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Cultural Traditions and Women's Rights in India: Navigating CEDAW Principles with Respect to Reproductive Rights

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ABSTRACT

Reproductive rights, fundamental to human rights, enable individuals to freely decide on the number and spacing of their children, intertwining with socio-economic, religious, and cultural influences. In India, these rights are shaped by societal norms and are critical in advancing women's broader human rights. A woman-centered approach to reproductive health acknowledges women as autonomous beings capable of making informed decisions beyond biological constraints. This perspective is essential for recognizing women's rights to reproductive autonomy, closely linked to their societal status and legal capacity. Reproductive rights encompass the ability to make choices about reproduction, including pregnancy continuation or termination and selecting contraception methods. These rights are vital for empowering women to make personal health decisions, emphasizing the importance of autonomy and informed choice in reproductive health.

Keywords: *Reproductive Rights, Woman, Autonomy, Human Rights, Societal Status.*

I. INTRODUCTION

India, predominantly a patriarchal society, has historically marginalized women, often relegating them to subordinate roles under the authority of fathers, husbands, or sons. This societal structure has fostered a cultural preference for male offspring, perpetuating gender discrimination. The preference for sons, seen as future breadwinners, is deeply ingrained in traditional Indian culture.³ This bias has contributed to a disturbing decline in the female-to-male ratio, particularly in northern states, as highlighted by recent census data. Despite numerous laws against it, female foeticide remains a pervasive and heinous crime in India, alarmingly prevalent among the middle and upper socioeconomic classes, including those who are well-educated.⁴

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³ Heitmeyer, Carolyn, and Maya Unnithan. "Bodily rights and collective claims: the work of legal activists in interpreting reproductive and maternal rights in India." *Journal of the Royal Anthropological Institute* 21.2 (2015): 374-390.

⁴ Dunn, Jennifer Templeton, Katherine Lesyna, and Anna Zaret. "The role of human rights litigation in improving

Reproductive decisions are among the most personal choices in our lives, yet they inevitably carry public implications. These decisions are influenced by a myriad of factors including political, ethical, economic, and healthcare concerns, reflecting deeply held societal beliefs and attitudes. The choice to use one's reproductive capabilities, whether to have children, and how to manage reproductive health are of profound personal significance and have major societal consequences.⁵

Advances in medical science have expanded the options available in reproduction, making childbearing a matter of deliberate choice rather than chance. This evolution has necessitated greater governmental involvement in reproductive decision-making to ensure consumer protection and quality control in practices such as contraception, pregnancy termination, and in vitro fertilization. However, this state intervention must be carefully balanced. While necessary to safeguard individual rights and interests, excessive regulation can have detrimental effects on both individuals and society at large.

In ancient times, Indian women were highly esteemed in society, as evidenced by texts like the Rig-Veda. Historically, women's valor and status have been well-documented from the Vedic era through to modern times. However, due to shifts in the socio-political and economic landscape, women's roles diminished over time, relegating them to the periphery of public life. Patriarchal norms entrenched many harmful customs that restricted women predominantly to domestic roles. The problem of female foeticide, particularly prevalent among the middle and upper classes, stands as a stark example of these regressive customs. Despite legal frameworks aimed at curbing such practices, they persist, often perpetrated by the educated elite.⁶

The practice of selectively aborting female fetuses continues, driven by a cultural preference for male offspring who are viewed as breadwinners. This bias has led to a disturbing decline in the female sex ratio, particularly in northern India, where recent censuses have revealed alarmingly low numbers. This preference underscores deep-seated gender inequalities that favor males over females, manifesting in both ancient customs and contemporary challenges.⁷

Despite India being the world's largest democracy and one of the early nations to grant women voting rights, societal attitudes toward women have not advanced in step with the country's

access to reproductive health care and achieving reductions in maternal mortality." *BMC pregnancy and childbirth* 17 (2017): 1-13.

⁵ Hellum, Anne, and Henriette Sinding Aasen, eds. *Women's human rights: CEDAW in international, regional and national law*. Vol. 3. Cambridge University Press, 2013.

⁶ Nowrojee, Sia, Geeta Rao Gupta, and Priyadarshini Rakh. "Women's empowerment and rights-based family planning: The distance travelled and the path ahead." *UN Foundation* (2020).

⁷ Pillai, Gauri. *Reproductive rights in India: the search for a new constitutional home*. Diss. University of Oxford, 2022.

economic and political progress. The Indian Penal Code, for instance, avoids the term "abortion," instead using "miscarriage" and criminalizing its inducement. The legal and societal frameworks surrounding reproductive rights in India illustrate the complex interplay of historical reverence and contemporary marginalization of women, highlighting the ongoing struggle for gender equity and the protection of women's rights within a rapidly modernizing society.

The Puttaswamy judgment recognized women's right to reproductive decisions as part of personal liberty under Article 21 of the Indian Constitution, reinforcing earlier positions such as in the Suchita Srivastava case, which affirmed women's rights to carry a pregnancy to term, give birth, and raise children as integral to their dignity and bodily integrity.

India's Medical Termination of Pregnancy Act (MTP Act) of 1971, which predates even the landmark *Roe v. Wade* decision by the US Supreme Court, regulates abortion in India. The Act permits abortions conducted by registered medical practitioners under specific conditions that ensure the woman's physical or mental health isn't jeopardized, or if the fetus shows severe anomalies. For pregnancies less than 12 weeks, the consent of one medical practitioner is sufficient, while those between 12 and 20 weeks require two.⁸

However, the MTP Act has faced criticism for not keeping pace with medical advancements and being overly restrictive, often limiting women's autonomy in making reproductive decisions. The Act's stringent conditions on when abortions can be conducted post-20 weeks have been particularly contentious, as they allow very little room for women's choice, focusing almost exclusively on immediate threats to life and severe fetal abnormalities.

The Act aims to balance a woman's privacy rights against the state's interests in protecting health and potential life, a stance that has sparked debate about the necessity of restricting abortions to prevent gender-selective practices. Yet, the lack of provisions for non-medical concerns such as economic factors or personal circumstances further complicates the accessibility of abortion services, failing to consider the broader impacts on a woman's life.⁹

Legal reforms have been suggested to address these issues, bolstered by judicial affirmations of reproductive autonomy as a facet of the right to privacy. The proposed amendments seek to expand access to abortion services up to 12 weeks on request and enhance service provision through a broader spectrum of healthcare providers. Despite these advancements, the legislation

⁸ Nanda, Bhumika. "India and the United Nations Human Rights Council: Gender at a Crossroads." *Jindal Global Law Review* 10.2 (2019): 269-285.

⁹ Liebowitz, Debra J., and Susanne Zwingel. "Gender equality oversimplified: Using CEDAW to counter the measurement obsession." *International Studies Review* 16.3 (2014): 362-389.

still requires significant improvement to fully respect and realize women's reproductive rights, demonstrating the ongoing challenge of aligning legal frameworks with contemporary understandings of human rights and medical ethics.

(A) Literature Review

- “Reproductive Justice: The Politics of Health Care for Native American Women by Barbara Gurr”

Barbara Gurr explores the multifaceted challenges faced by Native American women in accessing reproductive healthcare. Financial and transportation barriers, along with outdated IHS facilities, shape their healthcare experiences, leading to feelings of restriction and necessitating negotiation and resistance within the healthcare system.

- “Reproductive Rights in a Global Context: South Africa, Uganda, Peru, Denmark, United States, Vietnam, Jordan by Lara M. Knudsen”

Lara M. Knudsen's book provides a feminist perspective on reproductive rights, analyzing how cultural, racial, and class distinctions influence reproductive health care across diverse nations. It highlights the struggles and activism needed to improve access to reproductive health services, advocating for global social justice.

- “Cases on Reproductive Rights and Justice (University Casebook Series) 1st Edition by Melissa Murray, Kristin Luker”

This comprehensive casebook by Melissa Murray and Kristin Luker delves into the legal aspects of reproductive rights, examining how laws affect personal decisions about reproduction and family. The text covers a broad range of issues, including race, socio-economic status, and sexual orientation.

- “Reproductive Health and Human Rights: The Way Forward by Laura Reichenbach, Mindy Jane Roseman”

Laura Reichenbach and Mindy Jane Roseman critique the slow progress in improving maternal health since the 1994 ICPD Conference. Despite policy advancements and international efforts, significant challenges remain in reducing maternal mortality and addressing reproductive health and rights.

- “Sexual and Reproductive Health: A Public Health Perspective by Paul Van Look, Kristian Heggenhougen, Stella R. Quah”

This book emphasizes the public health aspects of sexual and reproductive health, aligning with

MDGs to improve maternal health and promote gender equality. It adopts a science-based approach to understanding and responding to the impacts of sexual and reproductive behaviors on societal health and development.

(B) Research Questions:

- How do cultural traditions in India influence the enforcement and acceptance of CEDAW principles, particularly in the context of women's reproductive rights?
- What are the main challenges and opportunities for integrating CEDAW principles within Indian legal and societal frameworks to enhance women's reproductive rights?
- How effective are current Indian policies and legal frameworks in protecting and promoting women's reproductive rights in alignment with CEDAW principles?

(C) Research Objectives:

- To examine the impact of cultural traditions on the implementation of CEDAW principles in India, focusing specifically on reproductive rights.
- To identify and analyze the key barriers and facilitators within Indian society and legal systems that affect the integration of international human rights standards related to women's reproductive rights.
- To evaluate the effectiveness of existing policies and legal measures in India concerning women's reproductive rights, assessing their compliance with CEDAW principles and suggesting areas for improvement.

II. CULTURAL TRADITION

In traditional Indian society, which is predominantly patriarchal, men are often seen as the breadwinners while women are expected to stay home and manage domestic responsibilities, including child-rearing. Historical interpretations of gender roles between the 12th and 18th centuries, primarily derived from scholarly works within the Brahmanical system, significantly influenced societal views. Women were venerated and culturally encouraged to bear many children, particularly sons, believed to be crucial for their parents' spiritual salvation.¹⁰

In 1986, an event organized by the Hindu Munnani exemplified how religious beliefs can directly influence reproductive decisions. During this ceremony, four Hindu women, each of whom had given birth to ten children, were celebrated with the title 'Brave Mother'. The

¹⁰ Gondal, Abdul Qayyum, et al. "WOMEN'S RIGHTS PROTECTION: ANALYSIS OF IMPLEMENTATION OF CEDAW AND BEIJING DECLARATION IN PAKISTAN." *Russian Law Journal* 11.5 (2023): 795-807.

ceremony highlighted concerns about the declining Hindu population relative to other religious communities, notably Muslims.¹¹ The awards were presented by the Shankaracharya of Kanchi, who pointed out that Hindus were adopting family planning measures whereas other communities were not, thereby impacting the demographic balance. This scenario illustrates the profound impact of religious and cultural factors on women's reproductive choices in India.¹²

Early social reform efforts in India were spearheaded by figures such as Raja Rammohan Roy, Vidyasagar, Ranade, Agarkar, and Veerslingam, targeting oppressive practices like sati, child marriage, and the lack of education for girls. These movements often resulted in governmental intervention, with significant milestones including the 1829 ban on sati by Lord William Bentick, recognized as the colonial government's first involvement in personal laws. Vidyasagar's advocacy for the rights of widows led to the Hindu Widows Remarriage Act of 1865, and the Brahmo Samaj reforms culminated in the Native Marriage Act of 1872, which set the legal marriage age at 14, banned polygamy, and introduced provisions for divorce.¹³

These historical examples underscore India's legacy of proactive state measures to enhance women's rights, suggesting that advancing women's reproductive rights is also feasible. However, it's critical to acknowledge that factors such as gender, social institutions, culture, and religion significantly influence women's lives by limiting their choices. Despite numerous laws and reforms aimed at improving women's conditions, discrimination persists, often justified by tradition, culture, or religion. Ashok Jain in 2006 emphasized that debates around abortion reflect broader ideological battles about the nature of family, motherhood, and society. It is regrettable that women continue to be discriminated against in the name of cultural or religious practices. What is necessary is a recognition that women should be valued for their capabilities and moral integrity, rather than being defined solely by their reproductive and sexual roles, despite biological differences.

III. RELIGIOUS VIEW ON ABORTION

In Hindu texts, abortion is seldom mentioned, with the Atharva-veda referencing it as sinful, contrary to the principle of creation. Hindu lawgivers, including Manu, equate abortion with severe crimes such as murder, describing it as *bhrun-hathya* or *garbh-hathya*, which translates to fetus or womb killing. However, ancient Indian medical texts offer a more nuanced view,

¹¹ Parikh, Indira J., and Pulin K. Garg. *Indian Women (an inner dialogue)*. Lieper Publication, 2023.

¹² Dar, Shabir Ahmad, Irshad Ahmad Reshi, and Adil Rashid Malik. "THE UNFORGETTABLE WOMEN OF HISTORY IN INDIA: UNTOLD STORIES OF BRAVERY, RESILIENCE, AND EMPOWERMENT." *MORFAI JOURNAL* 3.1 (2023): 117-122.

¹³ Bhat, Rashid Manzoor, A. Sillalalee, and L. S. Kandasamy. "Revolutionary Trends in Indian History: Ideological Diversity and Collective Resistance." *Journal of Social Science (JoSS)* 2.8 (2023): 750-758.

acknowledging the necessity of abortion under exceptional circumstances, such as threats to a woman's health or fetal development issues, indicating a sophisticated understanding of medical needs for abortion.¹⁴

In contrast, Islamic teachings are generally more accommodating of contraception and family planning, with no explicit prohibitions against abortion. Historical practices among Arabs, such as coitus interruptus, were accepted and reportedly endorsed by the Prophet Muhammad, unlike in Jewish tradition where it is equated with homicide.¹⁵

In 1937, the Grand Mufti of the Hanafi school issued a fatwa allowing birth control through mutual consent, which was later interpreted by scholars as unnecessary consent if the need for abortion was justified, thereby acknowledging a mutual right to terminate a pregnancy. This stance was slightly modified in 1964, restricting abortion to within 120 days of conception before the fetus assumes a human form. Thus, the Quran does not criticize family planning, and contraception is viewed as permissible by Islamic teachings.¹⁶

IV. CONVENTION ON ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

The "Convention on the Elimination of All Forms of Discrimination Against Women" (CEDAW), ratified by the United Nations General Assembly on "December 18, 1979," and enacted on "September 3, 1981," is globally hailed as the "International Bill of Rights for Women." Developed after over thirty years of efforts by the "UN Commission on the Status of Women," which was formed in 1946, CEDAW is a fundamental framework in the international effort to achieve gender equality. Distinct from simple declarations, it establishes legally binding obligations that require the elimination of discrimination against women, marking a significant shift towards addressing gender disparities.¹⁷

By ratifying this convention, nations like India commit to abolishing discrimination and institutionalizing gender equality within their legal systems. CEDAW consolidates principles from various human rights instruments, enhancing and broadening the scope to include all forms of sex-based discrimination, thereby promoting a structured and globally endorsed method for

¹⁴ Illathuparampil, Mathew. "Abortion in India—an Overview." *Zeitschrift für medizinische Ethik* 69.2 (2023): 293-300.

¹⁵ Adamczyk, Amy, Brittany Suh, and Lindsay Lerner. "Analysis of the relationship between religion, abortion, and assisted reproductive technology: Insights into cross-national public opinion." *Social Science Research* 120 (2024): 103012.

¹⁶ Lazarus, Janice Namrata. *Contextualising stigma within unmarried women's experiences of abortion in India*. Diss. Birkbeck, University of London, 2024.

¹⁷ Rehof, Lars Adam. *Guide to the Travaux Préparatoires of the United Nations Convention on the Elimination of all Forms of Discrimination against Women*. Vol. 29. Brill, 2021.

advocating women's rights.¹⁸

The convention's primary aim is to affirm the equal rights of men and women, as rooted in the UN's foundational goals of human rights, dignity, and equality. It outlines actionable steps for nations to ensure these rights, focusing not just on legal equality but also on actual, lived equality between genders. CEDAW encourages adopting temporary measures to accelerate the realization of substantive equality.

CEDAW's regulatory framework is detailed in measures against gender-based discrimination in areas such as human trafficking, public participation, employment, education, and health. It requires countries to revise national laws and attitudes that perpetuate gender inequality. A dedicated committee monitors the compliance of state parties through regular evaluations, enhancing women's legal rights globally.

The convention emphasizes substantive over formal equality, demanding that states assess the real-life impacts of policies to facilitate true gender equality. This includes addressing hidden discrimination in private spheres like family life and cultural practices. CEDAW's approach, while focusing primarily on protecting women from discrimination, also indirectly supports broader gender equality goals, including those related to transgender individuals. However, it has faced criticism for reinforcing binary gender distinctions rather than eliminating the categorizations that underpin inequality.¹⁹

V. REPRODUCTIVE RIGHTS

Women's sexual and reproductive health is closely tied to various human rights, including the "right to life," "freedom from torture," "the right to health care," "privacy," "education," and "freedom from discrimination." These connections underscore the essential role of these rights in providing comprehensive health services for women, as acknowledged by the Committee on Economic, Social and Cultural Rights (CESCR) and the Committee on the Elimination of Discrimination against Women (CEDAW). These bodies confirm that women's "right to health" specifically includes their sexual and reproductive health.²⁰

States are required to "respect, protect, and fulfill" rights concerning women's sexual and reproductive health. This duty is detailed in the commitments that nations must uphold to ensure

¹⁸ Pineiro, Laura Carballo, and Momoko Kitada. "Sexual harassment and women seafarers: The role of laws and policies to ensure occupational safety & health." *Marine Policy* 117 (2020): 103938.

¹⁹ Zampas, Christina, et al. "Operationalizing a human rights-based approach to address mistreatment against women during childbirth." *Health and human rights* 22.1 (2020): 251.

²⁰ Alston, Philip. "The committee on economic, social and cultural rights." *NYU Law and Economics Research Paper* 20-24 (2020).

women have access to necessary health services. The Special Rapporteur on the right to health has outlined that reproductive health services, goods, and facilities must be:

- "Available in sufficient quantities" to meet women's needs.
- "Physically and financially accessible," ensuring all women can use these services without significant obstacles.
- "Non-discriminatory," ensuring no woman is refused access based on race, socioeconomic status, age, or any other factor.
- Of "high quality," with a standard of care that is safe, effective, and centered around the patient.

(A) Instances of Infringements

Despite strong international agreements to safeguard women's sexual and reproductive rights, these rights are frequently violated in various harmful ways, including:

- "Restricted Access to Necessary Services": Women often encounter obstacles in accessing essential health services tailored specifically for them, such as reproductive healthcare, crucial to their well-being.
- "Provision of Substandard Services": The quality of reproductive health services available to women is often subpar, leading to potential health risks and inadequate management of medical issues.
- "Requirement for Third-party Consent": Women's independence is hindered by policies that demand they obtain approval from spouses, parents, or other third parties to access reproductive health services.
- "Coercive Practices": Women are sometimes forced into medical interventions like sterilization, virginity testing, and coerced abortion without their consent, severely violating their rights and dignity.
- "Harmful Traditional Practices": Practices like female genital mutilation (FGM) and early marriage not only breach women's and girls' rights but also lead to long-term negative health and psychological effects.
- "Cultural and Societal Norms": Many of these violations are rooted in deep-seated cultural and societal views on female sexuality and roles. Patriarchal perspectives often value women primarily for their reproductive function, leading to harmful practices like early marriage and closely spaced pregnancies, often driven by the preference for male

offspring. These practices can gravely affect women's health and are associated with increased maternal mortality.

- "Blame for Infertility": Women are often unfairly blamed for infertility, resulting in stigmatization and exclusion, which can lead to additional human rights violations.

These issues are typically grounded in patriarchal systems that reduce women's control over their bodies and reproductive choices. The impact extends beyond individual health concerns, reinforcing gender inequality and slowing societal progress toward gender equity. Addressing these issues requires comprehensive health, legal, and social measures to protect and enhance women's rights effectively.

(B) Freedom Norms

Human rights tenets stress the critical need to empower women with the autonomy and resources essential for informed reproductive and sexual health decisions. These principles are anchored in several pivotal international documents and directives:

- CEDAW Article 16 emphasizes the right of women to autonomously decide on the "number and spacing of their children," ensuring access to necessary "information, education, and means" to exercise these rights freely and responsibly.²¹
- CEDAW Article 10 underscores women's right to education, specifically the access to "educational information" that promotes the health and well-being of families, highlighting the essential role of sex education and family planning in women's educational rights.
- The Beijing Platform for Action extends women's rights to include control over decisions concerning their sexuality, including "sexual and reproductive health," free from "coercion, discrimination, or violence," setting a global agenda for empowerment and equality.
- General Recommendation 24 by the CEDAW Committee advocates for states to prevent unwanted pregnancies through "family planning and comprehensive sex education," aiming to bolster women's reproductive autonomy and promote responsible sexual behavior.
- CESCR General Comment 14 identifies maternal health services as a core human right that must be provided by states without fail, highlighting the immediate obligation of

²¹ Hellum, Anne. "CEDAW AND GLOBAL STANDARDS FOR WOMEN'S RIGHTS." *International Women's Rights Law and Gender Equality: Making the Law Work for Women* (2021).

states to take "deliberate, concrete, and targeted actions" to fulfill the right to health during pregnancy and childbirth.

- CESCR General Comment 22 calls on states to eliminate or reform laws, policies, and practices that "criminalize, obstruct, or undermine access" to sexual and reproductive health services, goods, and information, aiming to remove barriers to these essential services due to discriminatory practices.²²
- OHCHR Information Series on Sexual and Reproductive Health and Rights consolidates these standards to offer a comprehensive guide on the integration of human rights with sexual and reproductive health, providing a detailed resource for global implementation.

Collectively, these instruments create a robust framework advocating for the safeguarding and enhancement of women's sexual and reproductive rights, underscoring the importance of state intervention in providing education, resources, and legal protections to enable women to make informed reproductive health decisions devoid of coercion or discrimination.

VI. CONCLUSION

The interaction between cultural traditions and women's rights in India, especially concerning reproductive rights under CEDAW principles, is intricate. While India has progressed in creating laws to protect women's rights, cultural practices still hinder the complete fulfillment of these rights. This paper has discussed how traditional perspectives affect reproductive rights and the role that CEDAW and other global human rights frameworks have in addressing these challenges. It is evident that ongoing efforts in advocacy, education, and law reform are essential for India to truly achieve gender equality and enable all women to make knowledgeable choices about their reproductive health.

²² Vijayarasa, Ramona. "Quantifying CEDAW: Concrete Tools For Enhancing Accountability for Women's Rights." *Harv. Hum. Rts. J.* 34 (2021): 37.