of theoretical frameworks concerning reproductive rights, including their origins, status, and future progression. This need arises from the establishment of national legislation within an independent state and the state's engagement in international affairs, including its accession to various conventions that impose the obligation to incorporate them into domestic legislation.

Despite the interest of medical and legal sciences in reproductive human rights, including women's reproductive rights, it is regarded as one of the newest fields of study.

In the realm of theoretical legal scholarship, there exist several perspectives regarding the concept and essence of women's reproductive rights, with some interpretations taking a broader scope while others adopt a more limited perspective.

Until recently, the objectives and primary functions of women's reproductive rights were largely overlooked and did not garner significant attention among scholars. Recently, the essence and significance of women's reproductive rights has been of great interest. Consequently, due to legal reforms, the operation of this institution has gained greater relevance and assumes a pivotal role in safeguarding human rights and freedoms.

Hence, it is imperative to incorporate this category into the national legislation of the Kyrgyz Republic and contemplate the mechanisms for their enforcement.

It not only serves as a crucial mechanism for upholding the rule of law but also assumes a pivotal role in safeguarding human rights and freedoms.

Hence, the acknowledgment of these rights as a distinct legal category and the development of their methodological and theoretical dimensions stand out as some of the most urgent challenges within the field of legal scholarship.

The need for research is also explained by the fact that the protection, implementation and provision of reproductive human rights in Kyrgyzstan, including women, are in an unsatisfactory state.

## **2 Materials and Methods of Research**

The theoretical underpinning of this study draws upon a range of scholarly publications within this domain, alongside normative legal instruments related to reproductive rights. This includes, notably, the Constitution of the Kyrgyz Republic, international agreements, conventions, charters from international organizations, as well as data sourced from the National Statistical Committee of Kyrgyzstan.

The purpose of the study is to analyze the role of women's reproductive rights in the system of human rights and freedoms, trends in their formation and development, the level

of consolidation in national and international legislation, mechanisms for their implementation, as well as the improvement of the regulation of women's reproductive rights in the system of human rights and freedoms, their systematization.

### 3 Results and Discussion

In a State governed by the rule of law, the protection of human rights and freedoms is recognized as the main activity of the State and provides a comprehensive, objective and legal assessment of its activities by independent bodies.

The conceptual framework plays a pivotal role in the initial examination of legislative issues concerning reproductive rights. Reproductive rights are distinguished by the incorporation of conceptual categories within legislative frameworks. This, in turn, signifies that the breadth and depth of the concepts within the sphere of reproductive rights-related matters are considerable.

Nonetheless, the conceptual categories within the realm of Women's Reproductive Rights exhibit a degree of complexity and lack complete definition. This situation is also compounded by the absence of a unanimous consensus among scholars concerning the precise definition of women's reproductive rights. Indeed, there is no singular perspective on the concept, its utilization within legislation and scholarly discourse, the normative framework governing women's reproductive rights, the extent of its examination within academia, the theoretical, methodological, and legal approaches applied to it, and the methodologies for scrutinizing theoretical legal concepts.

Presently, the legal governance of reproductive human rights, encompassing women's reproductive rights, gives rise to several pressing issues within the realm of science, including the field of legal science.

Among domestic scientists in the context of reproductive rights were conducted studies of Kadyrkulova G.D. "Formation of new approaches to ensuring reproductive health of the population in rural areas of Kyrgyzstan" [1.p.178], O.V. Podkorytova "Protection of personal non-property rights and legitimate interests of parents as participants in family relations" [2.p.194], G.D. Beishenbieva "Reproductive health of women of socially vulnerable groups of the population of Kyrgyzstan" [3.p. 221].

Reproductive rights in the context of constitutional law were studied by Sabyrova Zh.Zh. [4.p.11] "Constitutional and legal foundations for the protection of reproductive human rights".

Within scientific literature and international documents, there exists a lack of consensus among scholars regarding the precise interpretation of the term "reproductive rights."

In Kyrgyzstan, the concept of reproductive rights is also regarded as a relatively nascent field that is only beginning to take shape and develop. Its condition is similar to that of a fetus. Nevertheless, the intricate interplay between women's reproductive rights and various aspects such as social, economic, ethical, medical, and legal dimensions adds complexity to the examination of their essence and characteristics.

According to numerous scholars, reproductive rights, including those pertaining to women, encompass several constituent elements that together form a unified institution.

Specifically, reproductive rights encompass artificial insemination, embryo implantation, surrogacy, and surgical sterilization, among other aspects. Furthermore, it is important to acknowledge that the exercise of the individual's reproductive rights often involves the utilization of assisted reproductive technologies.

The study of reproductive rights reveals a deep connection with medical sciences. As a result, many of the findings derived from medical practice have had a profound impact on the advancement of various other disciplines, including legal science, which has not been insulated from these influences.

In 1885, the French practitioner Joseph Gerard authored the pioneering dissertation titled "Contribution to the History of Artificial Insemination." It is noteworthy that on July 25, 1978, the first child in England was born through artificial insemination.

The study and comprehensive analysis of reproductive rights in the context of human rights and freedoms began in the latter half of the previous century.

In particular, the work of Z.V. Romovskaya 1968 "Personal non-property rights of citizens of the USSR" [5.p.19], reproductive relations in Soviet times, including those related to health are reflected in the work of A.A. Gorelika "Legal aspects of the removal of human organs and tissues" [6.p.91], the work of R.A. Dzyby "Equality of spouses as the basic principle of Soviet family law" [7.p.84], work of I. Kustova, B. Saryeva "Responsibility for impeding the realization of women's equality" [8], the work of E.M. Vorozheikin "Family and legal relations in the USSR" published in 1972 [9.p.336], the work "Theoretical foundations of the legal status of the individual in a socialist society" N.V. Vitruk, published in 1979 [10.p. 229], the work of N.S. Malein 1981 "Civil law in the USSR and human rights" [11.p. 216].

These works analyze human rights and freedoms, the sphere of personal non-property relations, family relations.

The first work on women's rights was published by G.K. Dmitrieva in 1975 "International Protection of Women's Rights" [12.p.187]. It is also possible to note the works of N.A. Margatskaya "Civil-legal aspects of transplantation and donation" [13.p.169], R. Kalistratova "Birth and law" [14.p.14-16].

It's worth highlighting that the aforementioned works were pioneering in nature, marking the inception of a novel research area focused on reproductive rights, encompassing women's reproductive rights, and paving the path for its subsequent advancement. The research conducted sheds light on various facets of reproductive rights, gender equality, familial dynamics, demographic considerations, as well as the legal dimensions pertaining to the regulation of human organs and tissues. Reproductive rights have not received comprehensive examination and acknowledgment as a distinct subject of research, and reproductive technologies within the healthcare domain have not been separately scrutinized as an autonomous area of study.

Nevertheless, these investigations underscored the necessity for legal regulation grounded in medical practices, thereby prompting the requirement for autonomous research on reproductive rights within the broader context of human rights and freedoms.

Some women's rights, including reproductive rights, were first investigated by G.I. Litvinova. Her work "Legal Aspects of artificial insemination" was published in 1981. In this work, she gives several options for the birth of a child associated with the implantation of unnatural embryos.

In her opinion, there are six options for an unnatural birth:

- 1) an egg taken from a woman is fertilized by her husband and implanted into her body;
- 2) an egg taken from a woman is fertilized by a donor and implanted into the woman's body;
- 3) another female egg is fertilized by the spouse and implanted into the woman's body;
- 4) another female egg is fertilized by a donor and implanted into the woman's body;
- 5) a woman's egg is fertilized by her husband, but implanted into the body of another woman;
- 6) a woman's egg is fertilized by a donor, and another woman bears it. [15.p. 117-121]

This work is considered to be the first work that opened the way to the legal study of reproductive relations.

It's important to highlight that within the realm of human rights and freedoms, reproductive human rights have piqued the interest of numerous scholars, resulting in the publication of various scientific papers, articles, monographs, and dissertations. Among

them it is worth noting a number of works, S.V. Polenina "Women's rights in the human rights system: International and national aspects"[16.p.255], O.A. Khazova "Reproductive human rights: The limits of legal regulation"[17.p.15-24], article V.I. Krussa "The rights of the individual in the constitutional and philosophical legal norm: The formulation of the problem" [18.p.45-47].

The contributions of these scholars have significantly enriched the theoretical framework surrounding women's rights and freedoms, laying the foundation for fundamental research in this field. However, this does not mean that there are enough of them. The advancements in science and technology have brought about significant changes in human life, paving the way for the emergence of a new, independent field of study.

Securing equality before the law and ensuring equal rights for women and men in the protection and exercise of human rights, as enshrined in the fundamental laws of the Kyrgyz Republic, has become a pressing issue.. Simultaneously, a range of legal relationships and their legal foundations have warranted consideration as an independent subject of legal research, while the identification of these issues has necessitated their resolution.

One of these areas pertains to the necessity of recognizing reproductive rights as an independent subject of legal inquiry, along with the imperative of regulating these rights.

At the outset of the twentieth century, the burgeoning interest of scientists in reproductive rights manifested in the emergence of various scholarly papers, dissertations, and monographs on the subject.

In particular, the study of A. A. Pestrikova "Duties of surrogate motherhood" [19.p.202], E.S. Mitryakova "Regulation of surrogate motherhood in Russia" [20.p.175], the work of E.V. Ivaeva "Problems of the implementation of constitutional human rights in the Russian Federation on the example of surrogate motherhood" [21 p.18], E.V. Perevozchikova "Constitutional right to life and reproductive right" [22 p.19], research by E.G. Solovyova "Reproductive rights - an element of constitutional human rights and freedoms" [23.p. 52].

Simultaneously, as these studies progressed, the evolution of conceptual categories within the realm of reproductive law, their definitions, and their core meanings brought to light a series of substantial challenges. This, in turn, underscored the absence of a consistent methodological and scholarly consensus among researchers in the field. Among these challenges, the category of reproductive human rights takes a central position.

The Convention on the Elimination of All Forms of Discrimination against Women, an important fundamental norm of international law, which enshrined the concept in article 11 that "everyone has the right to protection of health and safety, including reproductive functions" [24].

The International Labour Organization (ILO) No. 156 in 1981 adopted a convention recognizing the inadmissibility of forced sterilization for the preservation or receipt of work as a gross violation of human rights [25].

The Constitution of the World Health Organization (WHO) defines human reproductive rights as follows: "Reproductive rights are recognized not only as the absence of disease, but also as a state of complete physical, mental and social well-being."

The Declaration of the World Medical Association on Abortion (1983) states that "abortion is not within the competence of medicine, but doctors must protect their patients and respect women's right to self-determination."

The UN Convention on the Elimination of All Forms of Discrimination against Women also provides for reproductive rights, in particular, it provides for "the rights of spouses and persons to make decisions about the number, interval, choice of time of birth, to receive the necessary information, the decision to procreate without coercion or violence" [26].

Another important international act in the development of women's reproductive rights in the human rights system is the final documents of the Conferences on Population and Development, held in Bucharest in 1974, then in Mexico City in 1985 and in Cairo in 1985 [27.p. 460].

The international consolidation of reproductive human rights was first formulated at a conference in Mexico City in 1984. According to this document: "All spouses and individuals have the right to choose the number and determine the interval between the birth of children, the right to receive information and education."

According to article 20 of the Constitution of the Kyrgyz Republic: Family, fatherhood, motherhood, childhood are under special protection. Upon reaching the age of marriage, persons have the right to marry.

Thus, the reproductive rights of citizens are enshrined in the Constitution of the Kyrgyz Republic and in national legislation. Article 2 of the Law of the Kyrgyz Republic "On Public Health" gives the concept of human health [28].

According to the World Health Organization, health is not only a state of absence of diseases or physical defects, but also a state of complete physical, spiritual and social well-being.

A special legal act regulating the reproductive rights of citizens in the legal system of the Kyrgyz Republic is the Law of the Kyrgyz Republic No. 148 dated July 4, 2015 "On the reproductive rights of citizens and guarantees of their implementation" [29].

This law regulates public relations related to the reproductive rights of citizens, defines State guarantees for their implementation and defines the legal obligations of citizens and public authorities for the protection of reproductive health. Article 1 of this Law defines reproductive rights.

Among such normative acts is the Family Code, adopted by the Jogorku Kenesh of the Kyrgyz Republic on August 30, 2003 No. 201 [30]. The Family Code has undergone a number of significant changes and has been supplemented with fundamental novelties. Among them there are provisions regulating the reproductive rights of citizens.

It is worth noting that the Code does not provide a comprehensive normative consolidation of the concept of citizens' reproductive rights, and there is a lack of uniformity among the fundamental concepts used. Some reproductive rights are not provided for by law, and conflicts that have arisen are becoming commonplace.

According to Article 177 of the Family Code of the Kyrgyz Republic, laws and other regulatory legal acts of the Kyrgyz Republic, if they do not contradict the Code, should be applied within the limits and in the manner provided for by the Constitution of the Kyrgyz Republic before being brought into compliance.

In our opinion, there is no mention of the regulation of citizens' reproductive rights using a blank method based on legal techniques, especially in relation to the specially adopted law "On the Reproductive Rights of Citizens and Guarantees of Their Implementation."

**Table 1.** Table of comparative analysis of conceptual devices on reproductive law.

Family Code of the Kyrgyz Republic	The Law of the Kyrgyz Republic "On reproductive rights of citizens and guarantees of their implementation"
reproductive health - human health, reflecting their ability to reproduce full-fledged offspring;	reproductive health is a state of complete physical, mental health and social well-being of a person, which determines their ability to reproduce offspring;

As a result, the comparison of the basic concepts of the Family Code and the Law of the Kyrgyz Republic "On Reproductive Rights and guarantees of their implementation" is not uniform.

Thus, the lack of uniformity in the formulation of legal definitions not only leads to different interpretations, but also has a significant impact on the observance of legality, the legal consciousness of citizens [31.p. 136-142].

In our opinion, it is necessary to ensure uniformity of norms and concepts governing the reproductive rights of citizens, given that the Code takes precedence.

According to J. G. Sabyrova "reproductive rights are the right of everyone to have a child, to determine the number of children and the interval between childbirth, the right to use assisted reproductive technologies and the right to apply to surrogate motherhood, the right to be a germ cell donor, the right to renounce parental rights, the right to access services and information in the field of reproductive health" [32.p. 11].

According to the famous researcher A. Purge, "reproductive rights create an independent institution and cover many areas of law as a set of norms regulating private and public interests. Reproductive rights can be considered in the theory of law, international law, constitutional law, administrative law" [33.p. 13].

Another researcher D.K. Rashidkhanova, having examined the content of reproductive rights in more detail, believes that this is due to the fact that the structure of reproductive rights combines elements of personal non-property rights, the right to life, health protection, the right to personal inviolability, privacy and medical secrecy [34.p. 12].

Another Russian researcher, Yu.V.Pavlova, defining the legal nature of reproductive human rights, notes that "it is complex and includes rights enshrined in international documents as fundamental human rights and freedoms" [35.p. 234].

And S. Glushakov notes: "Reproductive human rights are one of the most universally recognized rights. They belong to the fourth generation of human rights and freedoms" [36].

Summarizing the data, it can be concluded that reproductive human rights in close connection with fundamental human rights have a complex nature, the legal nature of which has a dual essence.

Women's reproductive rights, being a systemic element of human rights and freedoms, are accompanied by significant physiological characteristics of a woman, are associated with the performance of an important social function of motherhood.

In the system of women's reproductive rights, the right of motherhood and surrogacy occupy a central place.

## **4 Conclusions**

The analysis of the content of women's reproductive rights allowed us to draw the following conclusions:

- Women's reproductive rights, being an integral part of human rights, are inextricably linked with the right to life, physical integrity, privacy, the principle of equality, the right to health and their interrelation as a structural element of women's sexual and reproductive rights.

Inviolability determines the impossibility of forced surgical intervention, sterilization, inviolability of private family life is accompanied by the observance of medical secrecy in the exercise of a woman's reproductive rights, donor confidentiality, and the exercise of reproductive rights.

Women's reproductive rights can be considered on several grounds: their absoluteness and relativity. Absolute rights (maternity, surrogacy), relative rights (child planning, termination of pregnancy) and others;

- the nature of these rights is directly related to personal non-property rights;

- there are grounds to distinguish women's reproductive rights as incentive rights (use of assisted reproductive technologies, in vitro fertilization, artificial insemination, surrogacy) and restrictive rights (sterilization, termination of pregnancy, abortion);
- women's reproductive rights, along with personal non-property rights, also include related property rights (surrogacy contract);
- women's reproductive rights should be considered on a legal and medical basis. The legal basis includes independence in the exercise of women's rights on an equal basis with men, independence of will and legal mechanisms for its implementation, and medical grounds include the state of a woman's health in the exercise of reproductive rights.

## References

1. G. D. Kadyrkulova, *Formation of new approaches to ensuring reproductive health of the population in rural areas of Kyrgyzstan*, 178 (2005)
2. O. D. Podkorytova, *Protection of personal non-property rights and legitimate interests of parents as participants in family relations*, 194 (2005)
3. G. D. Beishenbieva, *Reproductive health of women from socially vulnerable population groups in Kyrgyzstan*, 221 (2010)
4. Z. Z. Sabyrova, *Constitutional and legal foundations for the protection of reproductive rights of individuals*, 11 (2011)
5. Z. V. Romovskaya, *Personal non-property rights of Soviet citizens*, 19 (1968)
6. I. I. Gorelik, *Legal aspects of organ and tissue transplantation*, 91 (1971)
7. P. A. Dzyba, *Equality of spouses as the main principle of Soviet family law*, 84 (1972)
8. I. Kustov, B. Saryev, *Liability for obstructing the implementation of gender equality. Socialist legality*, 12 (1976)
9. E. M. Vorozheykin, *Family legal relations in the USSR*, 336 (1972)
10. N. V. Vitruk, *Foundations of the theory of the legal status of the individual in socialist society*, 229 (1979)
11. N. S. Malein, *Civil law and the rights of individuals in the USSR*, 216 (1981)
12. G. K. Dmitrieva, *International protection of women's rights*, 187 (1975)
13. H. A. Margatskaya, *Civil legal problems of donation and transplantation*, 169 (1984)
14. R. Kalistratova, *Birth rate and law, Soviet justice*, **2**, 14 (1971)
15. G. I. Litvinova, *Legal aspects of artificial insemination, Soviet state and law*, **9**, 117-121 (1981)
16. S. V. Polenina, *Women's rights in the system of human rights: international and national aspects*, 255 (2000)
17. O. A. Khazova, *Reproductive rights in Russia: the limits of legislative regulation, Constitutional Law. Eastern European Review*, **4**, 15-24 (2001)
18. V. I. Kruss, *Personal rights of humans in the constitutional and philosophical-legal dimension; problem statement. State and law*, **10**, 45-47 (2000)
19. A. A. Pestrikova, *Obligations of surrogate motherhood*, 202 (2007)
20. E. S. Mitryakova, *Legal regulation of surrogate motherhood in Russia*, 175 (2006)
21. E. V. Ivaeva, *Problems of implementing constitutional rights of individuals in the Russian Federation using surrogacy as an example*, 18 (2004)

22. E. V. Perekhodchikova, *Constitutional right to life and reproductive rights of humans*, 19 (2006)
23. E. G. Soloviev, *Reproductive rights as elements of constitutional rights and freedoms of humans and citizens*, 52 (2010)
24. Universal Declaration of Human Rights adopted on December 10, 1948, at the 3rd session of the UN General Assembly International Protection of Human Rights: Collection of Documents (1990)
25. International Labour Organization (ILO) Convention No. 156 of 1981: Collection of International Documents (1986)
26. UN Convention on the Elimination of All Forms of Discrimination Against Women: Collection of International Treaties, 36 (1980)
27. International Public Law, Collection of Documents in 2 volumes, **1**, 460 (1996)
28. Law of the Kyrgyz Republic "On Public Health", **72** (2013)
29. Law of the Kyrgyz Republic "On Reproductive Rights of Citizens and Guarantees of Their Implementation", **148** (2015)
30. Family Code of the Kyrgyz Republic, **201** (2003)
31. Ch. M. Tursunbaeva, Consolidation of reproductive rights in the family legislation of the Kyrgyz Republic. Journal Science, Education and Technology, **3(57)**, 136-142 (2016)
32. Zh. Zh. Sabyrova, *Constitutional and legal bases for the protection of reproductive rights of individuals*, 11 (2011)
33. A. R. Purge, *Legal regulation of surrogate motherhood as a method of assisted reproductive technologies*, 13 (2015)
34. D. K. Rashidkhanova, *Problems of legal regulation of relations in the production of medical interventions in human reproductive processes*, 12 (2005)
35. Yu. V. Pavlova, Reproductive rights of humans and citizens in the legal system of the Russian Federation. Medical Law, 234 (2014)
36. S. I. Glushkova, Human and citizen rights in the context of globalization. Legal system of Russia in the conditions of globalization: Collection of materials from the "round table" (2005)