

RIGHT TO CHILDLISSNESS- A DEFENSE PERSPECTIVE

Ananya Das

Symbiosis Law School

INTRODUCTION

The characteristically provocative passage from Geoff Dyer's *Out of Sheer Rage*: "People need to feel that they have been thwarted by circumstances from pursuing the life which, had they led it, they would not have wanted; whereas the life they really want is a compound of all those thwarting circumstances... That's why children are so convenient: you have children because you are struggling to get by as an artist – which is actually what being an artist means- or failing to get on with your career. Then you can persuade yourself that children had prevented you from having this career that had never looked like working out", it throws light upon the present day scenario of women who are childless either by chance or by choice and as to the way the society enforces the huge amount of stigma towards the childless women per se. 1 in 5 women in the UK and USA is now reaching their mid-forties without having children. This cohort of women is diverse in other ways, but many of them are liberated and thoughtful about the way to shape their lives, the choices that our ancestors didn't have. However, there still are instances when such choices weigh heavily upon them making them wish that had such stigmas did not exist at all.¹

Thus the aforesaid article deals with the issue of childlessness and its growth all across the world due to various reasons. There are lots of prejudices attached to the childless couple by the society and preconceptions are drawn with regard to their sexuality, race or any other personal aspect, even if the decision of not bearing a child may be wholly based on some other factors or even out of choice. Considering the population boom in many countries across the world and the rate of poverty due to unequal distribution of wealth, having a child and adding to the population is one bane. So when it comes to being childless out of choice, most couples or any individual happen to consider these facets and proceed with the decision of involving themselves in charitable work than to bear a child of their own.

Apart from the choice factor, there are health factors too that contribute to the issue of childlessness. The highly sedentary lifestyle coupled with the other environmental factors have led to deterioration in health of both genders that cause reproducing a tough task and might lead to many complications and birth defects in a child. As per (World Health Organization) WHO reports, it is difficult to determine the global infertility prevalence,

¹ Gateway Women, *The Gateway Women Manifesto: are childless women the new suffragettes?* <https://gateway-women.com/the-nomos-manifesto-are-childless-women-the-new-suffragettes/>, (15th August 2017, 11:15 am. IST)

due to the presence of both male and female factors which complicate any estimate which may only address the woman and an outcome of a pregnancy diagnosis or live birth.

As per the Demographic and Health Surveys from 1990, in collaboration with the WHO, completed in 2004, it was derived that one in every four couples in developing countries had been found to be affected by infertility, and the evaluation of responses was generated from the women while conducting overall 277 health surveys. The burden remains high upon the women as most of the social prejudices and blames are attached to them whereas both men and women can equally be the factors behind not having the potential to reproduce. A WHO study, published at the end of 2012, has shown that the overall burden of infertility in women from 190 countries has remained similar in estimated levels and trends from 1990 to 2010.²

The numerous stigmas attached with childlessness whether it's by choice or by chance is remarked with insults which are gender specific and generally it's the women who has to undergo such discrimination even when men are equally responsible for the causes. A woman not bearing child are prone to constant social scrutiny and are tagged as selfish as motherhood is glorified by the society as one that makes a woman "complete" which is utterly obsolete. The childless are barred from the special taxes and other forms of discrimination in many developing countries.

Socio-religious norms place a high premium on procreation as progeny ensure continuity of family. They are also required to perform all the religious rites for the family as per the rules of *Sapinda* under Hindu Law. For Hindu women barrenness is deemed to be a curse. Bearing children, especially a male child, ensures certification and redemption for a woman. People make alternate plans to have children and adoption is one option they opt for being at par with the society and succumbing to the undue social pressure. The social purpose of adoption is to provide 'the most desirable means of ensuring family life'. Some couples adopt a child in the hope that parenting will help them to overcome infertility.³

In the matter of recent politics, many different sides with regard to prejudices as well as acceptance of childlessness can be witnessed. For instance, childless politicians are charged with not having a proper stake in the society and that they don't have potential to device the future of any country as accused by Jean-Marie-Le Pen, the co-founder of National Front Party upon Emmanuel Macron. Many such attacks were inflicted upon many Politicians during the course of political campaign. Leaders such as Theresa May, British politician who has served as Prime Minister and Angela Merkel, German politician and Chancellor of Germany and the leader of the Christian Democratic Union. And the matter of utmost surprise is that most of the voters too agree to such discriminating remarks that portrays the condition of our society where an individual is judged on the basis of his/her

² World Health Organization, Human Reproduction Programme, *Sexual and Reproductive Health*, <http://www.who.int/reproductivehealth/topics/infertility/burden/en/>, (15th August, 2017, 10:00 am IST)

³ Sayeed Unisa, Sucharita Pujari, and Sujata Ganguly, *Child Adoption Patterns among Childless Couples Evidence from Rural Andhra Pradesh*, Vol 73, Issue 1, Pg. 2.

ability to procreate, which makes it feasible for harboring these discriminating thought and passing comments with the intention for personal attacks in any public ceremony.

Considering the aforesaid facts of the article it can be easily derived that the freedom to choose as to how to live is somewhat curbed due to the social stigma even in personal sphere. With the change in environmental factors and lifestyle, infertility has been a common issue. Women are now more inclined towards career and have equal contribution towards the maintenance of the family and household so the aspect of having kids takes a backseat and in due course of time, various biological factors make it a difficult prospect altogether. The most notable trend is the growing number of women who remain childless altogether. Since the 1970s the figure has shown a steady rise. In the UK in 1991 twice as many women as in 1986 stated that they expected to remain childless. Having kids now have become a matter of choice rather than a mandate especially in the cosmopolitan environment. With the advent of legalizing homosexuality in most countries, the natural process of procreation too has taken back seat abruptly. Many childless adults continue to have contact with children in a range of aspects of their lives through partners, relatives or friends. Opportunities also arise for childless adults to be involved in the lives of children through community initiatives and the eradication of child poverty on a global scale through sponsorship and wider redistributive initiatives. Childless couples are more inclined towards charity and involvement in social causes as compared to the couples having children as more of their income portion goes into the maintenance of their respective children. Moreover, with the steep rise in population in most developing countries, not having a child are more and more encouraged considering the scenario of resource distribution and fast depletion of most of the resources.

LEGISLATIONS

Child-free adults are voicing against discrimination these days. Maternity and paternity leaves are routinely given to parents of newborn children, whereas other employees are seldom entitled to any such or equivalent perks ever offered to them for endeavors that are, to them, of equal value. Parents are given tax-breaks for children, while child-free adults pay a discriminatory higher percentage of tax. Parents with children under a certain age are allowed to bring them onto airplanes for free, while travelers with small pets that can fit in a travel case under the seat are charged substantial fees.⁴

In the case of **ROE ET AL. V. WADE, DISTRICT ATTORNEY OF DALLAS COUNTY**⁵, an unmarried pregnant woman wishing to terminate her pregnancy by abortion instituted an action seeking a declaratory judgment in the United States District Court for the Northern District of Texas, that the Texas criminal abortion statutes, which prohibited abortions except with respect to those procured or attempted by

⁴ Ellen Walker, *Discrimination Against Childfree Adults*, <https://www.psychologytoday.com/blog/complete-without-kids/201105/discrimination-against-childfree-adults>, (18th August 2017, 11:00 am. IST)

⁵ 410 U.S. 113 (1973)

medical advice for the purpose of saving the life of the mother, were unconstitutional. A separate action, similar to that filed by the unmarried, pregnant woman, was filed by a married, childless couple, who alleged that should the wife become pregnant at some future date, they would wish to terminate the pregnancy by abortion. The two actions were consolidated and heard together by a three-judge District Court, which held that (1) the unmarried, pregnant woman and the physician had standing to sue; (2) the married, childless couple's complaint should be dismissed because they lacked standing to sue. Thus even in countries like USA, voluntary childlessness is considered unconstitutional, where apart from health issue of the woman concerned, she cannot opt for abortion on the pretext of her decision to remain childless.

Childless couples are devoid of family-friendly benefits having increased considerably over the last forty years. The benefits ensured to couples having children or a “family” per se fall into three categories: (1) alternative work arrangements; (2) leave time; and (3) dependent care services and assistance. Alternative work arrangements include, among other things, modified daily start and stop times, compressed work weeks, part-time work, schedule swaps, job sharing, and telecommuting. Leave time includes maternity and paternity leaves, paid sick leave for an employee or her family member, and authorized leave under statutes like the Family and Medical Leave Act⁶. Dependent care services and benefits include, among other things, on-site childcare centers, vouchers to subsidize childcare costs, and tuition benefits. At times, family-friendly benefits are embodied in formal policies (e.g., maternity and paternity leaves), and at other times they are merely informal practices (e.g., a supervisor’s exercise of discretion in deciding whether to grant a schedule adjustment).⁷

Under **the Hindu Succession Act**⁸, if a childless widowed woman dies intestate, the property owned by her goes back to the source it came from. The self-acquired properties, however, is transferred to her in-laws. Under **the Shia law**, a Muslim widow not having any children shall be entitled to inherit one – fourth share of the movable property belonging to her deceased husband. However, a widow with children or childless widow is entitled to one – eighth of the deceased husband’s property.⁹ Couples are not given the option of chosen childlessness in the biblical revelation under the law of the Church. To the contrary, it is commanded to receive children with joy as God's gifts, and to raise them in the nurture and admonition of the Lord. Chosen childlessness is termed as an epidemic will not be corrected by secular rethinking.¹⁰ Thus, considering the social, legal and

⁶ Act of 1993

⁷ Arizona State Law Journal, Trina Jones, *Single and childfree! Reassessing parental and marital status discrimination*, Pg. 13.

⁸ Act of 1956

⁹ Harsha Asnani, *What are the Rules Governing Inheritance of Property under Muslim Law*, <https://blog.ipleaders.in/rules-governing-inheritance-property-muslim-law/>, (18th August 2017, 12:00 pm. IST)

¹⁰ Albert Mohler, *Deliberate Childlessness: Moral Rebellion With a New Face*, <http://www.beliefnet.com/faiths/2005/06/deliberate-childlessness-moral-rebellion-with-a-new-face.aspx>, (18th August, 2017, 12:15 pm. IST)

religious scenario depicted above, it can be concluded as, bearing a child is a matter of consent which involves detailed planning, so it should be left to the concerned adults and the couples to decide as to how they want to create their personal sphere. For the most charismatic leaders of the five of the G7 countries like Mr. Macron, Mrs May, Mrs Merkel, Shinzo Abe and Paolo Gentiloni are childless in contrary to which Donald Trump has 5 children which sarcastically derives the contradiction. Also the Prime Minister of India Narendra Modi does not have any child which is far better than having a child like Rahul Gandhi. Furthermore Hilary Mantel, PG Wodehouse, the Bronte sisters and Jane Austen had no progeny but did give birth to numerous creative beauty endured by the world since generations.