

The Legal Theory and Social Problems Behind "Women's Reproductive Freedom Right": From the Perspective of Comparative Law

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Abstract: With the aging of population and the continuous decline of fertility rate, social problems are becoming more and more serious. In order to stop the continuous decline of the fertility rate, many countries have implemented the policy of increasing the fertility rate. Based on the method of comparative research, this study has studied the partial birth policies of many countries, and the research theme is divided into two parts. The legal theory behind "Women's reproductive freedom". On the one hand, in order to promote women's human rights, some fertility decisions violate women's human rights. On the other hand, unwanted births affect children's human rights. And the social issues behind "women's right to reproductive freedom". Studies have shown that despite the increasing number of decisions made to increase fertility rates, fertility rates are still falling, and the negative impact of some related decisions on society cannot be ignored. The decision of some countries to increase birth rates is a serious violation of human rights. At the same time, this study found that such a decision goes against the original intention of the state, not only damages the protection of human rights, but also causes jurisprudence problems and social problems.

Keywords: jurisprudence, human rights, women's reproductive freedom right

1. Introduction

The overturning of *Roe v. Wade*, which caused intense controversy around the world, took place on June 24, 2022, which meant that American women's right to abortion was no longer protected by the US Constitution. Therefore, there were many fierce protests in the US. The real reason for the decision made by the Supreme Court of the United States is that the United States needs more population to promote social development under the background of population aging and declining fertility rate. The reason for the protests is that this decision infringes on human rights. It seems that women's choice between abortion and non-abortion is limited. The fact is that removing the constitutional protection of a woman's right to abortion is tantamount to a direct violation of a woman's human rights, and that when a child is born at an unanticipated time, such a child's right to education is also affected. The overturning of *Roe v. Wade* is actually part of the decision of countries around the world to increase fertility. However, this study finds that restricting women's

reproductive freedom not only violates women's human rights, but also ignores children's human rights from the perspective of jurisprudence. At the same time, it will have a bad effect on the whole society. Research shows that the social impact of such decisions is not only detrimental to the realization of partial human rights, but also detrimental to national development, which is contrary to the original purpose of the state to promote national development. The decision to raise fertility rates in many countries has become a hot topic in people's lives. This study fills the gap in the research on the adverse effects of restricting women's reproductive freedom on society and at the same time studies the new human rights violations in modern society. In this paper, comparative method is adopted to study and compare the fertility policies of some countries to promote fertility, in order to solve the social and legal issues related to population fertility.

2. Jurisprudential Perspective

2.1. Restricting Women's Reproductive Freedom is a Violation of Women's Human Rights

Reproductive right is a basic human right. People have the right to choose, and the outside world has no right to interfere with it. But now Some decisions made in modern society to promote the use of fertility rate violate women's human rights.

Taking the overturning of "Roe v. Wade" case as an example, restricting women's reproductive freedom will not bring the desired result to human society. This study shows that the restriction of female reproductive freedom will only bring social regression. The fundamental purpose of restriction of female reproductive freedom is to increase fertility rate. Nevertheless, almost all of them ended up in failure. Even though these decisions may lead to a recovery of fertility rate in some countries in the short term, the downward trend will not change [1]. The world fertility level is still declining, and the "fertility transformation" continues. This trend is inevitable whether it is ongoing in Africa, Asia, Latin America or in Europe and North America where the fertility transition has been completed [1,2].

In order to recover the fertility rate, measures must be taken by countries. At the beginning, it is to gently encourage people to have children. Although the policies introduced by different countries seem to be different, the actual means and purpose are the same, giving better treatment to people willing to have children to achieve the purpose of increasing the fertility rate.

For example, the UK uses its annual budget to reduce the burden of raising children and provide childcare allowance. Nordic countries provide public childcare. While reducing the cost of raising children, they also actively match the commuting time of parents in opening hours, give both husband and wife childcare leave and high allowance, prevent the employment discrimination of employers on the gender of employees, and increase the female work participation rate. This contributes to fertility. Such policies have a positive impact on fertility promotion.

While Japan and South Korea are also facing the aging population and low fertility rate. But the fertility rate continued falling under these too shortsighted policy, which ended in failure. However, in the increasingly serious aging social background the effect of such policy still cannot achieve the expected results of the society, leading to the transformation of some policies from encouraging birth to forcing birth, and the overturning of the "Roe v. Wade" case can reflect such a transformation, from gentle urging to hard forcing. Forcing women to have children in order to achieve the purpose of increasing fertility rate is not only a restriction on women's reproductive choices, but also a violation of women's human rights. Through the comparison of policies to increase the fertility rate, it can be seen that the overturning of Roe v. Wade in the United States is a coercive means to violate human rights. Similarly, the birth encouragement policies in South Korea and Japan are influenced by family values and work ethics in Confucian culture, and their deep-rooted awareness of gender division of labor. As a result, Japan and South Korea have introduced a

large number of policies and supporting measures to promote fertility, but these policies are in essence more inclined to encourage women to return to the family. Women have to make sacrifices for the family, women's personal value is to contribute to the family, women have to bear children, women have to raise children, women have to take care of the family, and The United Nations Programme of Action (PoA) of the 1994 International Conference on Population and Development (ICPD) mentioned that all couples and individuals have the fundamental right to decide freely and responsibly the number and spacing of their children [3] In China, the reproductive right is a basic human right, and the choice of whether to give birth or not is the embodiment of human rights. People have the right to choose, and the outside world has no right to interfere with it. In United States, overturning the Roe v. Wade case and making the American Constitution no longer protect American women's right to abortion is an embodiment of human rights violation, which is one of the legal issues caused by the restriction of women's reproductive freedom.

2.2. Restricting Women's Reproductive Freedom is a Violation of Women's Right to Development

If the restriction of women's reproductive freedom is a naked violation of human rights, then it has to be mentioned that the invisible violation of some human rights of women in modern society. . With the rapid development of the world economy, people's desire for money is increasingly strong, and many people spend most of their time on work, which makes it difficult to care for their families. Under the background of the development of digital economy, men's work efficiency is higher than that of women, which means that men's working opportunities are expanded while that of women's are relatively reduced. As a result, the social division of labor between men and women tends to be more "men taking the lead in working outside while women taking the lead in working inside" [4], and men's time with family is further reduced. Taking care of children and taking care of the family has become women's "work", taking care of children is not a simple "work", it not only needs to pay the bills, for women to give birth will consume a lot of health costs children's education is also time and energy consuming.time costs, spiritual costs, and for the whole family, As a wife, she also needs to take care of her husband and deal with the trifles of the whole family, so maybe women without children can still have the opportunity to develop, but if they have children, from the perspective of interests,the development right will be sacrificed only for women with low work efficiency. This is the invisible violation of women's development right by society, which seems reasonable but does violate women's human rights. It infringes on women's right to development, and women's realization of self-value is restricted by their families.

After understanding the overturning purpose of Roe v. Wade, it has to be mentioned why women choose to have abortions. In short, this child is a fruit of the wrong time for a woman who is about to become a mother. If it's an accident for a family, then for a woman who has an unintended pregnancy, the inability to get an abortion is a lifelong pain that can seriously affect a woman's mental health. For married women, it may be difficult to accept for a while, for her, it is just not perfect enough to accept the child, then for unmarried pregnant women, this is a lifelong pain, her physical and mental health will be severely affected, often fall into self-blame, fear, anxiety and other emotions, because of the "unexpected birth" situation, The health status of children is also one of the reasons for parents to worry about, which is also an important factor leading to mental health problems of pregnant women [5].The mental health of women conceived as a result of rape is more acutely affected when abortion is not available, and the victim's authority as a mother is often undermined by rape. It is difficult to face the children conceived as a result of rape [6], and under the influence of negative emotions for a long time will also limit women's right to development.

From a jurisprudential point of view, restricting women's right to reproductive freedom not only violates women's human rights, but also violates women's right to development.

2.3. Violation of Children's Human Rights and Right to Education

Restrictions on women's reproductive freedom will affect the human rights of some children and their right to education. When children grow up in the social environment, it can be found that most children spend more time with their mothers in their childhood. As mentioned above, in the social background of rapid economic development and male employment advantages, men spend less time with their families compared with women [4]. Therefore, in such a situation, If the mother is not fully prepared or does not want to raise the child, the child's right to education will be seriously affected. Moreover, studies have found that the mother's attitude towards the emotional performance of the child directly affects the level of problem behavior [7]. If the mother is fully prepared for pregnancy, the child's education will be more fully prepared. Mothers are able to have more positive emotions towards their children, which is more conducive in their children's development. On the contrary, if a woman has not decided to become a mother, her love, attention and emotional expression for her child will have a certain negative impact on the child, and child will born in such an environment to grow up in a family with a father who lacks love and a mother who finds it difficult to express her love and even dislike the child. which is a violation of the child's right to education. To take a more extreme example, if women get pregnant under the circumstance of sexual assault when their reproductive freedom is limited, the situation of their children will be worse. Their mothers, most of these women who are assaulted and give birth to children raise their children alone, and it is found in the research that they are difficult to adapt to the society in a short time, difficult to deal with the family, they might be extremely vulnerable and sensitive. And having difficulty raising children after the abuse, these women often lose control of their emotions and become irritable while caring for their children. Children conceived as a result of rape may face abandonment, rejection or abuse... [8]. These are violations against children's human rights, these children often struggle to receive a good education and suffer from mental health problems to some extent.

Therefore, the violation of women's reproductive freedom is also a violation of the human rights of some children.

3. Social Perspective

The reason for restricting women's reproductive freedom is the crisis of social development due to the aging of population and the decline of fertility rate. However, in order to solve such problems, it is far from enough to restrict women's reproductive freedom. They want to have high fertility; they want to increase fertility. The most important thing is to understand why the fertility rate is falling. It is necessary to first understand the relationship between the restriction of women's reproductive freedom and the social problems behind it. It is believed that the two have mutual influence. Social environment affects women's reproductive intention, and the reduction of reproductive intention will naturally lead to the decline of fertility rate, which will inevitably lead to policies to recover the declining fertility rate, which will affect women's reproductive freedom. The restriction of women's reproductive freedom will lead to a series of social problems. Such as violations of human rights and their adverse effects.... So if people really want to solve these population-related social problems, they should start by solving social and environmental problems. It makes no sense to restrict women's reproductive freedom.

3.1. Influence of Social Fertility Environment on Fertility Intention

The root cause of the decline in fertility rate is the social psychology of "fear of childbearing" caused by the high cost of childbearing [9]. The cost of childbearing is not only the cost of money.

Raising children in modern society is not only the cost of feeding and warming children, but also the cost of time and energy for children. With the rapid development of the world economy, many people put a lot of energy on work, even though it is difficult to afford the cost of healthy growth of children in a good environment. In such a society, the concept of family becomes increasingly weak, and the disfamily-oriented development occurs in various countries [10]. Women who pay more health costs for childbirth choose not to have children in the face of the optional family and the burden of raising children, which leads to the decline of fertility rate. Due to the uneven division of labor caused by the development of digital economy [4], children and family have to a large extent become the limiting factor for the realization of women's self-worth, which further reduces women's fertility intention. Meanwhile, in such a social background, the role of "father" is usually tired of working and rarely gets involved in family, and children grow up in the environment of "widowhall education" [12]. "Absence" of father is also a factor that is not conducive to the growth of children [11,12], and it is also the social psychological cause of "fear of childbearing", because the generation of social psychology of "fear of childbearing" further reduces the fertility intention.

3.2. Influence of Reproductive Intention on Female Reproductive Freedom

The decline of fertility will inevitably affect the fertility rate. Faced with the decline of fertility rate, the society inevitably takes measures to prevent its continuous decline. Therefore, different countries adopt different decisions to achieve the same goal, and these decisions will more or less affect women's reproductive autonomy.

4. Conclusion

Studies show that from the Jurisprudential perspective, restricting women's reproductive freedom is a violation of women's human rights and the right to development, as well as children's right to education and human rights. Restricting women's reproductive rights is not only detrimental to the protection of human rights, but also has many adverse effects on society, which is not conducive to the development of society, and cannot make slow down the social problems such as declining fertility rate. The author suggests that in the face of problems such as population aging and declining population growth rate, we should look through the phenomenon to see the essence. Reduce the cost of childbirth and rearing, such as the development of painless birth, reasonable planning of men and women in child rearing responsibilities and obligations, reduce the work burden of both men and women so that children grow up in a sound family, reduce gender discrimination in work, especially postpartum women. This study fills the gap in the research on the negative impact of the restriction of women's reproductive freedom on society, and at the same time conducts a study on the invisible human rights violation in modern society. It is conducive to promoting the protection of human rights.

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