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International Covenants and Agencies

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As per the statistics provided by the United States Department of Justice, approximately 4-5 million violent crimes are committed against women annually, out of which 500,000 cases pertain to rapes or sexual assaults. According to six meticulously conducted studies originating from the United States, it has been indicated that a range of one in five to one in seven women in the United States will experience the trauma of a rape once in their lives.

The term 'violence against women' has been defined in multiple ways within the context of international law. It has also been utilized interchangeably with the terms 'gender-related' violence.¹ The treaty bodies have not formulated their own interpretations of the terms 'violence against women' or 'gender-based violence'. Instead, they depend on the definitions established in corresponding human rights instruments. It is noteworthy that the instruments in question have predominantly employed the phrase 'violence against women', while the term 'gender-based violence' has been more commonly utilized in the jurisprudence, guidelines, and policy statements of the wider United Nations. Based on recent victimization surveys conducted in the United States, it has been found that a mere two percent of cases involving interfamilial child sexual abuse, six percent of cases involving extrafamilial abuse, and approximately five to eight percent of cases involving adult sexual assault are reported to law enforcement authorities.

The DEVAW employs the terminology of "violence against women" and explicates it through the lens of "gender-based violence." It includes actions, threats of acts, coercion, or unjustifiable loss of freedom that are based on gender and have the potential to cause bodily, sexual, or psychological injury or misery of women.²

3.1 Overview of women's rights in the United States

The regulation of contraception and abortion in United States can be traced back to the latter half of the 1800s, when specific laws were enacted for this purpose. The era of limited public discourse regarding governmental control over procreation did not endure for a century. Michael Grossberg's historical account of the inception of United States legislation prohibiting contraception and abortion is a compelling subject of study. The enduring perspective on sex and gender transformation presents a challenge to the state of women's historical accounts. The longevity of patriarchy's structure may lead to the belief that the experience of rural women is static, thus promoting a structural understanding of their situation. Conversely, it is imperative to perceive the persistent frameworks of patriarchy as boundaries and constraints in which individuals of the past endeavoured to attain tangible benefits and fundamental self-respect. Upon comprehending rural patriarchy as a structural framework, it becomes feasible to document the unique and significant variations in the histories of women, men, and families across different localities and time periods. The historical experience of women cannot be artificially isolated from the broader context of history. To fully comprehend the women's history, it is essential to consider the economic transformations, political shifts, and ideological developments that have occurred over time. During the 19th century in North America, a significant economic and institutional revolution occurred, resulting in the disruption of the patriarchal structure in rural areas. This event marked a turning point for both men and women, leading to a new trajectory for their lives.

1) CONTRACEPTION

In "Governing the Hearth: Law and the Family in 19th Century America," Michael Grossberg explores the topic on pages 157-159. Published 1985.

In the early 19th century, husbands and wives used delayed marriage, nursing, and abstinence as birth control, despite family privacy issues. The douche advocate started the first contraceptive legal challenge as the need to control reproduction grew.

Purists led the contraceptive movement. The Society of New York founded for Suppression of Vice in 1872 to promote purity. *Eisenstadt v. Baird*³, is also notable. After the Court removed legal barriers to contraceptive use, dissemination, and marketing, the pharmaceutical industry expanded birth

¹ L. Heise, M. Ellsberg and M. Gottemoeller, Ending Violences against Woman (John Hopkins School of Public Health and the Center for Health and Gender Equality, 2000).

² Article 1, DEVAW. The draft Council of Europe Convention on Preventing and Combating Violence against Woman and Domestic Violence, CAHVIO (2009).

³ 405 UB. 438 (1972).

control options for all states. Condoms, topical spermicides, and diaphragms are safe, low-cost birth control choices. These products were impractical and ineffective, making sexually active women vulnerable to unwanted pregnancy. Even with condoms and diaphragms, 20% of women may become pregnant.

Oral contraceptives debuted in 1960. Due to its convenience and great success in preventing conception, the contraceptive pill, or "the pill," has been lauded by some. Oral contraceptives are prescription-only in the United States. These contraceptives must be taken daily for 21 days. Estrogen-progestin combination tablets inhibit pregnancy via multiple ways. These include ovulation suppression, the thickening of cervical mucus, which serves to block sperm's path into the uterus, and uterine lining thinning to hinder egg implantation. Dr. Etienne Baulieu of France created mifepristone (RU-486) in the 1980s, a major family planning breakthrough. France legalized surgical abortion in 1975. In 1988, RU-486 gave French women an alternative to aspiration abortion. Roussel Uclaf considered discontinuing mifepristone in 1989. Roussel was stopped by French Health Minister Claude Evin. Evin said that women morally owned mifepristone, not the pharma firm. Mifepristone allows abortions at earlier stages than surgical techniques. Mifepristone may help women who have trouble getting surgical abortions get them earlier. 86% of US counties, often rural, lack abortion services. In June 2000, the Kaiser Foundation found that 33% of non-surgical gynaecologists would prescribe mifepristone. Mifepristone has potential medicinal uses. Breast, ovarian, HIV, endometriosis, leiomyomas, meningiomas, and Cushing's Syndrome treatments are also possible. Mifepristone gives women more privacy and control over abortion decisions.

2) ABORTION

*Roe v. Wade*⁴

In March 1970, Norma L. McCorvey, who was single and pregnant, legal action was taken in the United States District Court for the Northern District of Texas. She named Henry B. Wade, the district attorney for Dallas County, as the person she was suing. In this lawsuit, McCorvey asked the court to rule that Texas's abortion laws, which only allowed abortions when they were needed to save the mother's life, were illegal and stop them from being enforced. The court let a qualified doctor named James Hubert Hefner end her pregnancy, even though he had three open abortion violations. At the same time, a married pair with no children named "Jane and John Doe" filed a similar suit, saying that if the wife got pregnant in the future, they would get an abortion because of her mental illness. A group of three judges combined these two cases and ruled that the Texas law was illegal, but they did not grant Roe's request for an order. Both Roe and the Does took their case to the United States Supreme Court when they didn't get the stay.

Most importantly, the Supreme Court decided that a woman's choice to choose whether to terminate her own pregnancy is protected by the Ninth Amendment's promise of privacy. The court then made decisions about a number of other parts of the case. These decisions further defined the rights of the person and laid out the role of the government in regulating abortion.

How has *Roe v. Wade* been overturned?

Dobbs vs. Jackson Women's Health Organization⁵ The SC said that Mississippi's law against abortions after 15 weeks is legal. Millions of United States women no longer have the civil right to an abortion because of this. Now, each state can again stop the process on its own. About half of the states in the US are likely to put in place new rules or bans. Thirteen states have already passed "trigger laws" that will make abortion illegal as soon as the SC rules against it. Several others are likely to quickly pass new rules. The SC has nine judges. Six of them were chosen by Republican presidents. In May 2022, a written decision from Judge Samuel Alito trickled and stated that the decision in *Roe v. Wade*⁶ is "egregiously wrong". *Planned Parenthood v. Casey*⁷ a case went to the SC in 1992, had the biggest effect.

DECISION:

Justice Alito's majority judgement, which Justices Thomas, Gorsuch, Kavanaugh, and Barrett endorsed. The Court said that the key issue at hand was whether or not the Constitution, as interpreted, guarantees an abortion right. The Court first claimed the Constitution does not include abortion. A state's abortion legislation doesn't amount to sex discrimination, according to recent court findings.

The Court concluded that abortion has no deep historical or customary roots in the United States. According to the Court, only fundamental rights and those granted by the first eight Amendments are safeguarded by the clause governing due process. The Court noted that the Fourteenth Amendment criminalized abortion in the US. At that time, 75% of states criminalized abortion at any stage. The Court said that before *Roe v. Wade*, "liberty" did not include abortion as an inherent right embedded in the nation's character, history, or practices. Roe misrepresented history, according to the Court.

"The people of various states" may evaluate "potential life" and a "woman who desires an abortion" contrarily. The Court settled that include abortion in a broader right would be disproportionate since proving it would be difficult. The Court ruled that equating abortion with autonomy or the freedom to "determine one's own concept of existence" would also enable "unlawful drug use, prostitution."

⁴ 410 U. S. 113 (1973)

⁵ 593 U.S. ____ (2021)

⁶ 410 U.S. 113

⁷ 505 U.S. 833, 1991.

3) FORCED STERILIZATION

The act of involuntarily or forcibly sterilizing individuals, commonly referred to as forced sterilization or coerced sterilization, is a practice that is carried out lacking the individual's knowledge or consent. Forced sterilization has a lengthy and unsettling history in the United States, with a focus on marginalized populations, including individuals with disabilities, women of colour, and Indigenous communities.

The practice of forced sterilization has garnered significant criticism for its infringement upon fundamental human rights. In response, there have been numerous endeavours aimed at holding those responsible for perpetuating this practice accountable. In contemporary times, a considerable number of individuals who have undergone involuntary sterilization in the United States have surfaced to recount their experiences and advocate for legal redress. Several states have enacted legislation to provide compensation to survivors and recognize the harm that has been inflicted.

The Legal case of *Skinner v. Oklahoma*⁸This particular case pertains to a crucial and delicate domain of human rights. The state of Oklahoma denies specific individuals a fundamental right that is essential to the continuation of a particular ethnic group, namely the right to procreate. The state of Oklahoma has implemented its legislation against the petitioner, rejecting his argument that it was in violation of the Fourteenth Amendment. Involuntary medical interventions. According to the prevailing view of the courts, there exists no inherent power to mandate the sterilization of individuals who lack legal competence, such as women with mental retardation, albeit by a narrow margin. The current trend, albeit not yet widely adopted, is to permit sterilization that has been sanctioned by the judiciary, subject to adherence to suitable procedural measures.

4) CONTRACT "SURROGATE" PREGNANCY

The concept of reproductive autonomy posits that proficient adult females should have the legal liberty to engage in commercial surrogacy at their discretion. According to certain scholars, couples who are unable to conceive have a corresponding constitutional right to privacy in deciding to employ surrogate mothers. The California Supreme Court, in *Johnson v. Calvert*⁹, endorsed Professor Marjorie Shultz's proposition that the resolution of disputes should be guided by the intent of the contracting parties, as a means of demonstrating utmost respect for women as independent decision-makers. Referencing Margaret Jane Radin's work, "Contested Commodities: The Trouble with Trade in Sex, Children, Body Parts and Other Things" (1996), pages 131-153. Apart from autonomy, there may be other ethical values that are relevant in determining choices regarding the circumstances surrounding pregnancy and parenthood. The publication titled "Future Persons and Present Duties in Ethics and the Law" was released in 1998. The New Jersey Supreme Court has ruled that contract parenting agreements are equivalent to illegal commercial adoption and are in opposition to sound public policy, thus rendering them invalid.

5) TRAFFICKING FOR FORCED PROSTITUTION

The United States has legislation in place to combat prostitution trafficking, including the Trafficking Victims Protection Act and the Violence Against Women Act. These statutes impose criminal penalties on traffickers and provide aid to victims. Despite these efforts, sex trafficking continues to be a significant issue in the United States. In 2019, the National Human Trafficking Hotline received over 11,000 reports of sex trafficking. Children, runaways, and individuals with a history of maltreatment or addiction make up a significant portion of the sex trafficking victim population.

To combat human trafficking for prostitution, it is crucial to spread the word of the issue and support organizations that work to provide victims with resources and prosecute traffickers. This includes advocating for stronger laws and policies to address the underlying causes of human trafficking and supporting local law enforcement and victim help. Human trafficking for the purpose of prostitution is frequently associated with other forms of exploitation, such as labor trafficking and human smuggling. The victims of human trafficking may be brought into the country illegally or under false pretences and forced to work in industries such as agriculture, domestic labor, and manufacturing.

Individuals who have been subjected to sex trafficking may experience both physical and psychological maltreatment, along with enduring health implications. Individuals may be at risk of experiencing physical harm, contracting sexually transmitted infections, and facing unintended pregnancies. Individuals may potentially encounter psychological distress such as trauma, shame, and a sense of powerlessness and seclusion. In the United States, various organizations offer assistance and resources to individuals who have been subjected to sex trafficking. These include the National Human Trafficking Hotline, Polaris, and the National Center for Missing and Oppressed Children. The aforementioned organizations endeavour to furnish victims with expeditious emergency services, secure lodging, legal aid, and medical attention, in addition to counselling and various other forms of psychological sustenance. The prevention of prostitution-related trafficking necessitates a multifaceted strategy that encompasses public awareness initiatives, focused law enforcement endeavours, and global collaboration. It is imperative to acknowledge and confront the fundamental determinants that render individuals susceptible to trafficking, such as destitution, prejudice, and societal disparity. Through collaborative efforts aimed at tackling these challenges, it is possible to safeguard susceptible groups and mitigate the incidence of prostitution-related trafficking within the United States.

The US has implemented a number of legal measures aimed at addressing the issue of trafficking for prostitution, as well as offering support and aid to those who have been victimized. The following are significant legal provisions implemented in the United States to prevent prostitution-related trafficking:

⁸ 316 US 535 (1942).

⁹ 5 Cal.4th 84 (1993)

1. The Trafficking Victims Protection Act (TVPA) is a legislative measure that was enacted to regulate and stop human trafficking. The aforementioned legislation was initially implemented in the year 2000 and has subsequently undergone multiple reauthorizations. The statement posits that there exists a comprehensive framework that serves the purpose of preventing trafficking, prosecuting traffickers, and protecting victims. The TVPA mandated the creation of an office inside the U.S. Ministry of State to track and coordinate anti-trafficking efforts both domestically and internationally.
2. The Violence Against Women Act (VAWA) has greatly impacted how people in the US think about and respond to violence against women. Full confidence and credit, domestic violence-related interstate crimes, interstate travel with the purpose to conduct domestic violence, protective order violations, and stalking over state lines are all covered. In addition, three new federal crimes were created by the United States's legislative branch. With the purpose to commit an offense against another person, it is a federal criminal to cross state boundaries or enter territories under special federal jurisdiction. Domestic violence, protection order violations, and stalking that cross-state lines all fall under this category. In addition, spouses, children, and parents of U.S. citizens or legal citizens who have suffered domestic violence are now able to apply for LPR status and a green card on their own. In 1994, four prohibitions on the use of firearms in cases of domestic abuse were added to the VAWA.
3. The Mann Act, (White Slave Traffic Act), is a federal legislation that was established in 1910. Its primary objective is to prohibit the transportation of individuals across state borders with the purpose of appealing them in prostitution or other sexual activities, thereby making such actions illegal.
4. Numerous states have implemented legislation at the state level to protect people from being trafficked for prostitution and other types of exploitation. Legislation frequently entails severe sanctions for individuals involved in trafficking, and may additionally encompass clauses for aiding victims and offering alternative types of assistance.

In *United States v. Sabatino Bianco*¹⁰ The aforementioned is a federal criminal case that underwent prosecution in the Southern District of New York. The legal matter pertained to accusations of human trafficking, specifically the transportation of women from Italy to the US with the intention of engaging in sexual exploitation. Sabatino Bianco, the accused, was alleged to have engaged in the recruitment of women from Italy by offering them legitimate employment opportunities in the US. Upon their arrival, Bianco coerced the women into labour at a strip club located in New York City. He confiscated their passports and identification documents, and subjected them to physical maltreatment and intimidation. The female individuals were coerced into engaging in sexual activities with patrons at the establishment and were not remunerated for their labour. In 2019, Bianco was apprehended and accused of engaging in sex trafficking and coerced labour. After undergoing a trial in the year 2020, he was convicted on all counts and subsequently received a prison sentence of 17 years. The severity of Bianco's offenses and the harm inflicted upon the victims were acknowledged by the presiding judge, who deemed the sentence imperative in order to convey the message that such behavior will not be condoned. This case underscores the significance of pursuing legal action against offenses related to human trafficking, as well as the imperative to safeguard susceptible individuals from being subjected to exploitation and mistreatment.

6) DOMESTIC VIOLENCE

The 'rule of thumb' and 'public-private split' in the house were protected by United States common law adopted from England. All 50 states and DC enacted the civil protection order in 1976. Domestic abuse may be criminal and civil. Civil protection orders allow domestic abuse victims to seek judicial remedy outside the criminal justice system in all states, territories, and the District of Columbia. Domestic abuse is a felony or misdemeanour.

Civil protection orders allow domestic abuse victims to seek judicial remedy outside the criminal justice system in all states, territories, and the District of Columbia. Most state statutes allow police to enforce orders of protection, and many states have laws demanding police to arrest people who have committed domestic violence crimes or violated restraining orders. Victims may sue abusers for assault, violence, stalking, intentional infliction of mental distress, and fraud. *Giovine v. Giovine*¹¹ was the first case to hold that separate acts of harm and battery within the context of domestic violence constitute an unceasing tort that tolls the statute of limitations until the tortious behaviour ceases. This decision opened the door to civil torts for domestic violence, a clear indication that these issues need to be handled separately.

Some US states have mandatory/presumptive arrest regulations after court decisions.¹² When probable cause exists, suspect and victim have a domestic relationship, suspect's claimed conduct is domestic assault, and incident was reported within 28 days, an arrest is made. In certain areas, police must utilize stringent crime scene investigation and evidence collection methods. US domestic abuse is widespread, and criminal prosecution protects victims. Due of criminal judicial inefficiencies, civil restraining orders or protection orders were created.

The aforementioned directives mandate that individuals who engage in abusive behaviour towards their spouses and offspring desist from such actions, refrain from approaching the petitioner, the location of work or education, the children and their educational institutions, avoid any form of communication with her, vacate her place of residence, adhere to visits and custody arrangements, and provide financial support for any children involved. The directives

¹⁰ 18-cr-1050 (S-1) (E.D.N.Y. 2019)

¹¹ 290 N.J. Super. 426 (Ch. Div. 1995)

¹² Diane Mitsch Bush, "Woman's Movements and State Police Reform Aimed at Domestic Violence against Woman A Comparison of the consequences of Movement mobilization in the U.S and India".

carry the potential for both civil and criminal contempt charges. The VAWA addressed domestic abuse, sexual assault, and stalking. It required the arrest and prosecution of domestic violence offenders, increased domestic violence training resources, made some domestic violence offenses federal felonies, and gave victims legal remedies. The state laws on domestic violence have been altered through the promotion of collaboration among authorities, prosecutors, the courts and judiciary, the healthcare and medical society, charities, community leaders, and businesses.

The government developed the Grants to Encourage Arrest, Enforcement of law and Prosecution Grants for reducing Violent Crimes Towards Women, and the Rural Domestic Violence and Abuse of Children, Enforcement of support Grants to address the frequency of violent crimes towards women. The civil rights remedy addresses discrimination and allows victims of gender-motivated offenses to sue for damages. In 2000, the United States Supreme Court ruled in *States v. Morrison*¹³ that the Violence Against Women Act's civil law remedy was unconstitutional. This was because gender-motivated acts of violence are not "economic activity" and do not affect interstate trade. The domestic judicial system failed to address private torture in this instance.

State legislation may help domestic abuse victims avoid additional violence and recover damages. United States and Canadian domestic violence courts were created. Therapeutic jurisprudence, preventative law, and restorative justice underpin their criminal and civil domains. Specialized courts are equipped with a range of resources and services, including advocacy support, partner collaboration, courts that are sensitive to the needs of victims and children, personnel with specialized expertise, impartial treatment, integrated information systems, mechanisms for evaluating and ensuring accountability, rules for assessing risk, ongoing training, compliance tracking, and penalty. The therapeutic approach believes the legal system may help domestic violence victims and abusers.

1.2 United Nations Development of Human Rights

The notion of human rights is a dynamic and inclusive concept that is not fixed or exclusive to any particular faction. Its interpretation evolves as individuals redefine their necessities and aspirations in connection to it. In accordance with this perspective, feminists redefine instances of human rights violations to encompass the debasement and infringement upon the rights of women. Incorporating the unique experiences of women is imperative to augment conventional human rights frameworks, thereby enhancing the visibility of women and reforming the conception and application of human rights in our society to better accommodate the certainties of women's lives.¹⁴

Among various types of violence perpetrated against women, the matter of rape and sexual violence being utilized as a means of torture has garnered the greatest degree of scrutiny from international treaty bodies, courts, and tribunals. The case of *Prosecutor v. Jean-Paul Akayesu*¹⁵ represents a significant and unprecedented ruling in acknowledging women's assertions of having been subjected to torture and genocide in times of war. The ICTR's Trial Chamber has determined that rape may, under specific circumstances, be considered a type of torture for the purposes of criminal culpability. The Trial Chamber has asserted that rape, akin to torture, is employed for various objectives such as intimidation, debasement, humiliation, discrimination, penalization, regulation, or annihilation of an individual. Similar to torture, rape constitutes a breach of an individual's personal dignity.¹⁶

The WGDAW has urged states to guarantee autonomous, affordable, and effective access to healthcare, encompassing reproductive healthcare. The implementation of a set of measures is required in relation to the termination of pregnancy. These measures include the nullification of restrictions on women's and girls' access to healthcare that are dependent on third-party authorization. Furthermore, it is imperative that healthcare providers undergo instruction on gender parity, the elimination of bias, and the recognition of women's entitlements and honour. It is imperative that women receive equitable health insurance coverage that is free from discrimination, including coverage for reproductive health services without any supplementary fees. Furthermore, contraception options and termination of pregnancy should be included in universal healthcare or subsidized to ensure affordability of these treatments and medications. It is recommended that conscientious objection be limited to the medical provider directly involved in the intervention, and that conscientious objection only be permitted if an alternative treatment option can be provided to the patient within a reasonable timeframe. Furthermore, it is imperative to guarantee that all stakeholders engaged in delivering healthcare services or manufacturing pharmaceuticals adhere to non-discriminatory practices, and institute protocols for the equitable treatment of women patients within their ethical standards. It is recommended that mandatory educational initiatives for both genders incorporate age-appropriate, complete, and equitable to SexEd that is grounded in scientific proof and human rights principles. The provision of sexuality education ought to prioritize the promotion of gender parity, sexual orientation, intimate relationships, and conscientious parenting and sexual conduct as a means of mitigating the incidence of premature pregnancies.¹⁷

The establishment of the National Human Rights Commission (NHRC) is governed by Protection of Human Rights Act of 1993. The commission is anticipated to conduct an inquiry and examination regarding the infringement of human rights. The functions of the association encompass a range of activities, such as the examination and evaluation of extant legal frameworks, active participation in legal proceedings related to the infringement of human rights, promotion of human rights education and awareness, and facilitation of the efforts of non-governmental organizations dedicated to addressing human rights concerns. Domestic violence is considered a violation of human rights and is inside the jurisdiction of the National Human Rights Commission (NHRC), in addition to its other functions.

¹³ 529 U.S.598

¹⁴ C. Bunch, 'Woman's rights as human rights: toward a re-vision of human rights', *Human Rights Quarterly* 12:4 (1990) 487.

¹⁵ *Prosecutor v. Jean-Paul Akayesu*, ICTR, Case No. ICTR-96-4-T (2 September 1998); (Appeal), ICTR, Case No. ICTR-96-4-A (1 June 2001).

¹⁶ *Ibid.*, para, 687.

¹⁷ See Working of Groups on discriminations against woman in law and practice report on health and safety, A/HRC/32/44

The Medical Termination of Pregnancy Act and Human Rights

The Medical Termination of Pregnancy Act of 1971 is a legislative measure established to govern the implementation of the entitlement to terminate a pregnancy.

The third section of the aforementioned Act delineates the specific circumstances under which the termination of pregnancy may be passed out. Since the 1970s, the proliferation of second-wave feminism has led to the emergence of abortion and reproductive rights as amalgamating concerns among diverse women's rights organizations in the United States. In the case of *Roe v. Wade*¹⁸ the United States Supreme Court rendered a decision that declared the statute which prohibited abortion, except in cases where it was deemed obligatory to save the life of the mother, as invalid. The judiciary noted that the entitlement to terminate a pregnancy during the gestational period is an inherent component of a woman's entitlement to bodily autonomy and confidentiality. In India, abortion is legally sanctioned within a limited timeframe of twenty weeks of gestation, subject to certain prescribed conditions and circumstances. The Supreme Court recently granted permission to a rape survivor to undergo pregnancy termination at 24 weeks, a time frame that exceeds the 20-week limit established by the Medical Termination of Pregnancy Act of 1971. The observation made by a division bench led by J.S. Khehar, J (as he was then known) stated that the prescribed limit of 20 weeks cannot be enforced in situations where the mother's life is at risk.¹⁹ Likewise, a bench comprising of S.A. Bobde, J has granted permission for a woman to undergo pregnancy termination beyond the 24-week limit. The judicial panel took into account the discovery that the foetus had been diagnosed with Anencephaly, a condition that posed a significant threat to the well-being of both the infant and the mother.²⁰

The pre-conception and pre-natal diagnostic techniques act and human rights

The Government of India enacted such a law in response to the appalling child sex ratio in the country in direction to save life of the expectant female child from societal prejudices. Modern scientific technology and its expanded abuse for determining the sex of prenatal children was the primary factor in the decline of the child sex ratio. Consequently, the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act of 1994. Later, in response to certain directives from the Supreme Court, the Act was expanded and retitled "The Pre-Conception & Pre-Natal Diagnostics Techniques (Prohibition of Sex Selection) Act of 1994 (PCPNDT Act)". Clearly, the right to be born is one of the most precious human rights, and the PCPNDT Act has vigorously protected it. The practice of sex-selective abortion not only prevents the birth of a female child, but it also degrades the dignity and divinity of femininity and taints the notion of human rights.

Surrogacy and Human Rights

Various scholars have posited that the act of surrogacy is in opposition to the self-respect of both the child and the surrogate mother. Furthermore, it does not guarantee the optimal wellbeing of the child. In the framework of surrogacy, the child is considered as the subject matter of a contractual agreement. The process involves conceptualization, execution, and fulfilment of a contractual agreement, typically in return for monetary compensation. The female, on the other hand, is perceived as a tool to achieve the intended objective, namely, a mechanism for reproduction. Both the woman and the child are being subjected to inhumane treatment. Individuals are often regarded and handled as objects or instruments. The aforementioned statement is in direct opposition to the acknowledgement of the innate worth of every individual within the human race, as stated in the introductory passage of the Universal Declaration of Human Rights.²¹

The concept of a carrier mother involves utilizing her as a means to facilitate the birth of a child. Therefore, she is regarded as a mere instrument rather than a goal, thereby infringing upon her inherent worth. The inalienable nature of dignity remains unchanged, even in exceptional cases where she may assume a voluntary role. In many cases, the maternal carrier consents to gestate the child in exchange for financial compensation. She engages in a contractual agreement wherein she provides the use of her body, specifically her uterus, for a fee. The act of renting one's body is a defining feature of prostitution, a practice that is widely regarded as incompatible with the preservation of women's dignity.²²

Currently in India, there is a lack of codified legislation pertaining to surrogacy. The Surrogacy Bill of 2016 has been presented in the legislative body. The aforementioned legislation prohibits the practice of commercial surrogacy and, while allowing for altruistic surrogacy, imposes specific limitations and guidelines on such arrangements.

1.3 CESC

The issue of women's sexual and reproductive health is intertwined with various human rights, such as the right to life, freedom from suffering, entree to healthcare, privacy, education, and the prevention of discrimination. The CESC and the CEDAW have explicitly stated that the right to health for women encompasses their sexual and procreative health.

This implies that it is the responsibility of States to uphold, safeguard, and satisfy the entitlements pertaining to the sexual and procreative health of women. The CESC employs the respect, defend, and achieve framework under the "Violations" category to demonstrate the state's non-compliance

¹⁸ 410 US 113

¹⁹ (2016) 14 SCC 382

²⁰ Mrs. Meera S. Pal & Ors. Va. Union of India, (2017) 3 SCC 462

²¹ Surrogate Motherhood and Human Rights, Legal and Ethical rights and Issues - September 2015. (p. 5)

²² Ibid (para9)

with the treaty. Chapman has proposed an alternative strategy to the CESCR that considers the conduct of the state, discriminatory practices, and the inability to meet the minimum core obligations. Nevertheless, the CESCR has not yet adopted this specific framework. Furthermore, it can be observed that the ICESCR establishes a correlation between the obligation to fulfil and the standard of progressive realization. According to the statement, non-compliance with the duty to fulfil may occur if states fail to gradually guarantee the accessibility of sexual and reproductive health facilities, and amenities.²³ The intricate connection amongst the duties to fulfil and the gradual attainment of those obligations has not been thoroughly examined. The linkage between these two standards may present significant challenges, given that several of the responsibilities to be met are intricately associated with gender parity, including maternal healthcare, which constitutes a pressing obligation.²⁴ Section IV delves deeper into the aforementioned tension. The General remark on equitable and reasonable working conditions, as presented by CESCR, departs from the typology of duties and instead designates "Violations" as both acts of commission and omission, leading to potential confusion.

The General Comment pertaining to the right to just and fair work necessitates the state's obligation to protect, which includes the enactment of minimum wage laws. The CESCR's closing annotations for Canada, Kenya, and Namibia also propose a comparable recommendation. The aforementioned statement reflects the imperative to adhere to the guidelines outlined in the wide-ranging statement pertaining to sexual and reproductive health. Specifically, it suggests that Kenya should prioritize the provision of sexual education, while Namibia should concentrate on dispensing HIV-related services.²⁵

Similar to the fundamental duties, the CESCR does not uniformly enforce the responsibility of states to uphold, safeguard and satisfy these obligations. The Concluding Observations, as identified by CESCR, do not make any mention of the state's regulation of health care and pharmaceutical companies, which is considered to be an obligation for protection.

1.4 ICCPR

The ICCPR is a treaty of the United Nations that delineates the civil and political rights of individuals. The International Covenant on Civil and Political Rights (ICCPR) upholds the entitlement to life, freedom, and personal security, while also forbidding acts of torture, as well as cruel, inhumane, or demeaning conduct or penalty.

Apart from the aforementioned overarching provisions, the ICCPR explicitly pertains to the entitlements of the female gender. The third article of the ICCPR asserts the equitable entitlements of both genders to full enjoyment civil and political liberties. The 23rd article of the ICCPR pertains to the entitlements of both genders to enter into matrimony and establish a household, while the 26th article prohibits any form of prejudice based on gender.

Consistent with the permissive interpretation of Art. 6 of the ICCPR, the HRC has examined various indexes of gender-based violence within its purview. As an illustration, the organization has urged states to guarantee that their legislation pertaining to rape, sexual abuse, and violence targeting women offers women with efficacious safeguards.²⁶ In 2000, the HRC released an overall remark on gender equality between women and men. The observation urges states to provide information on various topics related to pregnancy and childbirth, such as birth rates, deaths related to pregnancy and childbirth, and gender-specific data on infant mortality rates. Additionally, states are encouraged to report on family planning measures aimed at preventing unwanted pregnancies and reducing the risk of dangerous clandestine abortions. The Comment also highlights the importance of addressing issues such as female infanticide, widow burning, and dowry killings.²⁷ These topics are to be included in states' reports under Article 6. The Human Rights Council expresses its desire to obtain information regarding the specific effects of poverty and deprivation on women, although the request was not formulated as a mandatory requirement. According to the HRC, as stated in a state party report, the infringement upon women's rights to life through acts of violence remains a significant concern that requires more efficient measures to be taken.²⁸

In addition, it is acknowledged by the ICCPR that the autonomy of women's bodies and their reproductive rights are essential human rights. The seventeenth article of the ICCPR confirms the entitlement to privacy, which encompasses the prerogative to exercise autonomy over one's own physical being without any intervention from external entities such as the government or other individuals. The aforementioned encompasses the entitlement to avail oneself of reproductive health services, which encompass contraception and safe abortion, as well as the entitlement to receive information and education pertaining to reproductive health.

Apart from the aforementioned provisions, the ICCPR explicitly deals with the matter of violence perpetrated against women. The seventh article of the document in question prohibits the act of torture and any form of treatment or punishment that is deemed cruel, inhuman, or degrading. This can encompass physical and sexual violence acts. The 24th article of the Convention on Rights of the Child declares the entitlement of each juvenile to be exempt from any type of aggression, maltreatment, and misuse, encompassing those that are specifically aimed at females.²⁹

²³ "General Comment No. 22" supra note 35 at para 62

²⁴ UN Working Groups on Discrimination Against Woman in Law and Practices, 'Discriminations Against woman in economic and social lives, with a focus on economic crisis' (2014)

²⁵ "CO: Namibia supra note 25 at para 67".

²⁶ HRC, Concluding observations on Peru, UN Doc. (Vol. I) (1997), para. 167.

²⁷ HRC: Equality of Rights Between Men and Women, para. 10.

²⁸ HRC, Concluding observations on Colombia, UN Doc. (Vol. I) (1997), para. 287.

²⁹ International Covenant on Civil and Political Rights 1966, GA res. 2200A (XXI), 16 December 1966, UNTS 171.

The user suggests the inclusion of a clause that prohibits any medical or scientific research without the explicit consent of the individual involved.

Furthermore, the ICCPR acknowledges the significance of women's involvement in political and public domain. The 25th article of the UDHR confirms the entitlement to engage in civic matters, exercise the right to vote and run for office, and obtain public employment without prejudice, including gender-based discrimination.

The ICCPR has played a significant role in promoting and enhancing women's rights globally. It has been utilized by advocates and activists to ensure that governments are held responsible for their inability to safeguard women's rights. Notwithstanding the safeguards provided by the ICCPR, women persistently encounter noteworthy obstacles and impediments in achieving the complete actualization of their entitlements. The challenges encompass discriminatory laws and practices, gender-based violence, and restricted admission to education and economic opportunities.