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A Study of the Slave Woman's

Government Policy Intervention

Highlights

Actions in Zoological Crimes

Youth Acceptability and Challenges

Discovering Thoughts, Inventing Future

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Individual Way of Actions in Zoological Crimes

By Alexander Mikhailovich Pleshakov & Gennady Sergeyevich Shkabin

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Abstract- Today, the criminal law of most countries protects animals and provides criminal responsibility for their abuse. However, a person often uses them as an instrument for committing crimes. Such cases are not usual but they are regularly repeated in all continents and all countries, forming an independent type, which the authors conventionally called – zoological crimes. The article describes a model of human behavior, which is formed as a result of his use of an animal while committing a socially dangerous act. The authors pay special attention to crime preparation. In particular, we consider the search for an animal as a tool or means for committing a socially dangerous act; his training for such behavior; other actions that can be called the deliberate creation of the conditions for a crime committed. Citing and analyzing the opinions of Russian and foreign scientists, the authors distinguish three varieties of a specific way of criminal actions using animals: 1) "Baskerville"; 2) "provocation" and "delayed aggression"; 3) "long-arm," "distraction" and "vehicle."

Keywords: a zoological crime; zoological violence; a crime; an animal; an animal crime; animal abuse; modus operandi; criminal law.

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Individual Way of Actions in Zoological Crimes

Alexander Mikhailovich Pleshakov [α] & Gennady Sergeyevich Shkabin [σ]

Abstract- Today, the criminal law of most countries protects animals and provides criminal responsibility for their abuse. However, a person often uses them as an instrument for committing crimes. Such cases are not usual but they are regularly repeated in all continents and all countries, forming an independent type, which the authors conventionally called – zoological crimes. The article describes a model of human behavior, which is formed as a result of his use of an animal while committing a socially dangerous act. The authors pay special attention to crime preparation. In particular, we consider the search for an animal as a tool or means for committing a socially dangerous act; his training for such behavior; other actions that can be called the deliberate creation of the conditions for a crime committed. Citing and analyzing the opinions of Russian and foreign scientists, the authors distinguish three varieties of a specific way of criminal actions using animals: 1) "Baskerville"; 2) "provocation" and "delayed aggression"; 3) "long-arm," "distraction" and "vehicle."

Keywords: a zoological crime; zoological violence; a crime; an animal; an animal crime; animal abuse; modus operandi; criminal law.

I. Introduction

Nowadays, in criminal law literature, considerable attention has been paid to such a problem as cruelty to animals (Kitaeva V.N., 2011; Semenov K.P., 2015). However, in contemporary publications, it is difficult to find works devoted to crimes committed with the help of animals (Jacques Rossi, 1987). However, law enforcement agencies periodically face zoological crimes. They are socially dangerous acts committed with the use of animals, prohibited by criminal law. There are few such cases, but their number remains stable from year to year. According to our estimates, every year about, 1% of crimes with the use of animals are committed to the Russian Federation. Most of them are crimes against property (approximately 42%) and crimes against life and health (about 38%). The rest (about 20%) are crimes against public order, public health, state power, etc. An analysis of judicial investigative practice for these types of crimes showed that using any method of committing them, using animals as tools or means, indicates the specificity of the objective side of the act. In such situations, there are almost always additional details that are not mandatory for the crime, but necessary for the perpetrator to increase self-esteem, to obtain satisfaction from the action, to implement well-known, constant and familiar behavior. We propose to call this feature a way of action or an individual style of a criminal. To denote this concept, we introduced the phrase "modus operandi" (from lat. Modus operandi - a method of action). The purpose of the article is analysis, identification of the signs and types of this way of acting of a criminal using animals.

During the research, we used the following empirical methods:

The specific sociological approach included a survey of 220 respondents. They are crime victims, eyewitnesses (witnesses) of the event, persons who, due to their professional duties, observed the adverse effects of physical conflict with animals – medical workers, hunting inspectors, circus trainers, dog handlers, police officers, etc. Also, from 1996 to 2019, we studied materials from published judicial practice for more than thirty subjects of the Russian Federation (Republic of Tuva, Moscow, Moscow, Nizhny Novgorod, Ryazan, Tver regions, etc.).

We obtain the huge amount of information using content analysis. Four hundred eighty-three cases of using animals in the commission of violent crimes were identified and studied in the media.

II. Typical Methods for Crime Preparation with Animal using

In its external meaning, the modus operandi is a system of individual micro-receptions, micro-operations that are carried out sequentially, obeying the specific order and design of the culprit (Enikeev M.I., 1982, p. 105). Accordingly, the modus operandi is a small way in any of the typical methods or techniques with animals using – in violent, cruel, intimidating, secret, etc. In these methods, the subjective features of the criminal's actions appear.

Modus operandi has an individual character, is a peculiar and unique phenomenon. It is quite clear that since it is specific, then there are several internal signs and elements. Subjectively, it consists of many mental and psychopathic personality traits. It is the nature of thinking, skills, and ability to handle animals, skills in their training, life experience, temperament, characteristics, and duration of habits (the so-called dynamic stereotype), etc.

The specific physical role of an animal in a crime commission determines the non-standard action in the modus operandi. In this regard, the modus operandi has a unique feature, which consists in the fact

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that the perpetrator often needs to pre-train the "animal accomplice," to prepare it for the crime committed. We consider this aspect of the problem in detail.

Preparation is a broad and open concept. The criminal law considers it as preparation for a crime (for example, the Criminal Code of the Russian Federation in Part 1 of Article 30 provides it). About the way of action, we are interested in three forms of such a process and result. Firstly, the search for an animal as an instrument or means for committing a socially dangerous act; secondly, its adaptation (training) for such behavior; thirdly, another deliberate creation of conditions for the crime committed.

The search is any acquisition of an animal, that is, taking possession of it in any way – legal or illegal. It is understandable that not every representative of the fauna is capable of playing the role of an instrument or means of crime. Therefore, the search is not a mechanical process. Such acquisition is the result of a long and focused search and selection of a "partner." From this period, the training of a biological individual begins. After all, the guilty person need not only smart but also capable of feeling the owner and fulfilling his commands animal.

Adaptation to a crime commission (the second form of preparation) is bringing the representative of the fauna into a state that makes him suitable for the successful implementation of the plans and intentions of the offender. Adaptation, as a result, means a change in the qualities of the animal as an object of the material world (a change in its properties as a biological object), which gives it the human character of a thing, that is, an instrument or means of encroachment. Such criminal legal adaptation, reflected in the modus operandi, involves a combination of at least three conditions. Firstly, the perpetrator must have extraordinary abilities for training; secondly, the animal must have natural mind and ingenuity; thirdly, both need patience for long-term training in the development of joint actions.

To illustrate the preliminary training of the animal, we use the sociological method of exemplification, namely, a concrete example from fiction. J. London describes the unique interaction and mutual understanding of the dog – the Irish Terrier and the man in his novel "Jerry of the Islands" (London J., 2019, p. 137, 140, 142). It is not about preparing for a crime, but about attempt to protect their own life. The work reflects the stages of animal training in detail. For example, a dog could sit, stand, or lie for hours, for quite a long distance from the owner and tried to catch barely audible sounds or rustles in the bushes, and then coordinate its growl or grunt with forest noise. If the terrier recognized the owner or saw a domestic or wild animal, then he was not supposed to growl at all. If someone who tried to move carefully made the rustle, then he should growl quietly. If someone moved carefree, then Jerry was obliged to grumble very quietly. In the future, the mutual vocabulary of the man and the dog expanded so much that they could maintain a quick and accurate conversation from far away. The owner, with various whistles or lip sounds, ordered the terrier to stand still or not make noise, shut up, get closer, go into the bush, and find out the cause of the strange rustling. A person could give more complex tasks, and the dog learned to perform them, for example, describe a circle, move left or right, cross a ravine, and go back. After such instructions, executed with the accuracy, the terrier "reported" what he saw and heard, because he could faultlessly count to five.

In objective meaning, the several psychological factors form interaction of a man and an animal. First of all, it is an addiction to the requirements of the owner. Then the gradual formation of sensory reactions and conditioned reflexes are executed. To teach something to do, the laws of ethology, that is, the usual, natural behavior of animals, are used. Subsequently, in the so-called signaling situation, a skill is constructed. In these cases, muscle coordination is necessary, genetically non-fixed movements appear. Animal's abilities are formed to do something different, in a new way (Fabry K. E., 1993, p. 41-74).

The so-called associative reactions form the addiction to coherent and cooperative behavior. Associative learning is the formation of a temporary connection between two stimuli in the central nervous system of the animal, one of which was initially indifferent to it, and the other served as a reinforcement - either reward or punishment (Zorina Z. A., Poletaeva I. I., 2010, p. 67).

With such training, the behavior of an animal depends on conditioned reflexes. Depending on their structure, they are called either classical or instrumental. In classically conditioned reflexes, that is, during the pressure of unconditioned stimuli, a temporary connection between the signal and the obligatory reaction arises involuntarily (for example, salivation before eating). In instrumental conditioned reflexes (learning by trial and error) reinforcement, such as food, is given after the animal performs the actions that do not have a direct connection with the unconditioned stimulus (Thorndike N., 1911).

Correspondingly, in the process of associative learning, conditioned reactions of an animal appear only with a specific stimulus, and stimuli that are close in their physical properties do not cause such reaction. The famous neurophysiologist I. P. Pavlov defined this formation of behavior as the production of differentiated conditioned reflexes or, as he called it in abbreviated form, "differentiation" (Pavlov I. P., 1949, p. 262-263).

The division of conditioned reflexes into classical and instrumental is a methodical device and does not mean at all that they have a different nature. Similar neurophysiological mechanisms form them, that is, any instrumental action of an animal is always

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accompanied by a reaction that refers to classically conditioned reflexes. And vice versa, in any purely classical reflex, one can detect a motive component, which in its properties refers to instrumental.

Associative learning, built on instrumental and classical reflexes, is subjected to the laws of species experience, fixed in the process of evolution. The species experience is transmitted from generation to generation in the form of innate instincts; that is, it is video typical. Accordingly, the range of associative learning is also video typical. A man cannot teach "anything" a representative of any animal species. Animals do not have unlimited human capabilities and, by their nature, cannot do anything. There are natural "limits" for any training, even though animals of the same species have many different forms and types of behavior (Tinbergen N., 1993, p. 18).

Moreover, one animal may be more talented than another. However, this circumstance cannot affect the range of learning anything. So, we can teach a hare to knock on a drum. However, it is impossible to force it to light matches. The hare simply does not have physical capabilities for this. We can teach a penguin to dance, but we are not able to teach him to react to a person as a dangerous creature. These birds never had land enemies, and at the genetic level, there are no corresponding instincts (Fabry K. E., 1993, p. 62).

Of course, we gave examples with the hare and the penguin solely to illustrate the boundaries of the species experience. As far as we know, the criminal law practice has not yet recorded zoological crimes using these animals.

Repeated repetitions and lengthy exercises form associative learning for collaborative actions. This process of training, that is, the preparation of animals for the permanent solution of tasks, is based on their adaptive activity. Accordingly, the purpose of the learning is to develop the ability to adaptive changes (Sokolov E. N., 1997; Prior K., 1995). A property such as plasticity form the training opportunities themselves and their realization. W. Thorpe defined this feature of the central nervous system as the ability to change its reactions to external influences (stimuli), taking into account previous experience (Thorpe W., 1963).

In zoopsychology, the method of a delayed reaction determines the ability of an animal to respond to a memory of a stimulus (encouragement or punishment) in its absence. This set of techniques allows recording the presence of elementary mental representations in animals, for example, about a hidden object (its image). Accordingly, using these methods, it is possible to establish brain activity, which in this case, replaces information from the sensory organs (Griffin D. K., 1984).

During the animal training, the so-called method of successive approximation or the method of forming behavior is often used. The formation of instrumental reflexes by the mechanism of successive approximation involves reinforcement (stimulation) of animals only when they perform or do not perform specific actions. Using this method, a person gradually brings the behavior of a biological species closer to the desired result. This technique has been known for a long time and has a high degree of effectiveness. With its help, it is possible to form the most diverse, complex, and sometimes unexpected skills. For example, in the experiments of the American psychologist B. Skinner, the rats pulled a billiard ball towards themselves using twine, took it in their front paws and put it into a tube 5 cm above the cage's floor (Zorina Z.A., Poletaeva I.I., 2010, p. 77). The sequential approach mechanism always underlies the training (learning) of various types of circus and service animals. It is quite clear that criminals can use similar experiences for the preparation of zoological crimes.

In associative learning, the sequential approximation method is universal. With its help, the interaction between a man and an animal is quickly achievable, since elementary and minimal psychological requirements provide such a process and result. The essence of this method in a simplified form comes down to the well-known, although the limited, system of "carrot and stick" (encouragement and punishment).

Specialists often use such mechanical training to train service dogs. So, in the scientific literature it is indicated that dogs learn thanks to the gained experience: to feel the difference between pleasant and unpleasant sensations (in principle, no one objects to this opinion). Then the statement follows – there is no other method in dog training.

It is difficult to agree with this purely pragmatic conclusion about the presence of only "carrot and stick." However, it is possible that for special dogs (service animals, that is, for professional equipment), such a restriction is quite enough in the training range.

However, the disadvantages of the mechanical method are well known. Scientists explain them by the fact that such learning does not meet with reciprocal enthusiasm in dogs; its interest in any work is low. Often with such training, the animal shows shyness, excessive submission, inadequately responds to extraneous stimuli. Accordingly, for zoological crimes, the use of this method alone is not enough.

A study of forensic practice has shown that in preparing for the crime, the perpetrator also uses other techniques. In zoopsychology, this method of teaching animals is called operant (instrumental). The basis of the development of this system of skills is to use the cognitive (knowing) activities of various representatives of the fauna. Operant behavior is spontaneous action that is not caused by any physical stimuli. A guilty person form differentiated conditioned reflexes. They can determine the so-called orientation to learning, that is, the animal "learns to learn" (Birn R. W., 1998, p. 174).

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There is a transition from simple associative mechanisms to cognitive, to the emergence of ideas about the general rules for solving problems of the same type. According to the figurative expression of one of the theorists of teaching N. Mackintosh, in these cases, the animal "goes from memorizing to memorizing by meaning" (Mackintosh N. J., 2000, p. 123-143). The formation of knowledge about external events and causal relationships between them is naturally associated with the processing of information on temporal, numerical, and spatial characteristics of the environment. In these situations, the animal creates a mental picture of the world, which includes a complex of ideas about "what," "where" and "when" (Premack D., 1983, p. 351-362).

With the operant method, the animal is trained "with a smile on his face." The basis of this process is positive emotions, pleasure, the need for the favor of the owner. Ultimately, operant training consists of satisfying the animal's social instincts, which by no means excludes the possibility of punishment (demonstration of discontent) (Tsigelnitsky E.G., 2010, p. 162-164).

The cognitive abilities of animals belong to those mental processes that have other alternative names: reason, rational activity, rational behavior, etc. Scientists have given a general definition of this zoopsychological phenomenon. The thinking of an animal is its ability to capture the empirical laws that bind objects and realities of the external world and to operate with these laws in a new situation for it to build a program of an adaptive behavioral act (Krushinsky L.V., 1977).

In this article, in our opinion, it is necessary to give some explanations related to the conceptual apparatus in zoopsychology, comparative psychology, and law. While using the same terms in describing the thinking of higher animals and humans, we should, of course, remember the fundamental difference between them. No matter how complicated the mental features in the behavior of animals are, we can only talk about their conditional comparison with elements of cognitive activity of a human.

It is time to abandon another outdated opinion that there is a significant, profound difference between the psyche of a man and an animal. So, M.N. Marchenko argued that animals have no thinking and no consciousness at all (Marchenko M.N., 2010, p. 137).

Of course, it is not correctly. Up to date, zoopsychology accumulates a large number of facts that indicates that a wide range of vertebrates and birds have certain forms of elementary thinking. Numerous experiments in comparative psychology show that dolphins, parrots, and corvids have abilities for the highest degree of abstraction (thinking). Perhaps this property is also inherent in individual, prominent representatives of the Canids and, probably, some elephants, horses, and bears.

However, of course, anthropoid apes occupy a special place in this range: gorillas, orang utans, common chimpanzees and pygmy chimpanzees (bonobos). To one degree or another, these animals have elements of all the most complex cognitive functions of a person: not only abstraction but also generalization, comparison, assimilation of symbols, self-recognition, etc.

At the beginning of the twentieth century, the famous German zoopsychologist V. Köhler concluded that anthropoid apes possess the intellect that allows them to find answers in problem situations, not by trial and error, but due to a psychic mechanism – insight ("glimpse") (Zorina Z. A., Poletaeva I.I., 2010, p. 104-105). The meaning of this process is to understand the connections between incentives and events. It allows the monkeys to quickly solve new problems, including with their social contacts.

Highly organized primates are able not only to take into account the events of the external behavior of relatives but also to some extent, penetrate the hidden intentions of partners. The American scientist D. Primack called this model of cognitive ability the "theory of mind" (Premack D., 1983, p. 353). In an adapted form, it can be translated as figurative self-awareness, I-thinking, that is, the development of knowledge about myself.

Ethological studies show that individual chimpanzees can put themselves into the place of other individuals. Animals can hypothesize the psychological state and reactions of a neighbor, mentally calculate the situation, deliberately deceive partners, anticipate the consequences and thereby manipulate other monkeys. To determine such behavior, as we have already said, zoopsychologists R. Byrne and A. Whiten even invented the term "Machiavellianism" (Byrne R., Whiten A., 1988, p. 9, 37).

Analyzing the modus operandi, our task, of course, did not include a detailed distinction between associative and cognitive learning. We tried only to state that the individually adaptive activity of animals can be a combination of both forms of behavior. In other words, under certain conditions, an animal can "think, comprehend, and plan" its actions (Manning A., Dawkins S., 1998, p. 87). It is clear that in some cases, the perpetrator can use these abilities of his physical partner to commit a crime.

We can be suspected of anthropomorphism, that is, in the simple attribution of human features to highly organized animals. However, there is hardly any reason for this. As experience and the logic of constructing modern experiments in zoopsychology show, various approaches to their analysis are based on repeatedly verified materials of ethological observations and are designed in laboratory conditions (Zorina Z. A., Poletaeva I. I., 2010, p. 295).

The extraordinary mental characteristics of the animal determine the way of actions of a guilty person.

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We are talking about the increased emotional sensitivity of individual biological species, about their ability to understand the intentions of the owner. This property is called empathy. The essence of this phenomenon is to erase the psychological boundaries between the sensations of a man and an animal. During this feeling, some representatives of the fauna not only capture the emotions, mental states, and needs of the owner, but they can also fully calculate the situation. As a result of heightened perception, the animal is ready to solve a difficult problem and complete any task. Accordingly, the interaction of empathic communication and instrumental reflexes formed by the method of successive approximation make a basis for the modus operandi.

Empathy is objective and subjective. In the first meaning, this condition shows itself focused on unconscious bodily connections, is transmitted from the human body to the body of the animal (France de Waal, 2014. p. 195). In corporal synchronization, based on a community of moods, a face, various forms of facial expressions, gestures, body movements, voice, sounds, different intonations that convey the emotions and feelings of a person are involved.

Experience shows that individual training of an animal in a "criminal craft" can be very useful. Individual, empathically sensitive species are sometimes very observant and capable of prohibitively high concentration of attention. Such properties allow them to respond to the smallest involuntary (ideomotor) actions. They detect the deviation of the body, not even by centimeters, but by 2-3 millimeters, react to micromotions of eyelashes or eyes, to almost imperceptible facial expressions – to changes of eyebrows, lips, nostrils, forehead, etc. Of course, it is hardly possible to get a dog to do anything only with an eye movement, but the animal is quite capable of capturing the mood of the owner and his intentions.

In subjective meaning, empathy means the interpenetration of emotions. Experiments in neurobiology show that there are no clear dividing boundaries between the feelings of a person and a highly organized animal (France de Waal, 2014, p. 201). In the world of living beings, a man is empathic by definition. Due to its nature, each of us, in principle, can feel the moods and conditions of animals. Moreover, it can occur in a wide range. So, many people can understand when a dog, for example, jokes, laughs, takes offense, is sad, jealous, or experiences other feelings that are characteristic for a person. With a high level of empathy, the emotions and feelings of a person can become integrated, that is, subjective sensations coincide. The emergence of such psychic compatibility gives rise to an almost complete understanding of each other.

The interaction of the objective and subjective in empathy is based on the ability of domestic animals to respond to the owner's brain activity, which a person has not yet realized himself. This brain energy affects the micromotion of a person in some way and can suggest the direction of his future intentions. Observation of the owner, understanding of the smallest details of his behavior, possibly forms mental associations. It allows the animal to "read" the mood, accurately guess the hidden desires of a person even at the stage when he has not yet decided what he wants to do. Figuratively speaking, the animal can catch the mood of the owner at the moment when he only turns the key in the lock of the front door.

Many neurobiologists, zoopsychologists, ethologists, biolinguistics believe that empathy can reach a very high level in some cases and go beyond the boundaries of joint emotional sensations. In these situations, it is reasonable to talk about the telepathic connection between a man and an animal (A. Dubrov, 2001, p. 64).

In principle, in its psychological essence, telepathy is empathy, "turned on" at full capacity. Objectively, animal telepathy is the capture of human intentions at a distance without the help of five known sensory organs. Moreover, some animals are capable of not only "reading" thoughts, but also accurately fulfilling the orders of the owner (A. Gorelov, 2010, p. 235).

Telepathy is among those mental states that are called precognition, that is, the ability to foresee. As observations and experience show, many animals can, for example, predict the danger: natural disasters (earthquakes, floods, etc.) and even human-made disasters. Supposedly, the animals can read low-frequency sounds and feel geomagnetic vibrations and anticipate changes in the real world, for example, changes in the weather.

Probably, representatives of the animal world perceive reality much more sharply than humans and can focus all the feelings that they possess at one point. Highly organized pets, for example, can anticipate the appearance of the owner before its actual arrival. What forms such precognition is not completely clear (Tsareva I. B., 2000, p. 256-302).

To many scientists, the existence of supersensory perception still seems very doubtful. Moreover, they often refer to the well-known conclusion of V. M. Bekhterev that there is not a single impeccable and the completely persuasive fact that would speak about the possibility of mental suggestion at a distance. More than a hundred years ago, the scientist said that all the presented data do not withstand criticism (Balandin R. K., 2010, p. 305-306).

Up to date, the situation has not, in principle, changed. Telepathy remains alien to modern science; official science does not recognize it. As a rule, there are no reliable tools and techniques for experimental verification of this phenomenon. At the same time, there is another, directly opposite opinion. Scientists argue

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that telepathic communication certainly exists and practical evidence, and numerous observations testify this for a long period.

A.N. Kursky defines telepathy as the direction into the brain of another biological being of certain perceived requirements and mental images (Kursky A. N., 2002, p. 23). These models of reality reflect pictures of being that are born of one's imagination. Of course, the physical nature of such a phenomenon is still unclear. We suppose that there is a special "matter" that is radiated by the brain and is also perceived only by the brain.

In support of this idea, scientists suggest that in addition to the three states of matter (liquid, solid, gaseous), there is a fourth state of matter. It is the one that determines our feelings, emotions, experiences, and other numerous processes of the "mental" (psychological) order. In the universe, in addition to the well-known physical fields (electromagnetic, gravitational, acoustic, etc.), there may exist others that are invisible to the human eye. In the theory of natural science, one of them has long been called a biofield, or morphic field (Karpenko M., 1992, p. 177, 201).

The energy of brain waves has no limitations in the physical space and is closely connected with such mental states as the unconscious and subconscious. In other words, the reflection of the uncondiciousness of one person into the unconscious of another is perfectly acceptable (Dubov A. P., Pushkin V. N., 1989, p. 189).

According to the same scheme, people can also transfer information from the unconscious sphere to the subconscious (unconscious) sphere of an animal (Samygina S. I., 2008, p. 397-398). The exchange of information can occur at the level of their biofields, and thoughts can be transmitted as it happens during radio transmission in an electromagnetic field. This matrix, in the form of a connection of brain waves with a mental state, can only be assumed. The existence of a morphic field is only a hypothesis and an attempt to explain the paranormal abilities of individual animals. However, this assumption is logical. The basic idea is that there are no absolute laws in the universe. All known natural laws reflect only the picture that currently exists. All that is established by experience (experiments and observations) is only the probability of a conclusion. This probability can be extremely high, but it can never turn into a dogma since there is nothing eternal on Earth. In other words, we are always in search, but only approaching the truth, trying to penetrate the vastness of the unknown. The world is far from known because the universe is limitless and infinite.

Any scientist, from any branch of knowledge, must humbly admit: in the universe, there is nothing impossible, and the possible is always explainable. Inexplicable, in principle, does not exist. There is only that what we know, and that what we do not yet know. We do not know where our knowledge of animals ends, which, unfortunately, sometimes helps criminals, and where the expanses of the unknown begin. However, sooner or later, we will surely understand the mystery now. Science will determine the physical nature of telepathy, the resulting mental states, and the foundations of morphic fields. According to M. Karpenko, such spheres cannot but exist. "Their existence is inevitable, just as the infinite existence of matter generating these fields is inevitable" (Karpenko M., 1992, p. 209).

Such logical and dialectical statements allow us to conclude an applied nature. Since telepathic transmission of information from a person to an animal is quite acceptable, the extrasensory perception of thought orders can be taken into account and planned to achieve a criminal result.

Several objective factors determine training an animal in "criminal behavior" and the way of actions associated with this process. So, not every person has the ability to train, and not everyone can use the operant method. Few people have a genuine talent for handling animals, and not everyone has real opportunities to use them even for everyday purposes.

During preparing for a zoological crime, a guilty person, of course, does not operate with the terms and concepts of zoopsychology and ethology: a conditioned instrumental reflex, a delayed reaction, a consistent approach, associative or cognitive training, empathy, the operant method, etc. In the vast majority of cases, he does not know about them at all, either does not understand and cannot rely on scientific statements and conclusions. Accordingly, during training an animal, only two pragmatic circumstances are used: the experience of other people and their own observations. The guilty person always seeks to engage any developed ties with his "accomplice": visual, verbal, constructive, empathic, and even, possibly, telepathic.

It is necessary to move on to the third form of preparation for a zoological crime. The criminal law reflects it. This stage will be about the deliberate creation of conditions for the commission of a criminal offense using animals. In such situations, the modus operandi manifests that no one trains the representatives of the fauna. Creating conditions – it is the formation or use by the perpetrator of all external circumstances for the development of the event. Depending on the place, time, and situation, animals can play the role of elemental natural forces.

The peculiarity of this form of the modus operandi is that, as a rule, unstoppable, uncontrolled individuals in a state of natural freedom are used. The criminals make the calculation on the usual behavior of wild animals that act as part of their biological program. Under these conditions, their natural reactions act as a trigger for aggression.

In the world of living beings, natural forbidden rules apply, about which the perpetrator generally

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knows. Their essence is that representatives of the fauna cannot behave as they want. Only a person is capable of this. Animals, for example, of their own free will, cannot take their own lives or begin to breed when they want. In the animal kingdom, there is no free will with aggressive behavior. The biological species does not obey his own will: he wants to attack, but if he is not in the mood, he does not attack. Any of the most dangerous predators cannot attack anyone, anytime, because a strict biological program always determines their desires.

The same basic instinct of "life and death" determines prohibited behavior (I. Kant). Under natural conditions, the mechanism of its action determines the main thing – the survival (conservation) of its biological species. There are numerous variants of such reactions that occur with the so-called genetically programmed stimuli. It is the desire for self-preservation, fear for one's life, which appears with pain, injury, stalemate, to protect offspring, to the fight for prey. It also manifests itself during hunger, the protection of one's territory, sexual arousal, etc. Under such conditions, the reaction of the animal is spontaneous, automatic.

III. Zoological Crime Models

During committing a zoological crime, the guilty person uses the preceding predictable situations. However, from the application of criminal law, several difficulties arise here. The fact is that such preparatory actions as creating conditions for the commission of a grave or especially grave crime are practically unprovable. In order to fix this form of an unfinished crime, it is necessary that it not be brought to an end due to circumstances beyond the control of the guilty person, that is, the evidence is essential that the animal was only ready to attack. At the same time, such preparatory work can be quite distant in time from the end of the crime, or by themselves look like a minor act. Accordingly, the intention to take an action to "create conditions" is deprived of the evidence base. The modus operandi in such situations can theoretically be established only retrospectively, after bringing the criminal act to an end. Forensic practice does not have such facts of preparation.

A way of actions has a separate and unique character. Nevertheless, the uniqueness of the modus operandi can be generalized, grouped, and reflected in a specific system. Depending on two different criteria - on the nature of violent or non-violent actions and the social purpose of animals, we will give conditional specific names to all modus operandi.

The first modus operandi is "Baskerville." The criminals use it in violent, intimidating and destructive ways. This modus operandi involve, as a rule, trained pets.

The following types of individual actions are "provocation" and "delayed aggression." The perpetrators use them in violent, cruel, and generally dangerous ways, involving untrained wild animals.

The non-violent modus operandi are "long-arm," "distraction," and "vehicle." The criminals use them in covert mode, involving both trained and untrained pets.

We consider these types in more detail, and first of them will be the ones related to violence.

1. Baskerville. This term is a derived concept. This word is an interpretation from the famous work of A. Conan-Doyle "The Hound of the Baskervilles." The story tells about the murder and the attempt to intentionally cause death with the help of a specially trained dog.

The essence of this modus operandi is to cause physical harm to the victim. Baskerville is carried out, as a rule, by setting an animal on a person. This process is initiated by arousing hostile intentions, artificially fomenting the aggression of a biological species about a victim.

Instigation (setting an animal on) has a very long history. This bloody sight was usual for ancient Rome. People could watch it at the Colosseum. Artificial, provoking coercion of an animal to attack a person has been used at all times and among all peoples. The first forms of its legislative prohibition appeared in the Russian Empire in the XVII century. Thus, by the Council Code of 1649, criminal liability was incurred for deliberately setting a dog on a person. After 200 years, in the Code of Criminal and Correctional Punishments (1845), such acts committed out of prank (hooliganism) or with the purpose of causing harm (Articles 1253, 1254) were also prosecuted in the criminal procedure. And further in the Charter on the punishments imposed by magistrates in 1864 (Article 122) and the Criminal Code of 1903 (Article 233), setting dogs or other animals on a person was forbidden by criminal liability.

Instigation can be carried out by various methods and primarily with the help of mental means of influence. The inclination to aggression, as a rule, occurs verbally, that is, a man gives a command by voice – abruptly, loudly, demonstratively, or, conversely, quietly and without an accent. The password can be well-known and anything: "take," "alien," "face" or veiled: "safe," "high," "push" and etc. In the case of Baskerville, the command of the guilty person sometimes has complex and combined content. Supposedly, it can be a signal for aggression with the simultaneous task of immediately releasing the victim or a command for a "soft," deceitful attack with a quick leaving of the place of the event, or a demand to make distracting, aggressive movements and lie low, etc.

A signal for hostile behavior can be given simultaneously with constructive actions: patting on the

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body, pushing forward, stroking against the hair, etc. In some cases, the initiation of naturally protective or aggressive reactions occurs due to feeding the animal with narcotic, psychotropic, or potent drugs. Such agents and substances that have stimulating or hallucinogenic properties are capable of triggering video-typed and innate animal behavior programs. As a result of instrumental Baskerville, a peaceful pet can turn into a rabid beast or an ancient pterodactyl and cause significant harm to health.

Forensic practice indicates that in the vast majority of cases, different dogs are used to set on the victim in Russia and abroad (A. Pleshakov, 1992–1993, pp. 54-56; 62-63). Canids, by their nature, are predators and are always potentially dangerous to humans.

In the legal literature, there is an opinion that setting a dog of an aggressive breed is like starting a homing weapon (A. I. Korobeev, 2008, p. 256-257). We believe, that it is a misperception. In principle, it is clear what the author wanted to say, but there are several "trifles" in this statement that distort the essence of Baskerville.

Firstly, dogs of aggressive breeds do not exist (we have already talked about this). Secondly, the homing of a weapon, that is, it's directing towards a target mechanically or automatically, without further participation in this process by a person, is in no way suitable for a well-trained dog, and it, of course, is necessary for Baskervilles. Service animals, for example, can stop a physical attack on the appropriate command. Accordingly, in these cases, "launching a weapon" and its further use is under human control, and there is no need to talk about any homing.

The perpetrators use this modus operandi not only in crimes against the life and health of a particular person. Practice shows that we can see Baskerville in criminal acts against public safety; that is, it can harm the bodily integrity of many people. It is quite acceptable, for example, with group hooliganism or riots. In the world practice and our country, there are known cases when the perpetrators use dogs in clashes between rival gangs, extremist and criminal associations, during the "dismantling" of a fan or nationalist groups for spheres of influence or for settling bills. At the same time, the criminals train dogs to cause maximum harm to people and to protect themselves from knives, chains, baseball bats, bottles, rubber hoses, and even fire extinguishers. As we see, it is a modified version of one of the ancient forms of ethno zoological violence, when a man uses animals as weapons in his battles.

Interpersonal clashes involving dogs are usually very fleeting due to the stampede of members of the human race. In a massacre, a one trained dog can withstand at least five fighters, and even then under the doubtful condition that they will attack or defend in concert. And dogs trained to act in pairs, in general, become an irresistible force.

2. Provocation. The criminals use this way of action in three zoological ways: violent, dangerous, and cruel. Provocation means inciting (inducing) the animal to attack the victim. In certain situations (life-death instinct), a biological species is doomed to aggression – it cannot but attack. In zoopsychology, it is because the animal crosses a genetically programmed threshold of biological irritability.

Objectively, an assault is always a sudden attack or a raid, an unexpected hit or throw, etc. (Alexandrova Z. E., 1975, p. 243-244). All these active actions represent a rapid movement in space (on the ground, in the air, or the aquatic environment) with the aim of hostile physical contact with the victim. As a result, the victim falls into a disadvantageous and dangerous position, that is, into a "zoological" trap. A guilty person calculates this trap taking into account the place, time, situation, and radius of a possible attack of the animal.

During provocation, the mechanism of aggression starts reflexively. It is impossible to stop animals, usually wild ones because they are not technical means or mechanical devices. Unlike Baskerville, the perpetrator does not control the behavior of animals, which in these cases represent an irresistible natural force. Depending on external factors, a dangerous situation can develop so rapidly and unexpectedly that the guilty person or unauthorized persons can become victims.

From a psychological point of view, people can realize their provocative intentions in two forms. The first is to encourage the victim to enter into a dangerous conflict with animals. The second form is his coercion to such actions. According to the degree of mental impact, they have a different level of intensity.

The motivation is to deceive the victim deliberately or to ignore the circumstances of the dangerous situation. Less often, persuasion, promise, and prankster form an incentive. In turn, compelling a collision with animals represents a direct physical impact (violence) or active mental pressure (threat of violence). In any case, coercion always happens without consent of the victim.

Provocation is the multivariate modus operandi. As domestic and international experience shows, this technique is possible with a large variety of animals living in the wild environment. It can be both predatory mammals and large herbivores, for example, a bear, an elk, a bison, an auroch (Pleshakov A. M., 1994, p. 23, 67). For provocation, people use the so-called lycanthropes, that is, those who live in the buffer zone between the natural habitat and the sphere of human activity (large forest parks in megacities, national reserves, urban water areas, etc.). They can be wild

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boars, black and brown bears, wolfhounds, alligators, monkeys, etc.

Sometimes the perpetrators use poisonous snakes, arachnids (spiders), scorpions, or other toxic representatives of the fauna for provocation. Usually, they place the animals in a limited space – in the passenger compartment or a trunk of the car, in a bathtub, a cellar, a closet, a mailbox, etc. Physical and unexpected contact with such animals inevitably leads to their instant protective reaction and attack on humans.

In principle, this modus operandi has an old legislative tradition. Thus, in the Laws of the Great Ming Dynasty (China, 1368–1644), the number of crimes punishable by death included the deliberate use of a snake, a scorpion or other poisonous insects so that another person would die as a result of their bites (Article 314). It is a rare criminal law. However, at present, the actual use of this modus operandi is periodically noted in police reviews.

The provocations sometimes involve the so-called social insects – bees, ants, etc. The social behavior of such representatives of the fauna, their lifestyle is genetically programmed to preserve the species and to repel any aggression, even false. When self-defense reflexes are excited, numerous hymenopterans act in concert, by the entire community. By their attack, they are capable of causing death to the victim or causing significant harm to his health.

Provocations with predatory sea or freshwater fish in their physical consequences are some of the most difficult for victims. The mechanism of this method, as a rule, is divided into two stages. Firstly, the criminal transfers the victim to the aquatic environment – he pushes the injured person into the water, throws overboard, etc. Then, the perpetrator lowers raw meat next to the person, or pours out the blood of the animal, or inflicts bleeding wounds on the victim. Such conditions ensure the attack of predators, and it is impossible to stop it.

The range of dangerous aquatic inhabitants suitable for crime is diverse. They can be sharks: white (Carcharodon), brindle, mako, blue, blunt, possibly gray, sand, and other cartilaginous. They also include a barracuda, a moray eel and, probably, a stingray.

The list of freshwater predators is also very representative. On every continent, in different regions and water areas, there are fish that can cause serious harm to health or death. In South America, they are, for example, an arapaima, an electric eel, and the famous piranhas, in Africa – an electric catfish, a tiger fish, in Asia (India, Malaysia, Thailand) – a sarong, a freshwater stingray, in New Zealand – a black eel, etc., in Russia in our country it is an ordinary (European) catfish. The fish can reach five meters in length and weigh up to 400 kg.

3. Delayed aggression. The postponed reaction phenomenon forms the objective nature of the modus operandi.

This feature of behavior is a reaction to the memory of a negative stimulus (harm from people) in the absence of such irritants (people themselves). W. Hunter gave the general concept of a delayed reaction (Hunter W., 1913, p. 1-86). Correspondingly, the mental ideas of animals about the associative connections between the harm and the need to "respond" to protect offspring and preserve the species form delayed aggression. In other words, delayed aggression is a reaction to human evil; it is revenge on all people, a sign of interspecific conflict.

Offensive-hostile actions of animals do not arise immediately since a person (s) often manages to hide after causing damage to the biological community. The predator postpones the aggression for some time, but the negative stimulus persists. The biological individual does not consume an internal negative impulse simultaneously; it does not splash out on foreign objects, on other animals, on fellow tribesmen, etc.

Practice shows that some representatives of the animal world are can remember evil (incentive) for a long time and postpone the hour of reckoning. Experience suggests that birds living in large populations are revengeful: large (sea) gulls, black crows, rooks, etc. Gray crows inhabiting in cities are very vindictive. Their attacks are usually recorded at the time of nesting and hatching. The ruin of nests, the destruction of eggs, the killing of ravens give rise to a response. Bird communities can attack any of the human race. They do not care who is in front of them – a man, a woman, an older man or a child, although crows, for example, can remember a specific person.

Deferred aggression is a complex and multi-stage modus operandi, which is very rare. It is because the perpetrator must take into account many coinciding factors: climate, season, terrain conditions, biological status of animals (birds), their unconditional aggressiveness, etc. And, perhaps, the most difficult is to count on the presence of the victim in the point in space where the attack can take place. Accordingly, with delayed aggression, strangers often suffer.

Now we consider the modus operandi that is not connected with violence.

1. The long-arm. Scientists stylize and simplify the name of the modus operandi. Objectively, they define this type as "the continuation of the hand of a thief."

The long-arm is a technique that criminals use to steal, secretly thieve someone else's property with the help of animals. Those actions of the guilty party that is carried out unnoticed by the victim and by unauthorized persons or in the presence of other people, but who do

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not understand the unlawfulness of what is happening, are considered secret.

The long-arm is the exceptional modus operandi, a criminal mastery of a thief. To carry out secret thefts using animals, not only the observation and patience are required to choose a place, time, and determination of the victim, but also an understanding of the behavior foundations of the fauna representatives. The use of this technique is impossible without full comprehension and synchronous interaction of "accomplices." It is achievable only with prolonged animal training.

The criminals try to adapt small, plastic, swift animals that can hide and lie up for thefts. They include dogs, rats, primates of various species: monkeys, macaques, langurs, less often chimpanzees, etc. All monkeys have excellent hearing, sharp eyesight, and they distinguish between the shapes and colors of objects. Primates have an innate cleverness, are easy to learn, quickly memorize the gestures and people's words, understand what they want from them, and obey commands. As social experience shows, highly organized monkeys can be used to solve very complex problems and teach the most incredible things: to drive a tractor, to perform the duties of a switchman, to graze goats and sheep, to sort coconuts and to perform other, no less complicated actions. Experiments in zoopsychology show that chimpanzees, for example, can remember the position of 9 digits on a computer screen and play them in the correct order in one second. It is quite understandable that such abilities of animals are in demand for achieving criminal goals, including for the theft of other people's property.

2. Distraction. The modus operandi is one of the most common during committing zoological crimes. The technique is complex, inventive, sophisticated because criminals can use it to deceive both people and other animals.

The natural, ethological reactions form the deceptive distraction of another animal. Such instinctive reflexes are possible when the distracting individual is a sexual partner, or prey, or a rival, etc. for the fauna representative. In any case, it is a psycho physiological bait, drawing attention to oneself to lure or leave a place. The reaction to the bait is only the first step in the mechanism of criminal behavior. The second and main part is the skillful use of the situation.

Distraction in the form of focus on another object is the most often used against guard dogs that guard property, protect housing, control the territory, and the established order. To do this, as a rule, use a flowing bitch.

The criminals also use distraction to steal expensive domestic dogs and cats (the so-called dog-thieves and cat-thieves). For example, they use the same method of bait in the form of a flowing bitch for Canids theft. The perpetrators lure the dog to the place where it disappears from the field of view of the owner. After the capture of the animal, the culprits wait for the corresponding announcement about the monetary reward for the dog's finder.

The criminals also use this modus operandi to catch expensive wild animals (illegal hunting). So, for example, pigeons, which are natural prey for predatory birds, are used as bait for poaching falcons. The perpetrators attach a spinning reel with metal hinges to the pigeon's back, and tie a fishing line to this structure. Then they launch the birds into the sky, where the falcon rushes to prey and gets entangled in loops. The poachers rewind the fishing line and drag the birds towards itself (T. Revyako, 1998, p. 239, 258).

The culprits also use distraction to deceive or mislead people. They make the calculation on human's natural reactions. The animal distracts attention by its unexpected appearance, false assault, fussy movements, unusual behavior, emitting sounds that are inadequate to the situation – a sharp bark, a growl, a screech, etc. In these cases, the animal acts as a camouflage to hide the true intentions of the individual.

3. The vehicle. The criminals know this modus operandi for a long time and successfully use it in their practice. Animals are used as a mobile device for moving, transporting, crossing the border, transporting money, property, drugs, currency, and other material substrates. It is necessary to distinguish two options – passive and active use of animals in this modus operandi.

According to a passive form, the criminals use the natural physiological properties of the representatives of the animal world. In this case, the biological species can behave physically active: to run, to walk, to crawl, to respond to external stimuli, etc. However, from the targeted actions of the guilty person animal is passive. Birds (pigeons, falcons, hawks, etc.), reptiles (pythons, boas, crocodiles, etc.), livestock (cows, goats, sheep, etc.) that carry themselves or in themselves (by ingestion) various objects are used as such vehicle.

The criminals also use the active form of the vehicle. They involve trained and self-acting animals for this purpose. The culprits often use dogs in this way. The range of crimes with an active form is very broad. They can be smuggling of various material objects (things), transportation of property stolen during the theft or other types of illegal seizure of assets, transportation of drugs, psychotropic substances, weapons, the movement in the space of other prohibited items withdrawn from public use, etc.

IV. Conclusions

Summing up, we should note that in the general structure of individual criminal behavior, the details that

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accompany a socially dangerous activities are related to the place, time, and situation of its commission, that is, the signs of the corpus delicti. Thus, the modus operandi can additionally characterize the objective side of the act and thereby have criminal law, criminal procedure, criminological, and forensic significance. Accordingly, an analysis of the characteristics of a criminal event allows us to solve practical problems in identifying and disclosing a socially dangerous attack, and helps to establish the identity of the perpetrator. Indeed, the modus operandi is essentially a "visiting card" of the criminal. The image of his activity reflects both specific and characteristic features of behavior, as well as a way of actions while using animals.

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Being a Woman in the American Slavery System: A Study of Theslave Woman's Ordeal in America, from 1776 to 1865

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Abstract- Women have long been negatively stereotyped in every society, usually portrayed as submissive and passive. In the case of the black women in the slavery context, the conception of them by their male compatriots as well as the white master is dual: a working animal to do every chore in the household in the one hand, and an object for the master's sexual appetite in the other hand. Scholars in Amer ican slavery have grappled with the question of gender differences among slaves in the Americas in the seventeenth and eighteenth centuries. Whereas some scholars hold that both male and female slaves were assigned different roles, feminist scholars hold that enslaved women labored no less than enslaved men. They observed that unlike white women, female slaves performed the same roles as men slaves.

The present research work reveals and analyses the experiences and contributions of slave women in the global American slavery system. As such, the focus is on themes that especially concern female slaves; these include: motherhood, companionship, marriage, work on plantations, and punishment. Central in this study is how those female Blacks experienced slavery in America and how they help build the American economy in that period.

Keywords: slavery, female slaves, motherhood, companionship, marriage.

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Kombieni Didier [α], Aguessy Nathalie [σ] & Assongba Belmonde [ρ]

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The literary theory applied to the present research is Feminist or Gender Criticism; this is concerned with the ways in which literature (and other cultural productions) reinforce or undermine the economic, political, social, and psychological oppression of women. It is also concerns the role of women in the literary work; the representations of women, the power structures between men and women. On this basis, the assumption is that while "biology determines our sex (male or female), culture determines our gender, masculine or feminine" (Lois Tyson, Critical Theory Today, Pge 53).

Keywords: *slavery, female slaves, motherhood, companionship, marriage.*

Introduction

Slavery in America was mainly characterized by the over-working of millions of Blacks deported from the West African coasts. In most of the seventeenth and part of the eighteenth century, male slaves outnumbered female slaves, making the two groups' experiences in the colonies distinct. Living and working under various circumstances and regions, African-American women and men faced diverse situations of enslavement. The particular experience of women in the slave trade is especially important. As a minority of the total number of, women's experience in slavery and the slave trade has been disregarded. At best, historians have assumed that the generic term "slave" encompassed both men and women. However, the particular experiences of African women and their female descendants had clear consequences upon the experience of enslavement, both for themselves and for their male counterparts. Women's access to particular components of their African society's culture, their agricultural work, and their sexual and reproductive identities are just three of the elements that we must look towards to fully assess their role in the American slavery. Many European observers of the west and west-central Africa commented upon the industry of African women. They saw them as constant workers, some even characterizing these women as drudges. These observations are critical windows into the lives of African women before to and during the disruption caused by the trans- Atlantic slave trade.

The current research work is aiming to shed light upon the roles of slave women during the slavery era, those roles which people have rarely b taught in history courses but which some of these heroines reveal through an account of their lives in slave narratives and which some contemporary scholars also latterly tackled in their research works.

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1. Female Slaves' Experiences as Woman and as Mother

1.1. *The slave woman and womanhood*

From Africa to America, the role of the black enslaved woman had been debased. While in Africa, the passage from girl into womanhood was a symbol of entering a respectful category of community, in slavery it was rather celebrated as a source of economic income for the master, who then would acquire new slaves for his labor, free of charge. This conception made most slave women to become mothers as early as possible, around nineteen years old and then every two years, to the benefit of the masters. This practice, tacitly encouraged by the master, brought little benefit to the slave woman, except for the pride of being a mother and the consolation of having companions for the household chores; also being fertile for the slave woman seemed a guarantee for having a stable household, and avoiding being sold. But the prize to pay was to be forced into sexual relationship with a male slave, and to witness the same scourge with her daughters, in case she got some.

The physical exposition of the slaves' body during their transportation to America and during the sale process, coupled with the idea that the black women was a hypersexual being, exposed the slave woman to her white master, both as an object of abhorrence and that of fantasy. Since the slave was a personal property, the owner took this as full right to dispose of her willingly, and sometimes, female slaves would see through such relationships chances that they or their children, mulatoes, would be liberated by the master. Yet, on occasions, the white master did not hesitate raping slave women who are married, since her status as a married woman did not mean anything except that she remained a slave, then a possession belonging to the master. And the fact that the master have full control over the slave couple, left little power to the man over her wife. The case was even more critical when the slave man came from a neighbor compound. This made the slaves' matrilineal system to fully rely on the woman: definitely, the slave woman had no children; all the children belonged to the woman, then to the master.

Whenever possible, black slave women manipulated their unique circumstances in the struggle for their personal dignity and that of their families. As often as black men, black women rebelled against the inhumanities of slave owners. Like their ancestors and counterparts in Africa, most slave women took their motherhood seriously. They put their responsibilities for their children before their own safety and freedom, provided for children not their own, and gave love even to those babies born from violence. Contrarily to the slave man who would frequently plan escaping, the slave woman, in view of her physical weakness of being a woman coupled with her care for her children, would think that womanhood and personhood were easier gained within the slave community.

1.2. *The slave woman and motherhood*

Being a mother simply means having children to care for and to feed, although the care and education of children go far beyond a single woman's duties. Motherhood in the slavery system basically meant increasing the master's wealth. But this conception did not stop the slave women from producing children that they know, automatically would fall into that institution of slavery. One would have expected the slave woman, who did not just accept her condition as slave, to fight the system by refusing to contribute with more slaves to the master. But on the contrary, the slave woman could not forget the importance of motherhood as it existed in her mother land, Africa. In African tribes, a woman with no child sees herself excluded from the society; to put it clearly, men in traditional Africa get married first for children. The slave woman then had this as a fact, and since it brought a benefit to the master too, it became difficult to dissociate the slave woman from the concept of motherhood.

Slave motherhood occupied a central role in the American slavery system. Slave owners addressed it from the early 1780s onwards in response to demographic changes and abolitionist pressure to end the slave trade. Estimates show that "without slave imports from Africa, the African slave population would naturally have declined by some two percent per year in the 1770s and 1780s". (James Walvin, *A Jamaican Plantation: The History of Worthy Park*, New York: W. H. Allen, 1970, P.129.)

Slave women had to provide sufficient healthy laborers for the future free society and had to ensure that they were instructed in some correct moral behavior. It was the latter role of slave mothers as 'moral regenerators' that abolitionists addressed in their writings. Only a few abolitionists overtly tackled the issue of the slave owners' conception of slave women's childbirth practices. As a result of the role that they had allocated to slave mothers in their project of free slaves, they concentrated far more upon slave women's nursing practices. The slave owners stipulated that a mother's main task was to ensure the physical survival of her children. Also, she had to make sure that the children were emotionally content and received thorough moral training. All this occurred against a background of a rapidly increasing population.

Yet, globally, there was little motive for a slave woman to celebrate her first and other pregnancies; they knew that the master would let them devote very little time for breeding their baby, since motherhood did not accord them any leave form farm and other tasks. Many slave women died soon after delivery, either because of lack of medical assistance, or due to exhaust from both

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delivery and immediate hard work. "Negro women were too valuable in the field to be allowed much time to care for their children. A month or so after the birth of a child, the mother returned to her task. Thereafter the child was cared for during the day by the plantation nurse, who was generally a woman too old for work". (Charles Sackett Sydnor, *Life of Slave*, Mississippi: Mississippi University Press, 1933, P. 180-181).

However, there were special female slaves used for breeding, and these kinds of slaves were treated better than other female slaves. They also had the advantage of working less, while benefitting from better food opportunities. For such breeding slave women, it was expected that they give birth to the maximum of children until they were too worn out to have more children, or until they died in childbirth. Josephine Howell, a slave from Brinkley, recalled: "grandmother was a cook and a breeding woman, they prized her high, he had twenty-one children". (Josephine Howell, *Born in Slavery*, Arkansas: Federal Writers' Project, 1938 P. 139.).

2. The Female Slave's Plight

2.1. *Enslaved women role as wet nurses*

Wet-nursing is nothing but a typical form of gender exploitation; in the case of the enslaved black females, it represented both physical and sexual exploitation. White women who had breast milk difficulty or insufficiency, or who simply decided not to nourish their newly born babies because of personal conveniences, would resort to their nursing female slaves. The fact of breastfeeding one's own baby and another woman's child simultaneously, is not different from laboring and more typically, this would not be possible unless the breast feeder woman also has just given birth. In this way, wet-nursing appears as an additional burden to the slave woman. The evocative image of an enslaved wet nurse, carefully holding a white child to her breast in order to provide sustenance through her own milk, therefore holds much resonance for historians interested in gender, slavery, and relationships between black and white women in the antebellum South. "Wet-nursing bound women together across the racial divide, and white women also sometimes wet-nursed enslaved infants. Yet ultimately, white women used wet-nursing as a tool to manipulate enslaved women's motherhood for slaveholders' own ends. (Charles Sackett S ydnor, *Life of Slave*, Mississippi: Mississippi University Press, 1933, P. 180-181).

There have been many different forms of wet-nursing in the past, involving highly complex social relations. Patterns of wet-nursing thus vary within different historical contexts; and while at times the practice might have involved acts of altruism by women who shared their milk, at other times, for example under antebellum slavery, wet-nursing took on a more exploitative angle. Wet-nursing fostered both physical closeness and racial distance between enslaved and white women, and opportunities for resistance on the part of enslaved wet nurses remained severely limited. Conversely, slaveholding women's relative power granted them choices about whether to use a wet nurse. Occasionally (and for a variety of reasons) white women wet-nursed enslaved infants, enslaved women too shared their breast milk with each other in an example of more communal mothering processes. Slaveholding men and women manipulated enslaved women's mothering through their physical labor, their reproductive abilities, and the appropriation of their breast milk."Wet-nursing is a complex process that has commonly involved women in unequal power relationships in a variety of different regimes whereby wealthier women use women from lower down the social scale as wet nurses". (Valerie Fildes, *Wet Nursing: A History from Antiquity to the Present*, New York: Edinburgh, 1988, P.33).The wet-nursing system migrated to Europe, and included both slave woman and some white women who found in it, a new form of business. Philip Fithian, a tutor in Robert Carter's Virginia household, wrote in his diary, "I find it is common here for people of Fortune to have their young Children suckled by the Negroes!" (Philip Vickers Fithian, *Journal and Letters of Philip Vickers Fithian*, Virginia: Farished, 1774, P.7).The wet-nursing business became profitable for white slave masters who frequently hired their slave women to other white families in the need of breast-feeders. Paying for the services of a wet nurse was unnecessary when one could be procured for free from one's own chattel. "European colonial travelers to West Africa frequently commented on black women's breasts as large and droopy and compared them to goats' udders".(Stephanie M. H. Camp, *Closer to Freedom: Enslaved Women and Everyday Resistance in the Plantation South* Chapel Hill, 2004, P. 63.).

According to Jennifer L. Morgan, early European travelers typically commented that West African women's breasts were long, enabling women to suckle their infants over their shoulders. Referring to these black African women's breasts as dugges, an archaic word that meant either a woman's breast or an animal's teat, also "connoted a brute animality." Morgan also shows how representations of West African women led into later erotic images of enslaved wet nurses, in order for slaveholders to rationalize both the sexual exploitation of enslaved women and the care they provided to white offspring. "Ultimately, travelers' beliefs in black women's easy breast-feeding and childbirth laid the foundations for subsequent ideas about black African women's superior ability to perform hard manual labor". (Jennifer L. Morgan, Laboring *Women: Reproduction and Gender in New World Slavery*,

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Philadelphia: William and Mary Quarterly, 2004, P.33) These two assumptions led to an entrenched system of dual exploitation of enslaved women's bodies as both reproducers and as workers. So while in the United States as a whole, wet-nursing declined over the course of the nineteenth century, in the South wet-nursing remained important, encompassing the multiple forms of exploitation inflicted on enslaved women's bodies. Southerners only occasionally fed infant slaves with bottles. But the availability of lactating enslaved women reduced the demand for infant feeding bottles, which might risk a child's health anyway. Procuring a wet nurse from among the household's slaves, if such a woman was available, was a simpler option for slave-owning mothers. Bottles, though, were more willingly given to slave infants when their own mothers' milk was needed to feed white babies, whom whites inevitably prioritized over enslaved infants.

With reference to some researches mostly based mostly letters, diaries, and journals of literate white women**,** backed with the enquiries from the Works Progress Administration (WPA) and their respondents' testimony, Sally G. concludes that "about one-fifth of white women relied on female domestic slaves for wet-nursing and that the practice of sharing breast milk across racial lines (including white women feeding slave babies) represented one way some southern mothers rose above racial prejudice". (Sally Garett, *Mothers' Sacred Duty*, California: McMillen, 1990, P.118).

In many instances, white women would force the slave women to abandon nourishing their own baby to take exclusive care of the white babies. The wet-nursing system, as such, appears as an evident manipulation practice imposed on the slave woman; it likewise placed the white baby as far superior to the black baby, ss was already the hierarchy between Blacks and Whites. But the positive fact is that the wet-nursing system brought a close link and dependence between the white woman and the slave woman. Most slave masters then found in their slave women, more profitability than it appeared from the start, and the latter also found themselves on a more privileged position. Yet, these material benefits did not take those black women from their natural condition as slaves: nothing changed in their daily duties, in the household and in the plantation, and they were not safe from according punishments either**.** Even when nursing their own babies and the white women's, the slave women would go to the field for physically hard activities, and they never would claim this situation to change. "Enslaved women broadly rejected the notion that to labor in the big house was better than working in the field" (Eddy West, *Chains of Love*, Santa Barbara: Alford Ed, 2002, P. 84). One consequence of the wet-nursing system onto the enslaved women is emotional trauma as, contrarily to the white women, the slave woman had little ability and choice about their babies' feeding patterns, since they had to feed the white women's babies while taking care of their own child. The fact that white women scarcely complained about their wet nurses set little resistance of the latter in the process.

Slave women also benefited from the wet-nursing system; on the American Southwest plantation, some master would send female slaves' babies to be wet-nourished, while their mothers are busy working. This illustrates the degree of exploitation the white masters imposed on their female slaves, as both reproducers and workers. Most enslaved women who had babies, had limited contact with their babies during the working days because masters needed enslaved women as laborers to maximize his profits.

2.2. *Enslaved women's Companionship*

Colonialists realized that natural increase required more than material incentives to breed and an amelioration of the condition of pregnant and nursing slave women. Many believed that a church-sanctioned marriage or at least faithful cohabitation would raise the levels of fertility.

From the 1780s onwards, slaves were encouraged to live in stable and monogamous unions. Vivid accounts of slave debauchery supported these, which contended that decreases in the slave population should not be imputed to the planters' improper exercise of power. The focus in these accounts was on slave women's sexual practices. They argued that their trade-in sexual favors with slave men and white men not only made them contract diseases that made them infertile but also led them to abort their offspring as children restricted this profitable trade. Despite this widely held view and the various proposals to contain what was regarded as dangerous sexuality, such as offering slave women a reward upon marriage and flogging married slave women who had sex with white men, slave owners did little to remedy the problem of slave women's sexuality and hence facilitate natural increase. There is a contradiction between slave owners' rhetoric and practice. In this way, the masters frequently raped and forced the female slaves to breed with the male slaves.

Due to family splitting up occasioned by auctions, wives were separated from their husbands and giving as a companion to another man. Unmarried young girls were also married to slaves and obliged to get pregnant. The most beautiful of them or those filling some specific criteria in the eyes of the white men were chosen by masters to satisfy their libido. They give others like reward to overseers or as a gift on special occasion to another slave owner. Slave women could not choose by their own companion. When a female slave was not quite lucky to have a slave man as lover, or even dare to have a relationship with a person not chosen by the master, found themselves scourged severely or simply sold away.

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2.3. *Enslaved women considered as sexual objects*

Slave women's sexuality has occupied a central role in studies on Caribbean slave women. Until the late 1980s, the focus was on slave women's experiences of sexual oppression. By concentrating upon interracial sexual relations, various scholars tried to dispel the myth that slave women indulged in promiscuous and casual unions. Since then, attempts have been made to examine the meanings attached to slave women's sexuality. As the former slave Harriet Jacobs, author of *Incidents in the Life of a Slave Girl* put:

> The slave girl is reared in an atmosphere of licentiousness and fear. The lash and the foul talk of her master and his sons are her teachers. When she is fourteen or fifteen, her owner, or his sons, or the overseer, or perhaps all of them, begin to bribe her with presents. If these fail to accomplish their purpose, she is whipped or starved into submission to their will.
>
> (Harriet Jacobs, *Incidents in the Life of a Slave Girl*, *Boston:* Thayer and Eldridge, 1861, P.54).

Jacobs' account of the sexual violence endured by slave women is merely one of many. Although it is impossible to know exactly how many black women were sexually assaulted under slavery, such abuse was widespread.

Sexual abuse was among the cruel attitude of some slave masters and any other white males who disposed of power over the female slaves; those female slave had no choice other than surrendering for the masters' sexual advances, and when pregnancy occurred, this would engender the rage of a master's wife, who would in most cases manage to have the slave woman sent away from her compound. "Masters forcibly paired *good breeders* to produce strong children they could sell at a high price. Resistance brought severe punishment, often death. I know these facts will seem too awful to relate, but it is truth", said former slave William J. Anderson in his 1857 narrative, *The real dark deeds of American Slavery*.

To justify their deeds, Colonialists used various arguments to construct slave women as a deviation from the ideal white society have of the good wife. First, they argued that slave women began sex at an early age. Secondly, they mentioned that they frequently changed partners. Thirdly, they expressed the opinion that the women preferred multiple partners. Planter and historian Bryan Edwards said for instance, in 1793 that slave women "would consider it as the greatest exertion of tyranny, and the cruelest of all hardships to be compelled to confine themselves to a single connection with the other sex".(Bryan. Edwards, *The History Civil, and Commercial of the British Colonies in the West Indies,* 2 vols.).

The argument, however, that lent most support to the construction of slave women as sexually subversive was that they took readily to the prostitution of their bodies. For instance, the main character in the novel Marly was surprised at the readiness with which slave women offered themselves or even their daughters to white estate officers:

> He was incessantly importuned by the Pickeniny mothers, to take a wife, and there was not an individual among them, who had not someone of their young female friends to recommend for that purpose. Such recommendations were perpetually sounded in his ears. "Why mass Manly, not take him one wife, like older buckra? Dere is him little Daphne, would make him one good wife – dere is him young Diana - dere is him little Venus". In addition, to which much coquetry among the young damsels was displayed, and all their attractive qualities were shown for the same end.
>
> (Henry Moreton, *Marly: West India Customs,* Slave Trade Committee Report, 1862, P.65).

Many colonialists attributed slave women's deviation from the metropolitan ideal of female sexuality to their nature. Some did this indirectly by arguing, for instance, that exposure to the teachings of Nonconformist missionaries had not improved slave women's sexual behavior. Others did it more directly, like Jesse Foot, who referred to slave women's preference for multiple partners as a "natural passion", and Bryan Edwards, who thought that the women's sexual desire was nothing but a 'mere animal desire. The majority of the colonialists who did not represent slave women as naturally promiscuous attributed their lack of sexual purity to factors beyond the planters' control. The dominant image of slave women in the colonialist debate about slave women's sexuality was that of the immoral and evil temptress. They embedded this in accounts of interracial sexual relations. The short-term relations initiated by black and colored slave women to obtain material favors and of which white men were victims, were not the only interracial sexual relations. Many slave holders are in relations that were initiated by white men, had the consent of the slave women, and were relatively permanent. "The slave woman in question was usually the 'housekeeper'. Like the 'prostitute', they presented her as having an innate appetite for material, consumer goods. Most slave women desired to become a housekeeper and then the master's mistress so that they could order the manager to 'pamper and indulge' them like a 'goddess". (Henry Moreton, *Marly: West India Customs,* Slave Trade Committee Report, 1862, P. 65).

Distinguishing the violent sexual experiences of women of color from the term 'rape' illuminates the complexity of their oppression during slavery. Revealing how the law divorced women of color from the very possibility of claiming rape demonstrates not only that the state refused to protect those women from sexual violence, but also that the state refused to acknowledge its existence. The specific way that women of color were excluded from the category of people who could be raped meant both that their sexual lives were marked by extreme vulnerability and that their consent was

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fetishized in the sex trade. Sexual relationships between non-elite white men and black women were fairly frequent. However, the women of color who become the mistresses of the white men are neither rendered miserable nor degraded. It was not only bondswomen who were involved sexually with white men. Twenty-seven-year-old ship carpenter George Miller was closely associated with a free mulatto woman in whose house he died of fever in 1815, though it is not known if their relationship was casual or long term.

Discussion and Conclusion

Researches have revealed that about five of the fifteen million Blacks taken to America to be worked as slaves were women. More than their men, female slaves have had a three-fold burden: first the plantation and household hard condition labor, then the discrimination on them which was based not only on their skin color but also on their gender, and lastly, the sexual abuse their were facing from their masters. More than fifty percent of the enslaved women, from the age of fifteen, experienced sexual cases of abuse or rape. Initially, acquiring newly brought slaves from Africa was a preference of the slave masters, but with the end of the slave trade, all masters had a strong focus on their slave women's reproduction. This resulted in the sexual exploitation of enslaved women. They were forced to breed and then to perpetuate the slave exploitation to the next generation knowing that the slave child status follows that of the mother. To motivate them to do so, they were given extra allowance of food and commodities. These unhuman attitudes led to conflicts, giving the female slaves motives of resistance. Though they were severely punished equally to their male counterparts or sold away for any act of rebellion or non-submission, women resisted slavery in many different ways.

End Notes

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Técnicas Caseras De Inseminación: ¿De Las Puertas Para Adentro?

By Patricio Jesús Curti

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La resolución del caso convocante, su trasfondo argumental y el análisis correspondiente; son el disparador de un nuevo desafío, desatado ante la presencia de un vacío legal en la temática tratada.

Aunque, seguramente, las "técnicas caseras de inseminación" *(en adelante, TCI)* no sean una práctica novedosa; llegó el momento de tomar nota de su expansión y hacer "algo" en consecuencia. Mientras tanto y a sabiendas de los tiempos del derecho para brindar soluciones concretas, los operadores debemos comprender el abanico de posibilidades, delimitado por un marco legal que por lo pronto no prevé esta forma de concebir.

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Técnicas Caseras De Inseminación: ¿De Las Puertas Para Adentro?

Patricio Jesús Curti

I. Palabras Introductorias

La sociedad con un sinnúmero de demandas interpela constantemente al derecho de las familias a replantearse su esquema que -pese a las últimas reformas atravesadas- continúa teniendo una fuerte impronta tradicional y conservadora.

La resolución del caso convocante, su trasfondo argumental y el análisis correspondiente; son el disparador de un nuevo desafío, desatado ante la presencia de un vacío legal en la temática tratada.

Aunque, seguramente, las "técnicas caseras de inseminación" *(en adelante, TCI)* no sean una práctica novedosa; llegó el momento de tomar nota de su expansión y hacer "algo" en consecuencia. Mientras tanto y a sabiendas de los tiempos del derecho para brindar soluciones concretas, los operadores debemos comprender el abanico de posibilidades, delimitado por un marco legal que por lo pronto no prevé esta forma de concebir.

II. Antecedentes

Con fecha 9 de noviembre del año pasado, el Juzgado N° 19 en lo Contencioso Administrativo y Tributario de la Ciudad Autónoma de Buenos Aires hizo lugar a la medida cautelar innovativa solicitada por un matrimonio conformado por dos mujeres, a los fines de completar la inscripción registral de su hijo en términos igualitarios.

Las coactoras habían acudido a las TCI y bajo los argumentos que posteriormente se analizarán, el Juzgado interviniente resolvió -de manera provisoria y hasta tanto se dictara sentencia definitiva- ordenar al Registro del Estado Civil y Capacidad de las Personas de la Ciudad de Buenos Aires el reconocimiento del doble vinculo filial, consignando a las amparistas como madres del niño.

III. Algunas Conceptualizaciones Previas

Las TCI son aquellas que se realizan en la intimidad, sin mediación médica (en contraposición a lo que ocurre en las técnicas de reproducción médicamente asistida); siendo una especie dentro del género "inseminación artificial" y caracterizadas por la colocación del gameto masculino -esperma- en el tracto genital femenino[1].

Como se desprende de la definición, lo relevante de estas prácticas es que dejan por fuera cualquier intervención de un profesional de la medicina. Surgen, también, otras características distintivas como la posibilidad de concretarlas de manera privada y que, por lo general, son llevadas a cabo por personas que no tienen problemas en su sistema reproductivo o imposibilidad para lograr un embarazo. Incluso, en el ámbito íntimo, cualquier persona con la posibilidad biológica de hacerlo[2] (sola, en pareja o en una conformación de familias pluriparentales) pueden recurrir a esta alternativa.

Si bien se trata de una práctica poco frecuente en nuestro país, su realización es simple. De hecho, en numerosos sitios web se pueden encontrar las instrucciones y toda la información necesaria para concretarla[3].

Si bien las TCI no están prohibidas en Argentina, por sus particularidades se apartan de la regulación disponible en materia de filiación provista por las dos fuentes filiales que se hallan incluidas en el Código Civil y Comercial *(en lo sucesivo, CCyC),* generando un dilema jurídico al momento resolver cualquier cuestión sobre la que verse la práctica.

En concreto, con las variantes disponibles, existen dos posibilidades al momento de esbozar una respuesta al problema legal planteado, bajo los supuestos del caso analizado. Desde un enfoque biologicista, se podría encuadrar la situación en las reglas de la "filiación por naturaleza" con las complicaciones que se analizarán más adelante y partiendo de una premisa clave: el material genético de la cónyuge de quien ha dado a luz no tiene

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[1] Conforme al concepto extraído de la obra: HERRERA, Marisa, DE LA TORRE, Natalia y FERNANDEZ, Silvia; *"Derecho Filial: Perspectiva contemporánea de las tres fuentes filiales"*, 1era. Edición, Ciudad Autónoma de Buenos Aires, La Ley, 2018, pág. 592.

[2] Se realiza esta salvedad en miras de lo previsto por la Ley de Identidad de Género (26743), donde la vivencia interna e individual del género puede corresponder o no con el sexo asignado al momento del nacimiento. Es decir, en Argentina, por uso de esta norma, un hombre puede tener órganos sexuales del sexo femenino y viceversa.

[3] Véase, por ejemplo, en línea: https://www. reproduccionasistida. org/ inseminacion-artificial-casera/ (compulsa realizada el 21/4/19).

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correspondencia con el perteneciente al niño que ha nacido. Como segunda opción, al intentar resolver el conflicto jurídico con las directrices que trae la regulación de la "filiación por técnicas de reproducción humana asistida" *(seguidamente, filiación por TRHRA)* y no existiendo un consentimiento previo, libre e informado; tampoco se las puede abordar con las previsiones que el CCyC estableció para este tipo filial.

De este modo, quedan planteados varios interrogantes con respecto a las TCI. Entre otros: *¿Se resuelven aplicando las reglas de la filiación por TRHA, por naturaleza o ninguna de las dos? Al ser realizadas con semen de un tercero, ¿se asimilan a las realizadas con muestras adquiridas en un banco de gametos acreditado?*

IV. La Coyuntura

Para tratar de responder algunos de los interrogantes planteados anteriormente, habrá que realizar un análisis del caso resuelto, identificando las circunstancias y, principalmente, los tres ejes centrales sobre los que se argumentó la petición. Veamos:

- *Interés superior y derecho a la identidad del niño nacido.* Haciendo hincapié en los que resultan ser dos criterios claves para dirimir controversias en asuntos de filiación, la pareja adujo: *"la interpretación integral, dinámica y progresiva de la legislación vigente, teniendo en cuenta las innovaciones generadas por el nuevo CCyCN, que alcanzaron a todas las instituciones del derecho de familia y la ley 26.061 resulta muy claro que debe reconocerse y garantizarse nuestra comaternidad primando el interés superior del niño y el derecho a su identidad"*. Además, se destacó que *"la ausencia de normativa nacional torna evidente una restricción al derecho no sólo de los progenitores, en su proyecto de familia, sino en especial del niño que no puede ejercer en plenitud su derecho a la identidad"*.

Al estar involucrados niñas o niños, el principio del interés superior es el que termina siendo rector y definitorio ante determinados vacíos legales, apelando al triple concepto que ha ofrecido oportunamente la Corte Interamericana de Derechos Humanos[4]: como un derecho sustantivo, un principio jurídico interpretativo fundamental y una norma de procedimiento. En definitiva, ante la inexistencia de una respuesta jurídica y la situación concreta, este principio termina brindando seguridad jurídica al hecho consumado, más allá de las previsiones o imprevisiones de la ley; recurriendo a normas supralegales y de conformidad con las directrices del artículo 2 del CCyC.

Sobre la identidad, en extrema vinculación con el principio rector descripto y como un derecho humano fundamental, hay que recordar que está compuesta por distintos elementos y se subdivide en dos fases. Por una parte, están aquéllos que permanecen estables a lo largo de la vida del sujeto (composición genética, sexo, y nombre; conformando lo que se conoce como "identidad estática"). Por la otra, los que son variables y cambian constantemente (relaciones familiares, por ejemplo, constituyendo la "identidad dinámica")[5].

Además, este derecho se determina por tres elementos: genético, biológico y voluntario. Si se encara el tema de las TIC con las reglas de la filiación por naturaleza, lo que va a definir la identidad del niño y su vínculo jurídico, es el elemento genético. En cambio, desde las disposiciones de la filiación por TRHA, lo determinante será lo volitivo, enmarcado en la voluntad procreacional.

Siguiendo la línea argumental de las amparistas; *¿es posible afirmar genéricamente que convalidar esta práctica sin sustento legal es lo que mejor respeta la identidad del niño?* Al correrse de las reglas de la filiación por TRHA, también podría verse vulnerado este derecho fundamental. Recordemos que, justamente uno de los pilares de la regulación está vinculado con el resguardo del derecho a la información relativa a que la persona ha nacido por el uso de técnicas, el acceso a los datos médicos del donante y a la identidad de éste -por razones debidamente fundadas- (artículos 563 y 564 del CCyC).

- *Voluntad procreacional*. Es otra cuestión no menor, que se vincula con el argumento anterior y altamente considerada por la magistrada al momento de resolver, destacando: *"su donante de gametos nunca tuvo voluntad procreacional alguna, y que si bien no resultarían aplicables a ellas los recaudos exigidos por el CCyCN para las técnicas de reproducción humana asistida -ya que no recurrieron a un centro de salud-, han expresado su voluntad procreacional al momento de engendrar a J. con carácter de declaración jurada firmada ante autoridad notarial"*.

En este sentido, hay que repasar algunas ideas. Lo volitivo en la filiación juega un papel trascendental y desde el campo jurídico, es el elemento relevante para la determinación de la filiación en el campo de las técnicas de reproducción humana asistida.

Como se aprecia en el caso analizado, aunque el derecho familiar se caracterice por contener varias normas imperativas, en esta materia se pueden

[4] Comité de los Derechos del Niño (ONU), Observación general Nº 14 (2013) sobre el derecho del niño a que su interés superior sea una consideración primordial (artículo 3, párrafo 1), 29/5/2013, párrafo 6.

[5] Conf. a los lineamientos de: FERNÁNDEZ SESSAREGO, Carlos; *"Daño a la identidad personal"*, en *Libro de ponencias del Congreso internacional: "La persona y el derecho en el fin de siglo"*. Santa Fe. 1996.

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considerar sensiblemente disminuidas, por una creciente intervención de la voluntad de los sujetos en la relación que generada.

Siguiendo con esta línea de análisis, la importancia que alguna vez se le atribuyó a la verdad biológica ya no es tal y como se ha dicho con respecto a la paternidad: *"no puede circunscribirse en la búsqueda de una precisa información biológica; más que eso, exige una concreta relación paterno-filial, padre e hijo que se tratan como tal, de donde emerge la verdad socioafectiva"*[6].

Bajo estos supuestos, la filiación ya no transcurre por un determinismo biológico. Se tornó una construcción afectiva. La paternidad no es sólo un acto físico, sino, principalmente, un hecho de opción, sobrepasando los aspectos meramente biológicos, o resumidamente biológicos, para adentrar con fuerza y vehemencia en el área afectiva[7]. Tal como expresa Lamm, *"como consecuencia de la aparición de las TRHA, se está ante nuevas realidades que importan una 'desbiologización de la paternidad', y en cuya virtud el concepto de filiación ganó nuevos contornos en sede doctrinaria y jurisprudencial"*[8].

El decisorio en cuestión, acertadamente valora la ausencia de la voluntad procreacional por parte de quien aportó el gameto masculino. Aunque cabe resaltar que, el uso de las TIC se aparta de las previsiones vinculadas con la instrumentalización de la voluntad procreacional, inobservando las formas del consentimiento previo, informado y libre de las personas intervinientes; previstas por el artículo 560 del CCyC. Por su parte, el artículo 561 advierte que la instrumentación debe contener los requisitos previstos en las disposiciones especiales, para su posterior protocolización ante escribano público o certificación ante la autoridad sanitaria. Tajante es el artículo 562, al decir que *"Los nacidos por las técnicas de reproducción humana asistida son hijos de quien dio a luz y del hombre o de la mujer que también ha prestado su consentimiento previo, informado y libre en los términos de los artículos 560 y 561, debidamente inscripto en el Registro del Estado Civil y Capacidad de las Personas, con independencia de quién haya aportado los gametos".*

Basándose en las previsiones descriptas anteriormente, el Asesor Legal de la Dirección General del Registro del Estado Civil y Capacidad de Personas, al momento de dictaminar refirió que *"no se ha exteriorizado la voluntad procreacional a través del correspondiente consentimiento previo, informado y libre. La propuesta de la manifestación ante Oficial Público del registro de la voluntad en cuestión, no puede suplir la omisión legal que otorga al instituto el emplazamiento en estado de familia. En atención a ello y no dándose en caso que nos ocupa los supuestos necesarios para determinar en esta instancia administrativa la existencia de la filiación que se pretende incorporar, correspondería denegar la solicitud en examen".*

De la lectura del fallo y por la estrategia utilizada, se vislumbra una clara inclinación al abordaje de las TCI en el marco de la filiación por TRHA. Posiblemente, en miras de que la decisión final alcance también a otras formas familiares por fuera del matrimonio (personas solas, parejas "no casadas" o conformaciones pluriparentales). Por el alcance intentado se utilizan ciertos matices de este tipo filiatorio (por ejemplo, la utilización de la declaración jurada de las partes intervinientes ante autoridad notarial) con evidentes inconsistencias. Frente a estas fragilidades jurídicas observadas, debe quedar en claro algo fundamental: *"el donante no es donante sino padre, siendo posible entablar acciones de reclamación de estado de impugnación y, al mismo tiempo, en caso de mujeres sin pareja, está latente la posibilidad de que el donante reconozca al niñx ante el Registro Civil"*[9].

Como hemos visto, los límites a la autonomía personal en cuestiones filiales ya están determinados por las variables que propone el CCyC. Entonces, resta cuestionarse: *¿por qué se acude a las TIC, eludiendo normas instauradas que dan un marco jurídico sólido a la voluntad procreacional?* La posible respuesta es totalmente atendible. Se basa en el argumento utilizado por quienes defienden a las TIC, destacando como una ventaja principal, la preservación del ámbito íntimo al momento de concretarlas. En este orden de ideas, es válida la motivación de las usuarias que optan por este tipo de prácticas en los términos que ha resaltado la doctrina: *"Las que más han recurrido a la forma casera son lesbianas que sienten que recuperan parte del control sobre el proceso y sobre sus cuerpos que sería enajenado al hacerlo con intervención médica o que quieren evitar o minimizar las interacciones con el sistema médico debido a los malos tratos motivados por lesbofobia que siguen siendo frecuentes"* [10].

[6] CHAVES DE FARIAS, C. y ROSENVALD, N. en "Direito das Famílias", Lumen Juris, Río de Janeiro, 2008, pág. 517.

[7] DELENSKI, J. C. O, "O Novo direito da filiação", Sao Paulo, Dialetica, 1997.

[8] LAMM, Eleonora; "*La autonomía de la voluntad en las nuevas formas de reproducción. La maternidad subrogada. La importancia de la voluntad como criterio decisivo de la filiación y la necesidad de su regulación legal*", en Derecho de Familia. Revista Interdisciplinaria de Doctrina y Jursiprudencia Nro. 50. Editorial Abeledo-Perrot, pág. 49.

[9] HERRERA, Marisa, DE LA TORRE, Natalia y FERNANDEZ, Silvia; ob. cit., pág. 606.

[10] PERALTA, María Luisa; *"LxsNiñxs en las Familias Gltb: un panorama de la situación actual"*, en Revista Niños, Menores e Infancias, n° 10, Instituto de Derechos del Niño, Facultad de Ciencias Jurídicas y Sociales, Universidad Nacional de la Pampa, diciembre de 2015, disponible en: http://sedici.unlp.edu.ar/bitstream/handle/10915/

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- *Igualdad y no discriminación.* Con relación a este principio constitucional-convencional, indicaron las interesadas: *"el Estado debe proteger y promover la formación y reconocimiento de todos los tipos de familias sin discriminar ni privilegiar unos modelos por sobre otros, y por lo tanto, no puede negar a las familias que recurren a las técnicas de reproducción asistida de forma privada, el derecho al reconocimiento de su realidad familiar".* Se expresaron con respecto a la discriminación que sufrirían las parejas del mismo sexo *"que recurren a estas técnicas en cuanto se les exige su consentimiento previo, libre e informado, mientras que cualquier padre que se presenta en el Registro Civil para ´reconocer´ a su hijo -simplemente expresando que es el padre- consigue dicha inscripción".*

Hay que decir que estas afirmaciones no tienen suficiente asidero. En primer lugar, el "reconocimiento" se trata de un acto jurídico basado en el elemento biológico de la filiación, válido para parejas heterosexuales y reservado únicamente a la filiación por naturaleza. A su vez, el CCyC para los reconocimientos donde no haya correspondencia genética entre las partes involucradas, prevé la acción de impugnación correspondiente. En segundo término, las TIC no están reguladas ni reservadas para ningún tipo de forma familiar. Por eso, no puede aseverarse que el Estado esté discriminando o privilegiando un modelo de familia por sobre otros.

Asimismo, se invoca a la Resolución N° 38/GCBA/2012 del Gobierno de la Ciudad de Buenos Aires que establece, en sus artículos 1 y 2, que el Registro Civil debe inscribir a niñas o niños, cuyos progenitores resulten ser del mismo sexo, respetando la Ley 26618, equiparando las partidas y dejando constancia que el solicitante no biológico procede en los términos del artículo 42 de dicha ley (norma que expresamente dispone que todas las referencias a la institución del matrimonio del ordenamiento jurídico se entienden aplicables a los constituidos por personas del mismo o de diferente sexo, reconociéndoles iguales derechos y obligaciones y sin que las reglas previstas en el ordenamiento jurídico puedan ser interpretadas o aplicadas en el sentido de limitar, excluir o suprimir el ejercicio o goce de los mismos derechos y obligaciones en cualquiera de los casos de matrimonio).

A su vez, el CCyC, en miras del principio abordado en este apartado, regula la presunción de filiación matrimonial, expresando en su artículo 566*: "Excepto prueba en contrario, se presumen hijos del o la cónyuge los nacidos después de la celebración del matrimonio.... La presunción no rige en los supuestos de técnicas de reproducción humana asistida si el o la cónyuge no prestó el correspondiente consentimiento previo, informado y libre…".* Por último, el artículo 569 determina que: *"La filiación matrimonial queda determinada legalmente y se prueba: (…) c) en los supuestos de técnicas de reproducción humana asistida, por el consentimiento previo, informado y libre debidamente inscripto en el Registro del Estado Civil y Capacidad de las Personas".*

También, la Ley 26618 modificó el inciso c) del artículo 36 de la ley 26413 del Registro del Estado Civil y Capacidad de las Personas y actualmente establece que *"la inscripción deberá contener: c) el nombre y apellido del padre y de la madre o, en el caso de hijos de matrimonios entre personas del mismo sexo, el nombre y apellido de la madre y su cónyuge, y tipo y número de los respectivos documentos de identidad".*

Como si fuera poco y bajo estos mismos lineamientos, el artículo 402 del CCyC fijó una cláusula genérica por la cual se exige reconocer a los matrimonios igualitarios los mismos derechos y obligaciones que tienen los matrimonios de personas de distinto sexo.

En definitiva, por las razones señaladas e independientemente de los riegos que se mencionarán a la brevedad, no hay motivo para que sea desconocida la comaternidad en el caso de matrimonios conformados por mujeres.

V. La Respuesta Judicial

En cuanto al pedido individual por parte de las coactoras, derivado en una respuesta concreta e inmediata; vale preguntarse: *¿cuál otra podría haber sido la respuesta del Poder Judicial ante la realidad?* Sin reglas claras, al momento de definir la inscripción de la comaternidad, se torna abstracto barajar cualquier análisis respecto a las variables y los antecedentes del caso. Sin importar las condiciones en las que se produjo la práctica, en miras de las pruebas aportadas y el interés superior del niño, la solución judicial no podía dejar de brindar un resguardo legal a esa familia y particularmente, a ese niño. Definitivamente, fue la decisión acertada ante el escenario planteado.

Habrá que detenerse en la respuesta final esperada que invoca la existencia de una "causa colectiva", vinculada con que se ordene al Gobierno de la Ciudad Autónoma de Buenos Aires y al Registro Civil de esa jurisdicción que proceda a inscribir a los niños y niñas nacidos por técnicas de reproducción humana asistida realizada de manera privada (casera), conforme la voluntad procreacional expresa por los progenitores, declarando la inaplicabilidad del Capítulo 2, del Título V del CCyC, referido a las reglas generales de la filiación por TRHA con la intervención de un centro de salud.

¿Podemos estimar apriorísticamente que en todos los casos -como el que llegó al órgano judicial- se estaría restringiendo el derecho de los progenitores

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(proyecto familiar) y del niño o niña que no puede ejercer en plenitud su derecho a la identidad? Por el estudio de los argumentos esgrimidos (a los que habrá que remitirse) es de minina "apresurado" pensar que la falta de reconocimiento de las TIC por parte del Registro Civil porteño vulneraría en términos colectivos el derecho de los adultos, el interés superior y la identidad de niñas y niños.

También, podría barajarse la posibilidad de que el caso no habría trascendido judicialmente si las peticionantes, acudiendo a la presunción matrimonial del artículo 566 del CCyC, hubiesen concurrido al Registro Civil solicitando simplemente su aplicación. Es decir, utilizando las reglas de la filiación por naturaleza y valiéndose del derecho de los hijos a tener reconocido el doble vinculo filial.

No obstante, aunque se aplique la presunción referida y por la ausencia de un consentimiento previo, informado y libre; ese vínculo está sujeto a la posibilidad de que se plantee futuramente una acción de impugnación de la filiación matrimonial, por la falta de vinculo genético entre la cónyuge de la madre y el niño. No puede descartarse que la persona que "donó" su gameto masculino pretenda en algún momento tener vinculo filial con el niño, interponiendo la acción de impugnación de la filiación presumida por la ley y valiéndose en el artículo 590 del CCyC, donde estaría legitimado dentro de la fórmula: *"cualquier tercero que invoque interés legítimo"*. Como si esto fuera poco, la legitimación activa se extiende a la cónyuge, la madre que dio a luz (por derecho propio o en representación del niño o niña) y al hijo o hija.

VI. Palabras Finales

Así están dadas las circunstancias. No hay ninguna certeza jurídica para quienes terminen involucrados en las TIC. Tan solo se vislumbra una desprotección legal absoluta.

El tema se ha instalado a nivel nacional y no resulta ajeno a lo que ocurre en otras partes del globo terráqueo.

Pensar que esta práctica se extinguirá es absurdo. Silenciarla, no es una alternativa. Por el contrario, la visibilización es el primer paso que conducirá a una regulación especial con las respuestas necesarias.

Mientras tanto, ponderando los pros y los contras del uso de las TIC, conviene desalentar su uso. Tengamos presente que la mejor vía -conforme a la legislación vigente- para canalizar los derechos humanos que subyacen a formar una familia, la autonomía personal, la reproducción, la identidad y el interés superior del niño; es la filiación por TRHA. Recurrir a las reglas que propone este tipo filial, en contraposición a solicitar la donación de un amigo, conocido o cualquier otro tercero que brinde su semen en forma directa; permite a las usuarias liberarse de cualquier reclamo legal futuro respecto de la filiación del niño o niña que haya nacido.

Entonces, ante el panorama analizado: ¿qué tan caseras, privadas e íntimas terminarían siendo estas técnicas de inseminación?

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Women Empowerment in India: Concept and Role of Law

By Dr. Akashdeep Singh

Abstract- During the early Vedic period Indian women enjoyed equal status with men in all field of life. They enjoyed freedom in selecting their life partners. They had the right to get education. Remarriage of widows were permitted. Men did not have the right to divorce their wives. They were given the complete freedom in all aspect of family matters. There was no pardha system in hindu society. However their position got deteriorated during Mughal rule in India as they had not been paid sufficient attention which they deserved. Thereafter, the status of women in the beginning of the British rule reached at the worst level. However in mid nineteenth century some socio-religious reforms movements started by Raja Ram Mohan Rai, Swami Dayanand, and Swamy Vivekanand. Due to their efforts the position and status of women started improving in some instances. Thus, when the Constitution of India was being framed the constitution makers took inspiration from these eminent personalities and expressly provided special provisions in the var ious parts of the constitution which provides equality for women in all aspects of their life. This paper depicts the issues and challenges in empowering the women and suggests some ways of empowering women. This paper also highlights the role of law in empowering women.

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Women Empowerment in India: Concept and Role of Law

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Abstract- During the early Vedic period Indian women enjoyed equal status with men in all field of life. They enjoyed freedom in selecting their life partners. They had the right to get education. Remarriage of widows were permitted. Men did not have the right to divorce their wives. They were given the complete freedom in all aspect of family matters. There was no *pardha* system in hindu society. However their position got deteriorated during Mughal rule in India as they had not been paid sufficient attention which they deserved. Thereafter, the status of women in the beginning of the British rule reached at the worst level. However in mid nineteenth century some socio-religious reforms movements started by Raja Ram Mohan Rai, Swami Dayanand, and Swamy Vivekanand. Due to their efforts the position and status of women started improving in some instances. Thus, when the Constitution of India was being framed the constitution makers took inspiration from these eminent personalities and expressly provided special provisions in the various parts of the constitution which provides equality for women in all aspects of their life. This paper depicts the issues and challenges in empowering the women and suggests some ways of empowering women. This paper also highlights the role of law in empowering women.

I. Introduction

Since time immemorial, the women in our country have not only been given an equal status but have been treated superior to men. Since ancient times anything that could nurture human life was worshipped as a female identity, i.e., the nature as Prakriti Devi, the earth as Prithvi Devi, the forests as Van Devi and so on. The changing times have affected the status of women from being worshipped to being treated as second class citizens and grossly exploited.[1]

During the medieval period women took the forefront in arts literature, and music. Women were also rulers in the medieval period. Some of the great women rulers were Razia Sultan, the only women ruler to reign over the throne of Delhi. The Gond Queen, Durgavati ruled for fifteen years, before she lost the battle to Mughal Emperor Akbar's general Asaf Ali. At the same time the condition of women began to deteriorate in the medieval era because during this time child-marriage, sati, female infanticide came into existence and began to be practiced on a large scale. "Jauhar" was commonly practiced song among rajput women. It was the practice of the voluntary immolation of all the wives and daughters of defeated warriors, in order to avoid capture and consequent molestation by the enemy. Polygamy was become practice by most Hindu Kshatriyas. It is the practice wherein a husband could marry more than once.[2]

The Hindu religion considered the birth of sons extremely important for the family, since it was believed that only sons could fulfil the obligations to their ancestors who had died and save them from suffering a spell in hell. The daughter could not perform these rites and was therefore considered as inferior to the son. All these issues gradually led to the neglect of the female child who is often relegated to the background even in the present day Indian society.[3]

Guru Nanak Dev ji did a lot to ensure that women were respected and not treated inferior to men. He said that from a woman, man is born; within a woman, a man is conceived; to a woman he is married; through women come the future generations; to a woman he is bound. Without a woman there will be none at all.[4]

The Traditional status of a man and woman was that of the husband as the provider and protector of the wife, family and its members. The wife's first duty, therefore, was to submit herself to the authority of her husband and to remain under his roof and protection. This mindset or philosophy was prevalent worldwide. The earlier judicial pronouncements explain it very clearly as in 1909 the House of Lords expressly held that the women did not fall within the meaning of the term 'person'. Just after two years after the famous case of *Bradwell vs. Illinois*[5] the U.S. Supreme Court admitted that women are persons and citizens but they have no right to vote. In India the Calcutta High Court, in *Re Regina Guha*[6] and the Patna High Court, in *Re Sudhansu Bala Hazra*[7] rejected the applications of

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[1] Dr. Yedla Prabhakar, "Women Empowerment In India Through r Property Rights : A Socio Legal Study", *International Research Journal of Human Resources and Social Sciences*, Volume 4, Issue 7, July 2017, p. 557.

[2] Dr. Radhika Kapur, "Status of Women in Pre-Independence India", Available at https://www.researchgate.net/publication/330221015_Status_of_Women_in_Pre-Independence_India/citation/download

[3] Sutapa Saryal, "Women's Right in India: Problems and Prospects", International Research Journal of Social Science, Volume 3, Issue 7, July 2014, p. 50.

[4] Guru Nanak, *Shri Guru Granth Sahib*, Raag Aasaa Mehal 1, Ang 473,

[5] (1873) 83 U.S 130(Wall.)

[6] AIR 1992 Cal 161

[7] AIR 1922 Pat 269

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women for enrolment under the Legal Practitioners Act. The full benches of these courts held that the women were not included in the term 'person'. This went to show that women in earlier times were not even treated as human beings.

This problem is not just endemic to India but in every society in the world, women have been ill-treated in some way or another. The irony lies especially in fact that in our country where women are worshipped as Shakti[8], the maximum number of atrocities are committed against her in all areas of life. Women are considered as an object of male sexual enjoyment and reproduction of children. They suffer due to two main reasons- firstly, due to gender and secondly, due to abject poverty. Every day, in every country in the world, women are confronted by discrimination and inequality. They face violence, abuse and unequal treatment at home, at work and their communities and are denied opportunities to learn, to earn and to lead. When we speak of poverty, it is important to mention that even though everyone in the society is affected by abject poverty, women are the worst affected. Gender inequality is a key driver of poverty and the main reason that women are denied of their basic rights.

The root cause of all the ill treatment is as follows-[9]

(i) Illiteracy,
(ii) Economic dependence
(iii) Caste restrictions,
(iv) Religious prohibition,
(v) Lack of leadership qualities and
(vi) Apathetic and callous attitude of males in the society.

Socialisation refers to the process whereby an individual becomes a functioning, active member of the society. Families are the first agents of socialisation. In our society girls are socialised from their tender age to be dependent on males. Their families and others around them teach young girls that their place in within the four walls of the house and to take care of family and children. In her childhood she dependent on and protected by her father and after she gets married, she is supposed to be protected by her husband and in old age at the mercy of her sons.[10]

II. Meaning of "Empowerment"

According to the Cambridge Dictionary, by definition, the term "empowerment" refers to the process of gaining freedom and power to do what you want or to control what happens to you[11]. Popular meaning of the term women empowerment is enjoyment of certain rights by women, but generally signifies a little more than feeling better and powerful. Empowerment is essentially a transmission from a position of enforced powerlessness to one of power. It promotes women's inherent strength and positive self image. It should not be misunderstood that to empower women we have to give more powers to women to dominate others, to abuse others, to exploit men or to establish any sort of superiority over men. Women empowerment in the family is the empowerment of men and women both. The partnership between men and women is absolutely essential for creating violence free families, which would empower women.[12]

III. Women Empowerment- Need of the Hour

Due to the atrocities inflicted on women everywhere, women empowerment was needed more than ever. Almost every country, no matter how progressive and developed, has a history of ill-treating women. While the western countries are still making progress, third world countries still have a great deal of work to do to establish equality.

In India, women empowerment is the need of the hour. India has made it on the list of the least safe countries for women. Honour killings, rapes, violence, molestation etc serve as major reasons. Families think it is their right to take women's lives if they bring "shame" or "disrepute" to them. The education and freedom scenario in the country also leaves a lot to be desired from. Women are not allowed to pursue higher education, they are married off early. The men are still dominating women in many spheres of life. In addition to the multitude of problems, domestic violence also serves as a major issue in India. The men beat up their wife and abuse them as they think women are their property and women are afraid to speak up. Similarly, the women who do actually work get paid less than their male counterparts. It is downright unfair and sexist to pay someone less for the same work because of their gender. Thus, we see how women empowerment is the need of the hour. We need to empower these women to speak up for themselves and not be victims of injustice.[13]

a) Statistics

The status of women in India particularly in rural areas needs to address the issue of empowering women. About 66% of the female population in rural area is un-utilized. This is mainly due to existing social customs and norms. In the agriculture sector and animal

[8] https://feminisminindia.com/2018/07/10/women-in-early-india-status/
[9] https://en.wikipedia.org/wiki/Women_in_positions_of_power
[10] Dr.E.Raju. "Gender Discrimination in India", *IOSR Journal of Economics and Finance*, Volume 2, Issue 5, Jan. 2014, pp. 60-62.
[11] www.dictionary.cambridge.org
[12] Hajira Kumar, *Women's Empowerment Issues, Challenges, and Strategies: A Source Book*, Regency Publication New Delhi, 2005, pp. 54, 55.
[13] *Rahman, Aminur,* "Women's Empowerment: Concept and Beyond", *Global Journal of Human Social Science Sociology & Culture, Volume 13 Issue 6, 2013, pp. 9,10.*

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care, women contribute 90% of the total workforce. Women constitute almost half of the population, perform nearly 2/3 of its work hours, receive 1/10th of the world's income and own less than 1/ 100th the world property. Among the world's 900 million illiterate people, women outnumber men two to one. 70% of people living in poverty are women. Lower sex ratio i.e. 933, the existing studies show that the women are relatively less healthy than men though belong to same class. According to 2013, UNDP report on Human Development Indicators, all south Asian Countries except Afghanistan, were ranked better for women than India It predicts: an Indian girl child aged 1-5 years is 75% more likely to die than the boy child.[14] A woman is raped once in every 20 min and 10% of all crimes are reported. Women make up less than 24% of the world's parliamentarians and 5% of its mayors. On average, women are paid 24% less than men for the same work, across all regions and sectors. Nearly two thirds of the world's 781 million illiterate adults are women. 153 countries have laws which discriminate against women economically, including 18 countries where husbands can legally prevent their wives from working. Worldwide, 1 in 3 women and girls will experience violence or abuse in their lifetime.

In 2012, women occupied only 8 out of 74 ministerial positions in the union council of ministers. There were only 2 women judges out of 26 judges in the Supreme Court and there were only 54 women judges out of 634 judges in various high courts.[15] The statistics mentioned leave a lot to be desired from and are a clear indicator that a lot of work needs to be done to eradicate inequality, uplift women and put them on equal footing with men in the society.

b) Various ways to empower Women

Women empowerment is considered the need of the hour. There are various ways in which the ultimate goal of women empowerment can be achieved. Women should be given equal opportunities in every field, irrespective of gender and also be given equal pay for equal work. The most important is emphasising on and providing education to girls and women. Illiteracy is the main reason of women suffering. Providing education can help as a step towards women empowerment. Various programs and skill development training camps can be held where they can be taught skills to fend for themselves in case they face financial crisis and more than that to become independent and stand on their own feet.[16]

Divorce needs to be de-stigmatised in society and women should not be looked down upon for wanting to end their marriage. There needs to be a tide of change in the mind set of the people in the country and societies. Women need to be looked at as more than just child bearers and home-makers. There also needs to be proper implementation of government schemes and programmes. Another extremely important step is providing proper health opportunities and safety. Empowerment of Women could only be achieved if their economic and social status is improved. This could be possible only by adopting definite social and economic policies with a view of total development of women and to make them realise that they have the potential to be strong human beings. Awareness programmes need to be organised for creating awareness among women especially belonging to weaker sections about their rights. Women should be allowed to work and should be provided enough safety and support to work.[17]

c) Challenges

There are several challenges to the process of women empowerment. Improper socialisation of young girls also acts as a major deterrent towards empowerment. The continuing preference for a son over the birth of a girl child in almost all societies and communities adds to the list. There is an increasing inequality with respect to education, nutrition and other opportunities. The root cause of this type of attitude lies in the fact that male child is the heir in India with an exception of Meghalaya. Poverty is a reality of life for a large number of women in India. It is another factor that poses challenge in realising women's empowerment. Targeting these issues will help in eradicating inequality and setting up equal status for women.

Some challenges are listed below-[18]

Education: While our country has grown from leaps and bounds since independence as far as education is concerned, the gap between women and men is extremely large. While 82.14% of adult men are educated, only 65.46% of adult women are known to be literate in India. This goes to show that many women are deprived of basic educational facilities and opportunities and they suffer because of it. The gender bias is in higher education and specialised professional training.[19]

[14] UNDP Report 2013, issued by the United Nations Organisation. Available at http://hdr.undp.org/sites/default/files/reports/14/hdr2013_en_complete.pdf

[15] Crimes in India Report 2013. Available at http://www.nisc.gov.in/PDF/NCRB-2013.pdf

[16] Sunita Kishor, Kamla Gupta, "Gender Equality and Women's Empowerment in India". Available at https://dhsprogram.com/pubs/pdf/OD57/OD57.pdf

[17] Endalcachew Bayeh, "The role of empowering women and achieving gender equality to the sustainable development of Ethiopia", *Pacific Science Review B: Humanities and Social Sciences*, Volume 2, 2016, pp 39, 40.

[18] Lalit Mohan Choudhary, "Women Empowerment in India: Issues and Challenges", *IOSR Journal of Humanities And Social Science,* Volume 21, Issue 10, 2016, p. 55

[19] Manju Hooda, Anjali Hooda, "Women Empowerment in India", *Imperial Journal of Interdisciplinary Research (IJIR)*, Volume 3, Issue 5, 2017, p. 895.

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Poverty: Poverty is considered the greatest deterrent to peace in the world and also an even greater hindrance in the way of women empowerment. It is important to set up eradication of poverty as a national goal because even though it is something that affects society at large, women suffer the most.

Health and Safety: The health and safety concerns of women are paramount for the wellbeing of a country and are an important factor in empowering the women in a country. However there are many concerns as far as maternal healthcare is concerned.[20]

Professional Inequality: This type of inequality is practiced in the employment sector and promotional opportunities. Women face countless types of discriminations in male dominated environment of work in Government Offices and Private enterprises. They are also denied the opportunities to hold important positions and do not get proper promotions according to their potential.

Mortality and Inequality: Due to gender bias in health and nutrition there is an extremely high mortality rate and a reduction in the population of women especially in Asia, Africa and China.

Domestic Inequality: Domestic relations show gender bias in infinites small but significant manners all across the globe, more so, in India e.g. sharing burden of housework, childcare and menial works by so called division of labour.[21]

d) Role of Law

Law plays an indispensable role in promoting women empowerment in societies across the world. It can be defined as a system of rules and regulations which a particular country, community or society recognises and can be enforced in a court of law.

The patriarchal system which is prevalent in India makes women to live at the mercy of men, who exercise unlimited power over them. In order to uplift women in India and improve their condition, the Legislature enacted multiple enactments. This process of making laws to empower women started in the colonial era when we were under the British rule. Which are as follows:

1. 1829, Abolition of Sati;
2. 1856 Widow Remarriage
3. 1870 Female infanticide banned;
4. 1891 age of consent raised to 12 years for girls;
5. 1921 women get rights to vote in Madras province:
6. 1937 women get special rights to property;
7. 1956 Suppression of Immoral Traffic in Women and Girls Act
8. 1961 Dowry Prohibition Act
9. 1986 The Indecent Representation of Women (Prohibition) Act

Apart from these above mentioned laws there are some enactments pertaining to industry which contain special provisions for women such as:

(i) The Workmen Compensation Act, 1921
(ii) Payment of Wages Act, 1936
(iii) Maternity Benefit Act, 1961
(iv) Minimum Wages Act, 1948

In addition to these Acts, the Constitution of India also gives special protection to women in the form of these following privileges;[22]

(i) Article 14 expresses that the State shall not deny to any person the equality before the law and equal protection of laws with in the territory of India.
(ii) Article 15(1) prohibits the State to discriminate against any citizen on the grounds only of religion, race, caste, sex, place of birth pr any of them.
(iii) Article 15(3) permits the State to make special provisions for women and children.
(iv) Article 16 provides that there shall be equality of opportunity for all citizens and they shall not be discriminated on the basis of religion, race, caste and sex.

Article 39 (a) of the Constitution provides that the state in particular direct its policy towards securing that citizen, men and women equally, have the right to an adequate means of livelihood. Article 39 (e) of the Constitution provides that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.[23] Article 51(A)(e) of the Constitution provides that it will be the duty of every citizen to renounce practices derogatory to the dignity of women.[24]

Due to the fact that in earlier times women were not allowed to make decisions for themselves, women empowerment and these laws came like a breath of fresh air. It made women aware of their rights and independent. These laws challenged patriarchy and shook it to its roots. They also acted as tool to empower women and ensure that they could make their own independent places in society and carve out a path for themselves instead of depending on their male counterparts.

[20] Rajeshwari M. Shettar, "A Study on Issues and Challenges of Women Empowerment in India", *IOSR Journal of Business and Management*, Volume 17, Issue 4, 2015, p. 17

[21] Manju Hooda, Anjali Hooda, "Women Empowerment in India", *Imperial Journal of Interdisciplinary Research (IJIR)*, Volume 3, Issue 5, 2017, p. 896.

[22] Constitution of India, Bare act.
[23] Article 39 Constitution of India.
[24] Article 51(A) (e) Constitution of India.

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IV. Conclusion

Women represent half the world's population and gender inequality exists in every country across the world because of which women do not feel empowered to stand up for themselves. Unless women are given the same opportunities that men are, they will underperform and will not be able to achieve their maximum potential. The greatest need of the hour is change of social attitude towards women. Women empowerment will be real and effective only when women are given equal rights and can stand on their own two feet. The Empowerment of Women has become the most important concern of 21st century not only at national level but also at the international level. Societies must do their own bit to ensure equal participation and upliftment of women.

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Un Fallo Del TEDH Que Denota Su Postura Acerca De La Gestación Por Sustitución: La Tarea De Enfrentar Los Conflictos Que Plantea Una Práctica "Sin Sustento Legal", Priorizando Sus Efectos

By Patricio J. Curti

Palabras Introductorias- Desde una perspectiva realista se posiciona el Tribunal Europeo de Derechos Humanos *(en lo sucesivo TEDH)* encauzando el debate que se viene dando en la región en torno a la "gestación por sustitución"[1] y tomando una postura determinada con respecto al tema.

Seguramente la tarea ha sido dificultosa, ya que este pronunciamiento implicó romper con algunos esquemas "clásicos" acerca de la filiación, cuyo debate se presenta en varios puntos del mundo -inclusive en nuestro país[2]-.

De esta forma, el Tribunal puso fin a un conflicto jurídico -con cuestiones éticas y morales de fondo- de gran complejidad, abordándolo sin abstracciones y posibilitando el asentamiento de las bases para futuras aperturas normativas.

Así, el 26 de junio de 2014 el TEDH ha dictado su sentencia, declarando en los asuntos 65192/11 (Mennesson c/ Francia) y 65941/11 (Labassee c/Francia) la violación del art.

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Un Fallo Del TEDH Que Denota Su Postura Acerca De La Gestación Por Sustitución: La Tarea De Enfrentar Los Conflictos Que Plantea Una Práctica "Sin Sustento Legal", Priorizando Sus Efectos

Patricio J. Curti

Fallo comentado: Tribunal Europeo de Derechos Humanos, Caso "Affaire Mennesson c. France", 26 de junio de 2014.

I. Palabras Introductorias

Desde una perspectiva realista se posiciona el Tribunal Europeo de Derechos Humanos *(en lo sucesivo TEDH)* encauzando el debate que se viene dando en la región en torno a la "gestación por sustitución" [1] y tomando una postura determinada con respecto al tema.

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Así, el 26 de junio de 2014 el TEDH ha dictado su sentencia, declarando en los asuntos 65192/11 (Mennesson c/ Francia) y 65941/11 (Labassee c/Francia) la violación del art. 8 del Convenio Europeo de los Derechos Humanos *(en adelante CEDH)* por no reconocer el país demandado, la relación de filiación existente entre los niños nacidos mediante "gestación por sustitución" y sus padres, que pudieron procrear gracias a esta técnica y considerando, en relación a los hijos, la vulneración del derecho a la vida privada, apelando -principalmente- al principio del superior interés del niño.

II. El Encuadre Fáctico

En última instancia, dos matrimonios franceses recurren ante el TEDH, luego de haber acudido de manera absolutamente legal en los Estados Unidos a la "gestación por sustitución", mediante la implantación de embriones en el útero de otras mujeres. De dichas gestaciones nacieron, en un caso, dos niñas gemelas y en el otro, una niña.

En su oportunidad, el Tribunal Supremo francés denegó las respectivas solicitudes de inscripción de filiación o de reconocimiento de sentencias extranjeras, desatendiendo cuestiones tales como la filiación "socioafectiva" [3] , el interés superior del niño, el derecho a la identidad, la protección de las relaciones familiares y la consolidación de la familia, entre otros temas. Frente a este panorama, los recurrentes invocaron ante el TEDH el art. 8 del CEDH (respeto a la vida privada y familiar), en función del perjuicio ocasionado.

Particularmente, en cuanto a los detalles de los casos, hay que destacar que en el primero (Mennesson) se trata de niñas gemelas nacidas a partir del material genético del padre y óvulos donados; teniendo en cuenta que al producirse el embarazo (marzo del año 2000), esta pareja solicitó a la justicia que cuando nacieran las niñas sean inscriptas como hijas de ellos, lo que así se dispuso en la sentencia de la Corte Suprema de California del 14/07/2000. Luego provistos de esta documentación, en noviembre del año

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[1] La terminología para referirse en Francia a este fenómeno es variable, entre sus denominaciones posibles nos encontramos con las siguientes: *maternité pour autrui, gestation pour autrui, maternité de substitution, mère porteuse*, entre otras.

[2] En este sentido, cabe mencionar a nuestro recientemente sancionado Código Civil y Comercial Unificado -con vigencia a partir del 1 de enero de 2016- cuyo Anteproyecto contenía una regulación específica en cuanto a este tema y posteriormente fue quitada en la versión aprobada por la Cámara de Senadores el 28/11/2013.

[3] Kemelmajer de Carlucci, Herrera y Lamm, subrayan en este tipo de filiación que "…el elemento volitivo observaría un espacio de mayor envergadura que el componente genético... Esta desmitificación acerca de lo biológico como requisito único y central en la determinación de la filiación responde la consolidación de la procreación asistida como una fuente propia del derecho filial, con caracteres y reglas especiales, en la que el elemento volitivo ocupa un lugar privilegiado. Tan así es, que se habla de una 'desbiologización de la paternidad' focalizándose en la 'parentalidad voluntaria' como un hecho jurídico compuesto de elementos volitivos, sociales y afectivos, y no exclusivamente de características genéticas…" (Kemelmajer de Carlucci, Aída - Herrera, Marisa - Lamm, Eleonora, "Filiación y homoparentalidad. Luces y sombras de un debate incómodo y actual", LA LEY, 20/09/2010, E, 977).

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2000, el padre de las niñas solicitó en el consulado de Francia sito en Los Ángeles la transcripción del acta de nacimiento en los registros del estado civil francés y la expedición de los correspondientes pasaportes. Esta petición fue denegada, motivo por el cual el matrimonio Mennesson tuvo que tramitar los pasaportes estadounidenses para que las niñas salgan del país y la familia completa pueda ingresar a Francia. En este país, comienza el debate por el reconocimiento de la filiación, llegando a la Sala Civil de la Corte de Casación francesa (06/02/2011), quien se valió de dos argumentos centrales para rechazar el pedido de transcripción del acta de nacimiento extranjera en el registro civil local: el orden público internacional, y el principio de indisponibilidad del cuerpo humano[4],

La base fáctica del caso "Labassé" es parecida, tratándose de un matrimonio que celebró un acuerdo de gestación en un "centro de fertilidad" (Minnesota, Estados Unidos), naciendo una niña el 27/10/2001. Luego, a fines de octubre del año 2001, el Tribunal del Estado de Minnesota, como consecuencia de la renuncia de la gestante a todos sus derechos como madre sobre la niña, indicó que el Sr. Labassé es el padre biológico. Por estos motivos le concede la custodia de la niña para que pueda regresar a Francia. Cuando llegan a este país -así como en el caso anterior- el grupo familiar se encuentra con diversos obstáculos para que sea reconocido el vínculo jurídico-filial que había obtenido en el lugar de nacimiento.

Más allá de las vicisitudes en territorio francés, lo cierto es que las sentencias dictadas en los estados de California y de Minnesota establecieron vínculos filiales que forjaron el punto de partida de un debate que no encuentra unanimidad, pero que parece esclarecerse con este fallo.

El "margen de apreciación de los Estados" frente al interés superior del niño: el respeto por un principio global

Como es sabido, los Estados firmantes del "Convenio Europeo para la Protección de los Derechos Humanos y de las Libertades Fundamentales" cuentan con un "margen de apreciación" para valorar su contenido ante la falta de consenso que hay entre ellos para interpretarlo. Así, resulta ser un espacio de discrecionalidad disponible para fijar el alcance de los Derechos Humanos que consagra la Convención, en consonancia con las circunstancias jurídico-sociales de cada país.

Si nos situamos en la premisa basada en que *"…el interés superior del niño se aplicará a todos los asuntos relacionados con el niño o los niños y se tendrá en cuenta para resolver cualquier posible conflicto entre los derechos consagrados en la Convención o en otros tratados de derechos humanos…",* sumado a que *"…la determinación del interés superior del niño debe comenzar con una evaluación de las circunstancias específicas que hacen que el niño sea único…"*[5], este margen de apreciación debe ceder y relativizarse ante un problema vinculado con la filiación, en la medida en que ésta -sin lugar a dudas- constituye un aspecto esencial de la identidad del niño.

En relación con la doctrina del margen de apreciación, vale destacar que *la Convención no tiene la pretensión de crear un derecho único para todos los Estados que integran el sistema; se trata, simplemente, de delimitar los estándares mínimos dentro de toda sociedad democrática y pluralista*[6]. Resulta ser, en definitiva, una forma de asegurar la interpretación de las normas internacionales del ámbito europeo en sintonía con las diversas realidades nacionales.

Además, si nos centramos en los argumentos que produjeron el desconocimiento de una decisión extranjera en pos del orden público, es importante recordar que el TEDH ya se ha pronunciado al respecto, refiriendo que la denegación de un Estado debe estar fundada en una necesidad social imperiosa y resultar proporcional al fin legítimo perseguido[7], limitando de esta forma cualquier valoración realizada con respecto a la operatividad de las cláusulas que prioricen el orden público por sobre cualquier otra norma (internacional en este caso).

[4] En este orden de ideas, resulta importante hacer referencia al Artículo 16-7 del Código Civil francés que indica lo siguiente: *"…Todo convenio relativo a la procreación o la gestación por cuenta de otro será nulo"*. Por su parte el Artículo 16-9 preceptúa que las disposiciones del capítulo sobre el que se encuentran los artículos en cuestión ("Del respeto del cuerpo humano") son de orden público.

[5] Cfr. a los párr. 33 y 49 de la Observación General Nº 14 sobre el derecho del niño a que su interés superior sea una consideración primordial (artículo 3, párrafo 1) del "Comité de los Derechos del Niño" (29 de mayo 2013).
Además, en este sentido, el TEDH ha señalado (asunto *Maumousseau y Washington c. Francia,* de 6 de diciembre de 2007) que "desde la adopción de la Convención sobre los Derechos del Niño, del 20 de noviembre de 1989, 'el interés superior del menor' en cualquier materia que le concierna, es el objetivo central de la protección del menor, buscando la plenitud del niño en el ámbito familiar, constituyendo la familia 'la unidad fundamental de la sociedad y el medio natural para su crecimiento y bienestar' según los términos del preámbulo de esta Convención" (párr. 66 y sigs.).

[6] Kemelmajer de Carlucci, Aída - Herrera, Marisa, "El principio de no discriminación en una reciente sentencia del Tribunal Europeo de Derechos Humanos. Una cuestión en movimiento desde el ámbito regional y una responsabilidad desde el ámbito estatal", LA LEY, 06/07/2010, D, 282, Cita Online: AR/DOC/4961/2010).

[7] Cfr. sentencia del 3 de mayo de 2011 en el asunto Negrepontis-Giannisis c. Grecia, del TEDH. En este decisorio se ponderó el derecho a la vida privada y familiar como fundamento del reconocimiento de decisiones extranjeras. El caso se refería específicamente a una adopción constituida en Estados Unidos y el Tribunal -confirmando su criterio ya manifestado previamente en su sentencia del 28 de junio de 2007 en el caso Wagner y J.M.W.L. c. Luxemburgo- favoreció el reconocimiento de decisiones extranjeras en los Estados miembros del Convenio Europeo, concluyendo en que las obligaciones positivas al respeto efectivo de la vida familiar con base en el artículo 8 del CEDH se proyectan sobre las relaciones de estado civil y familiares constituidas en el extranjero.

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Según el propio TEDH, el mecanismo de salvaguarda instaurado por el Convenio reviste un carácter subsidiario en relación a los sistemas nacionales de garantía de los derechos del hombre, pero a su vez destaca que este margen nacional de apreciación va íntimamente ligado a una supervisión europea[8].

Haciendo especial hincapié sobre el caso en cuestión, el Tribunal entre sus consideraciones recordó las variables que determinan la extensión del margen de apreciación: las circunstancias, el contexto y la presencia o ausencia de un denominador común a los sistemas jurídicos de los Estados. Además señaló que cuando no hay consenso en el seno de los Estados miembros y el asunto gira en torno a cuestiones morales y éticas delicadas, el margen de apreciación es amplio. Pero, cuando un aspecto particular de la existencia o de la identidad de un individuo está en juego, el margen dejado al Estado es restringido[9].

Siguiendo con los argumentos del TEDH, la interferencia en el derecho al respeto de la vida privada y familiar, que preceptúa el texto del art. 8 del Convenio, por parte de las autoridades francesas se observa en el desconocimiento de una relación de filiación entre padre-hijo "de conformidad con la ley"[10], que sobrepasó el amplio margen de apreciación de los Estados: estándar básico o esencial para que el tribunal europeo responsabilice o no a un Estado.

Este "margen de apreciación" siempre choca con sus dos principios limitantes: proporcionalidad y el justo equilibrio. Estos, a su vez, encuentran su talla justa en el "interés superior del niño"[11] y tal como lo dijo el TEDH en su decisión: *"las elecciones operadas por parte del Estado, incluso en los límites de este margen acordado, no escapan del control del Tribunal. Incumbe a este examinar atentamente los argumentos que se tuvieron en cuenta para arribar a la solución establecida e investigar si se llevó a cabo un equilibrio entre los intereses del estado y los de los individuos directamente alcanzados por la solución"*[12].

En cuanto a las particularidades del caso, hay que sumar otra afirmación referida oportunamente por el Tribunal: *"aunque el artículo 8 del Convenio no garantiza un derecho a adquirir una nacionalidad particular, es claro que la nacionalidad es un elemento de la identidad de las personas"*[13]. Al respecto, recordemos que en los dos asuntos que dieron origen al debate, los padres biológicos son franceses y en este sentido, las niñas se exponen a una gran incertidumbre en cuanto a la posibilidad de que se les reconozca esta nacionalidad, en aplicación del artículo 18 del Código Civil de Francia[14], es decir, una indeterminación tal que afecta negativamente la definición de sus propias identidades, que además, forma parte integral de la noción de sus vidas privadas.

Sin lugar a dudas, en consonancia con estas ideas, las decisiones adoptadas por el Estado francés no fueron compatibles con el interés superior mentado y supone una situación absurda que se traduce en una filiación válida en un país y nula en otro, con padres distintos dependiendo de la situación territorial. Sin lugar a dudas, la identidad por su conformación es universal y así debería ser considerada en cada lugar donde las personas se encuentren, más allá de las fronteras.

La encrucijada presentada ante el máximo Tribunal europeo lo colocó en la situación de tener que decidir entre la validez de los acuerdos de "gestación por sustitución" y su inevitable cruce con la satisfacción de los derechos humanos de las niñas. Así centró su atención en la información proveniente de diversos organismos y actores a los fines de mensurar cual era la mejor decisión que se podía tomar en torno a la situación de estos sujetos nacidos a partir de esta técnica:

1. Informe del Consejo de Estado sobre la Revisión de Leyes de Bioética (aprobado por su Asamblea general plenaria el 9 de abril de 2009). Analiza el tema de la gestación por sustitución, afirmándose, entre otras consideraciones, que "*en los hechos, la vida de estas familias es más complicada cuando la transcripción no es realizada, debido a formalidades que deben ser cumplidas en ocasión de algunos acontecimientos de la vida diaria*", destacando que, en ausencia de transcripción del acta de nacimiento, en todos los trámites que hacen a la

[8] Cfr. a los párr. 48 y 49 del asunto Handyside c. Reino Unido (7 de diciembre de 1976), Tribunal Europeo de Derechos Humanos.

[9] Cfr. al párr. 76 del fallo comentando.

[10] Vale destacarse que en torno a la figura de la "gestación por sustitución" el debate en cuanto a la contrariedad o no al orden público sobre esta práctica se encuentra cerrado en los estados en los que se practicó, conforme -entre otros precedentes- al caso "Jhonson vs. Calvet" resuelto por la suprema Corte de California el 20 de mayo del año 1993. En este fallo se entendió que no es contrario al orden público el contrato de "gestación por sustitución" celebrado entre las partes por cuanto -entre otros argumentos- no explota la condición de las mujeres, ni afecta el interés del niño y la maternidad se encuentra establecida por la intención y no por el hecho del parto ni por la realidad genética sino por la intención (noción de causa eficiente del contrato).

[11] El Tribunal Europeo de Derechos Humanos ha señalado en reiteradas ocasiones el principio esencial según el cual cada vez que la situación de un niño es cuestionada, debe primar el interés superior del mismo (ver, entre otros, Wagner y J.M.W.L. c. Luxemburgo -antes citado-, y *E.B. c. France* del 22 de enero de 2008). Claramente esta afirmación se funda en el artículo 3 de la Convención sobre los Derechos del Niño que dice: *"En todas las medidas concernientes a los niños que tomen las instituciones públicas o privadas de bienestar social, los tribunales, las autoridades administrativas o los órganos legislativos, una consideración primordial a la que se atenderá será el interés superior del niño".*

[12] Cfr. al párr. 81 del fallo comentando.

[13] Cfr. sentencia del TEDH *Genovese c. Malta* (nº 53124/09), del 11 de octubre de 2011.

[14] El referido artículo dice: *Son franceses los hijos de los que uno de los progenitores al menos es francés.*

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vida cotidiana de los niños, como en particular, el derecho hereditario, los niños se ven perjudicados al ser considerados para la ley como "terceros".

2. Informe del grupo de trabajo "Filiación, orígenes, paternidad". Presentado en abril del 2014, en el marco de la elaboración de un "proyecto de ley que aborde las nuevas protecciones, seguridades y derechos para los niños" y encargado por el Ministro delegado de familia a este grupo presidido por la prestigiosa Irene Terry, socióloga y directora de estudios en la escuela de altos estudios en ciencias sociales, comprende las metamorfosis contemporáneas de la filiación, analizando tanto la diversidad de estas modalidades, así como las preguntas que aparecen al respecto. Este informe aborda especialmente la cuestión del reconocimiento de la filiación de los niños nacidos de una maternidad subrogada en el extranjero.

Asimismo, certifica que la jurisprudencia del Tribunal de Casación obstaculiza a un reconocimiento tal, que tiene "implicancias particularmente graves" para el niño.

Además, este informe pone en debate la compatibilidad de esta postura del Tribunal con respecto al artículo 3.1 de la Convención sobre los derechos del niño.

3. Los principios adoptados por el Comité ad hoc de expertos sobre el progreso de las ciencias biomédicas del Consejo de Europa. Se mencionan una serie de principios adoptados por el Comité Especial de expertos sobre Ciencias biomédicas del Consejo de Europa publicado en 1989. Entre ellos, se destaca el decimoquinto que trata el tema de las madres sustitutas, y que fue redactado de la siguiente manera: "*...1. Ningún médico o centro puede utilizar técnicas de procreación artificial para el diseño de un niño llevado por una madre de alquiler. 2. Ningún contrato o acuerdo entre una madre sustituta y la persona o la pareja para la cual o de la cual un niño es criado puede invocarse en el derecho. 3. Cualquier actividad de intermediación entre personas involucradas en la subrogación debe ser prohibido, así como cualquier forma de publicidad relativa a ello. 4. Sin embargo, los Estados podrán, en casos excepcionales establecidos por su legislación nacional, permitir que un médico o un centro pueda proceder a la fertilización de una madre de alquiler utilizando técnicas de procreación artificial, siempre que: a. la madre de alquiler no obtenga ninguna ventaja material de la operación; y b. la madre de alquiler en el nacimiento pueda elegir quedarse con el niño*".

En contraste con lo expuesto, nos encontramos con un fallo[15] de la región europea (más precisamente en España) que bajo una interpretación absurda del interés superior del niño denegó en ese país a los padres la inscripción del nacimiento de sus hijos (luego de ser concebidos mediante "gestación por sustitución" en California, conforme a la legislación de dicho Estado). Actualmente y gracias a la reciente sentencia del TEDH, el debate se encuentra cerrado y las bases para futuras decisiones se hallan delineadas. También deberá cambiar de postura el Estado francés, ya que su Tribunal de Casación se ha mostrado inflexible en este tema, rechazando sistemáticamente las transcripciones de las actas de nacimiento en ejecución de las decisiones extranjeras que determinan la filiación de los niños originadas en la gestación por sustitución[16].

[15] Tribunal Supremo de España, sala de lo Civil, pleno D. Ramón y D. César c. Administración General del Estado (06 de febrero de 2014).

[16] En relación con la la jurisprudencia del Tribunal de Casación, podemos decir que se ha considerado en diversas decisiones que el convenio por el cual una mujer se compromete, aunque mas no sea a título gratuito, a concebir y llevar un niño en su vientre para abandonarlo a su nacimiento, es contrario tanto al principio de la indisponibilidad del cuerpo humano como al principio de indisponibilidad del estado de las personas (Cas. 31 de mayo de 1991: B.1991 A.P., nº 4, p. 5; en este caso, la madre subrogada era la madre biológica del niño.) Esta posición obstaculiza a establecer un vínculo jurídico de filiación entre el niño que proviene de un contrato de maternidad subrogada, y la mujer que lo recibe luego de nacido y que lo educa, sea por el medio de la transcripción de las actas, como en el caso en cuestión, por medio de la adopción (Cas. Primera civ., 29 de junio de1994: B. 1994 I, nº 226, p. 164; en este caso también la madre subrogada era la madre biológica del niño) o por efecto de la posesión de estado (Cas. Primera civ., 6 de abril de 2011: recurso nº 09-17130).

Además, en dos sentencias de segunda instancia del 13 de septiembre de 2013, el Tribunal de Casación se pronunció sobre la cuestión de la transcripción de las actas de nacimiento de niños nacidos en la India de una maternidad subrogada, de madres indias y de padres franceses. (Cas. Primera civ.: recursos nºs 12-18315 y 12-30138). Los padres franceses, que habían anteriormente reconocido a los niños en Francia, habían solicitado en vano la transcripción de las actas de nacimiento establecidas en la India. En uno de los dos casos, el Tribunal de Apelaciones ordenó la transcripción, con motivo de que la regularidad formal y la realidad material de las actas en litigio no habían sido impugnadas. El Tribunal de Casación anuló esta decisión, con motivo de que en el derecho positivo, el rechazo de la transcripción se justifica "cuando el nacimiento es el resultado de un proceso que engloba una contrato de maternidad subrogada, en fraude a la ley francesa". Este contrato, aunque lícito en el extranjero, es nulo, de una nulidad de orden público en el derecho francés, según los artículos 16-7 y 16-9 del Código Civil. (El Tribunal de Casación falló de la misma manera el 19 de marzo 2014 en un caso similar; recurso nº 13-50005). En el otro caso, el Tribunal de Apelaciones rechazó ordenar la transcripción aduciendo que no se trataba solamente de un caso de maternidad subrogada prohibido por la ley, sino que también se estaba frente a una compra de niños, contraria al orden público, en donde el padre había pagado a la madre subrogada un salario de 1 500 euros. El Tribunal de Casación rechazó el recurso por los mismos motivos anteriormente citados y agregó que *"en presencia de este fraude, ni el interés superior del niño, garantizado por el articulo 3.1 de la Convención internacional de los derechos del niño ni el respeto a la vida privada y familiar, en el sentido del artículo 8 del Convenio (...) podrán ser invocados"*.

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En definitiva y tal como se arguyó, el mencionado "margen de apreciación de los Estados" no puede violar los principios básicos de todo Estado democrático y menos aún soslayar el eje rector de toda decisión judicial en temáticas vinculadas con la niñez.

La gestación por sustitución: realismo y necesidad de regulación

Ante el fenómeno de la "gestación por sustitución" las respuestas que se proyectan giran en torno a tres posibilidades: I) la prohibición absoluta del contrato de gestación y sus efectos jurídicos sobre la filiación del niño (vía elegida por el Tribunal de casación francesa); II) el mantenimiento de la prohibición del contrato de gestación, pero admitiendo sus efectos, creando un vínculo de filiación con el niño (atenuación del orden público); y III) instaurar un estatuto jurídico adecuado que regule y ordene tales prácticas y sus consecuencias sobre la filiación.

En este sentido y como resulta habitual en los fallos del TEDH, entre sus consideraciones remarcó su preocupación en cuanto al análisis del tema, indagando acerca de la postura que adoptan los treinta y cinco Estados Parte del Convenio (distintos de Francia). De esta forma, puso su énfasis en que tanto la cuestión de la "gestación por sustitución" en general, como así también, el reconocimiento de los acuerdos de gestación celebrados en otros países, no encuentran un tratamiento jurídico uniforme. En este análisis, concluyó en que la gestación por sustitución: a) está prohibida expresamente en catorce de sus estados: Alemania, Austria, España, Estonia, Finlandia, Islandia, Italia, Moldavia, Montenegro, Serbia, Eslovenia, Suecia, Suiza y Turquía; b) no está reglamentada en otros diez estados, o está prohibida en virtud de disposiciones generales, o no es tolerada o la cuestión acerca de su legalidad es incierta: Andorra, de la Bosnia-Herzegovina, Hungría, Irlanda, Letonia, Lituania, Malta, Mónaco, Rumania y San Marino; c) es aceptada en siete estados (bajo reserva de condiciones estrictas): Albania, Georgia, Grecia, Países Bajos, Reino Unido, Rusia y Ucrania. Se trata de la llamada "altruista" (la madre sustituta puede ser asistida en los gastos propios de su estado pero de ninguna manera remunerada), pero parece que podría tener un carácter comercial en Georgia, Rusia y Ucrania; d) parece ser tolerada en cuatro estados en donde no hay ninguna reglamentación al respecto: Bélgica, República Checa y, eventualmente, en Luxemburgo y Polonia; e) podría obtener el reconocimiento en trece estados, sea por vía de exequátur, o por la transcripción directa de la decisión extranjera del acta de nacimiento extranjera en los registros civiles correspondientes, o por la adopción: Albania, España, Estonia, Georgia, Grecia, Hungría, Irlanda, Países Bajos, República Checa, Reino Unido, Rusia, Eslovenia y Ucrania; f) a pesar de estar prohibida o no prevista por la ley, también podría ser reconocida -como en el punto anterior- en once estados: Austria, Bélgica, Finlandia, Islandia, Italia, (cuando se trata del vínculo de filiación paterna y el padre de intención es el padre biológico), Malta, Polonia, San Marino, Suecia, Suiza y eventualmente en Luxemburgo; y g) parece estar prohibido su reconocimiento en once estados: Andorra, Alemania (salvo en cuanto al vínculo de filiación paterna cuando el padre de intención es el padre biológico), Bosnia-Herzegovina, Lituania, Letonia, Mónaco, Montenegro, Rumania, Serbia y Turquía.

Si tenemos en cuenta este análisis de situación desde el derecho comparado y que esta disparidad de regulación se replica en todos los continentes, resulta manifiesta la necesidad cada vez mayor de una Convención Internacional que ordene este conflicto socio-legal. En este camino se encuentra la Conferencia de la Haya de Derecho Internacional Privado[17], preparando un convenio específico para regular los acuerdos internacionales de gestación por sustitución, ya que ni la prohibición expresa ni el silencio de la ley evitan que la práctica se realice; antes bien, se utilizan estrategias o subterfugios que generan conflictos que podrían ser evitados con una regulación legal que controle la práctica y resuelva los problemas que ocasiona[18].

Afortunadamente, la realidad indica que el número de Estados con leyes que regulan la gestación por sustitución está creciendo[19], es decir que la tendencia se perfila hacia la flexibilización y normativización de esta técnica -cada vez más frecuente- dando respuestas y soluciones concretas.

En función de lo dicho, la regulación legal de estas prácticas disminuye los conflictos, porque el problema no está en la práctica en sí misma, sino en la

[17] La Conferencia Internacional de La Haya de DIPr. viene trabajando la temática desde el año 2010 en un proyecto llamado: "The private international law issues surrounding the status of children, including issues arising from international surrogacy Arrangements". Luego de recopilar información de los cuatro cuestionarios enviados en el año 2013: cuestionario No 1 dirigido a los miembros de la Conferencia de La Haya y otros Estados interesados; el cuestionario N° 2 dirigido a aquellos profesionales del derecho con experiencia práctica pertinente en este ámbito; el cuestionario N° 3 dirigido a los profesionales de la salud que trabajan en este ámbito; y el cuestionario N° 4 dirigido a las agencias de gestación subrogada; en su reunión de abril de 2014 el Council on General Affairs and Policy of the Conference decidió continuar recopilando información y posponer la decisión de constituir un grupo de expertos para el 2015. Para más información: http://www.hcch.net/index_en.php?act=text.display&tid=183

[18] Lamm, Eleonora, *"Gestación por sustitución. Realidad y Derecho"* (23-07-2012), Indret "Revista para el Análisis del Derecho", Edición 3, disponible en: www.indret.com, compulsado en 10-10-2014.

[19] Por ejemplo, se regula en Australia (ACT (2004), Queensland (2010), New South Wales (2010), Western Australia (2008), Victoria (2008)), Canadá (Alberta (2010), Columbia Británica (2011)), Grecia (2002 y 2005), Rusia (2011), Sudáfrica (ley entró en vigor en 2010), Brasil, (2010, modificada en 2013), Sinaloa, México (ley entró en vigor en 2013), Uruguay (2013), etc.

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inexistencia de un marco legal que permita regular, controlar y establecer criterios para poder llevarla a cabo atendiendo a los intereses de todas las partes involucradas: la gestante, la o las personas contratantes y el niño o niña fruto de ese acuerdo[20].

Además, resta decir que los demandantes del caso en cuestión alegaron una violación del "derecho de fundar una familia" (art. 12 del CEDH), y si bien el TEDH rechazó este argumento afirmando que los demandantes no habían agotado las vías internas para hacer valer este derecho, hay que mencionar que ante la falta de regulación de la gestación por sustitución y su prohibición, indefectiblemente se genera la vulneración planteada. Esta afirmación se funda en los numerosos pactos y tratados internacionales que reconocen el "derecho a fundar una familia" (Declaración de los Derechos humanos y el Pacto Internacional de los Derechos civiles y políticos, entre otros) y este derecho, como todos, debe poder ejercerse de forma libre y responsable[21].

Además, es importante destacar que las limitaciones legales en este tema, son discriminatorias por tres razones, especialmente: 1) desde el punto de vista económico: es sabido que esta práctica se realiza en muchos países del mundo y de esta manera las personas que cuentan con recursos económicos viajan al exterior, sometiéndose a estas técnicas -complejas y costosas- fuera de las fronteras nacionales. Las prohibiciones legales, entonces, resultan accesibles solo para quienes pueden afrontarlas; 2) en materia de discapacidad física: esto se vincula con las mujeres que no pueden gestar, por ejemplo, por carecer de útero, es decir una incapacidad de concebir o de llevar a término un embarazo; c) en materia de sexualidad: la gestación por sustitución representa la única opción que tiene una pareja homosexual compuesta por dos hombres o en los casos de hombres solos, atento a que, por razones biológicas tienen incapacidad de concebir y gestar un hijo genéticamente propio (aunque sólo de uno de ellos).

Pero sin entrar en detalles en cuanto a las razones por las cuales esta práctica debería regularizarse y permitirse en los diversos países del mundo y avocándonos al caso concreto, habrá que decir que conforme a la sentencia del TEDH se refleja lo dicho por la doctrina que se enrola en la admisión amplia de la gestación por sustitución, refiriendo así como lo entendió este Tribunal que *el interés superior del niño exige la regularización de la gestación por sustitución, es decir, de un marco legal que lo proteja y le brinde seguridad jurídica. Sin perjuicio de lo dicho, no se puede dejar de advertir que de esa práctica nace un niño y el interés superior exige que las personas que quieren ser padres puedan serlo, y que esa filiación sea reconocida legalmente*[22].

Como vemos, la "gestación por sustitución" es una práctica a la que recurren aquellas personas que encuentran en ella, la única alternativa para formar una familia, pese a su nulidad o falta de previsión legal. Esto genera múltiples conflictos que podrían ser evitados ante existencia de una regulación legal que la contemple y resuelva, a través de mecanismos tuitivos para la protección integral de los niños, por un lado, y facilitadores del acceso a la procreación, por el otro.

Desde la reiteración de una postura realista, admitiendo que las prohibiciones al respecto, no impiden que estos contratos igualmente se continúen realizando y retomando con la problemática planteada en el caso analizado, se ha dicho al respecto que el interés superior del niño se presenta *a priori* u *a posteriori. A priori,* ese interés exige la regularización de la situación a los fines de contar con un marco que lo proteja, le brinde seguridad jurídica y le garantice una filiación acorde a la realidad volitiva. Por otro lado, de esa práctica nace un niño, y de su interés superior *a posteriori* resulta que las personas que realmente quieren asumir el papel de padres puedan hacerlo[23].

III. Palabras de Cierre

Nuevas relaciones familiares, globalización, progreso científico, revolución reproductiva, voluntad procreacional, resultan ser -entre otros- conceptos que se entrecruzan en nuestra realidad. Frente a ella, la

[20] Camacho, Juan M. (2009), "Maternidad subrogada: una práctica moralmente aceptable. Análisis crítico de las argumentaciones de sus detractores", disponible en: www.fundacionforo.com, compulsado el 27-08-2011.

[21] Para una mejor comprensión de lo referido, cabe señalarse que la idea de "derechos reproductivos" se consolidó a nivel universal a partir de la Conferencia Internacional sobre la Población y el Desarrollo de Naciones Unidas (CIPD), realizada en El Cairo en 1994 y la Cuarta Conferencia Mundial de la Mujer, Beijing 1995. Estos instrumentos establecen que: *"los derechos reproductivos abarcan ciertos derechos humanos que ya están reconocidos en las leyes nacionales, en los documentos internacionales sobre derechos humanos y en otros documentos pertinentes de las Naciones Unidas aprobados por consenso. Esos derechos se basan en el reconocimiento del derecho básico de todas las parejas e individuos a decidir libre y responsablemente el número de hijos, el espaciamiento de los nacimientos y el intervalo entre éstos y a disponer de la información y de los medios para ello y el derecho a alcanzar el nivel más elevado de salud sexual y reproductiva. También incluye su derecho a adoptar decisiones relativas a la reproducción sin sufrir discriminación, coacciones ni violencia, de conformidad con lo establecido en los documentos de derechos humanos. En ejercicio de este derecho, las parejas y los individuos deben tener en cuenta las necesidades de sus hijos nacidos y futuros y sus obligaciones con la comunidad. La promoción del ejercicio responsable de esos derechos de todos deben ser la base primordial de las políticas y programas estatales y comunitarios en la esfera de la salud reproductiva, incluida la planificación de la familia".*

[22] Lamm, Eleonora, *"Gestación por sustitución…"*, cit.

[23] Lamm, Eleonora, "*La autonomía de la voluntad en las nuevas formas de reproducción. La maternidad subrogada. La importancia de la voluntad como criterio decisivo de la filiación y la necesidad de su regulación legal",* Revista Interdisciplinaria de Doctrina y Jurisprudencia. Derecho de Familia, nº 50, Abeledo Perrot, Julio 2011, p. 107 y ss.

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actitud del derecho de las familias debería centrarse en tres pilares fundamentales: adaptación, captación y normativización.

Entonces, una vez más nos cuestionamos: ¿nuevos paradigmas o normas jurídicas vetustas?...La sociedad evoluciona –a un ritmo cada vez más vertiginoso- y el derecho debe seguir también ese camino. Pareciera que en algunos campos y/o contextos esto no sucede y las personas se encuentran con un derecho anacrónico que no satisface sus necesidades actuales.

Así se pronunció Marisa Herrera con respecto a este campo del derecho, destacándolo como esencialmente dinámico, en constante movimiento y por lo tanto, eminentemente crítico del *statu quo*, lo que se traduce en un constante interés o búsqueda por acortar la brecha existente entre derecho y realidad[24]

Este fallo comentado remarca la necesidad de un abordaje complejo e inmediato del tema que exige, además, la reformulación de los principios tradicionales sobre los cuales se asienta la reproducción humana en nuestros días con el objeto de encontrar un lugar apropiado dentro del campo jurídico.

[24] Entrevista a Marisa Herrera, en Revista "Lecciones y ensayos", nro. 90, Departamento de Publicaciones – Facultad de Derecho (Universidad de Buenos Aires), 2012, Ciudad Autónoma de Buenos Aires, disponible en: www.derecho.uba.ar/publicaciones/lye/revistas/90/herrera.pdf, compulsado en 09-10-2014.

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Government Policy Intervention Programmes in Ogun State: Youth Acceptability and Challenges

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Abstract- Every government acknowledged to be proficient is always observed to be responsive to the needs of her citizenry particular ly the teaming population of her youth through series of intervention programmes. This study examined the available government intervention programme, its youths' acceptability of such programmes and some challenges encountered in the process. The study adopted the qualitative design using narrative approach with a population of 4,500 Voluntary Teachers Corps Scheme (VTCS) and 12 Desk Officers in the Teaching Service Commission of Ogun State. A sample of 60 VTCS and two (2) Desk Officers constituted the Focus Discussion Group. The selection process involved the multi stage, stratified, purposive, convenient and simple random sampling techniques. The data collected were analyzed using content analysis. The results showed that government intervention programmes were in different areas such as sports, education, job creation, r ural school study, agriculture and agro allied matters, works and services to mention a few.

Keywords: *government intervention programme, youth, acceptability, challenges.*

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Government Policy Intervention Programmes in Ogun State: Youth Acceptability and Challenges

Alamu, Oluwaseyi I. [α] & Subair S. 'Tayo [σ]

Abstract- Every government acknowledged to be proficient is always observed to be responsive to the needs of her citizenry particularly the teaming population of her youth through series of intervention programmes. This study examined the available government intervention programme, its youths' acceptability of such programmes and some challenges encountered in the process. The study adopted the qualitative design using narrative approach with a population of 4,500 Voluntary Teachers Corps Scheme (VTCS) and 12 Desk Officers in the Teaching Service Commission of Ogun State. A sample of 60 VTCS and two (2) Desk Officers constituted the Focus Discussion Group. The selection process involved the multi stage, stratified, purposive, convenient and simple random sampling techniques. The data collected were analyzed using content analysis. The results showed that government intervention programmes were in different areas such as sports, education, job creation, rural school study, agriculture and agro allied matters, works and services to mention a few. These intervention programmes were well accepted by the youths due to the potential prospects there in, and the availability of the youth who showed interest but could not be satisfied posed a serious challenge. It was however concluded that since its impact remained positive, the intervention programme should be embraced more and sustained for better and improved youthful living.

Keywords: government intervention programme, youth, acceptability, challenges.

I. Introduction

The empowerment of youths has being a challenge to development of the nation particularly in Ogun State. Large numbers of youths from both urban and rural areas are seen roaming the streets in search of jobs and a few are involved in social vices that threaten the peace of the state. The educated ones among the populace are thrown into the labour market seeking jobs that are either nonexistent or difficult to come by. Consequent upon this, the Ogun State Government has put in place policy programmes to quell the effect of youth redundancy. The essence of government policy intervention programmes to empower the Nigerian youths is to help reduce unemployment and enhance their self-sustenance in addressing poverty and other deprivations. Thus, empowerment will go a long way in creating employment and self-reliance among youths, it will also curb crime rate and insecurity related to lack of employment in Nigeria. In line with the provision for employment opportunities and improved living conditions, the state government of Ogun state, designed some specific schemes and strategies aimed at developing the skills and talents of youths in the state. Among the programmes identified in the study area are Poverty Alleviation Programme (PAP), State/Local Economic Empowerment and Development Strategy (SEEDS/LEEDS); Fadama II, III; and the present International Fund for Agriculture Development (IFAD), Assisted Value Chain Development Programme (VCDP) aimed at ensuring food security, generating more employment opportunities and providing raw materials for industries. Therefore, this paper seek to investigate youth acceptability and the challenges faced in implementing government policy intervention programmes in Ogun State, Nigeria.

II. Literature Review

Various governments at all levels in Nigeria are working seriously to ensure that youth unemployment is brought to bearable level. To achieve this, governments have brought about various policies for solving the unemployment problems and also helping the unemployed in Nigeria. The 1979 constitution of the Federal Republic of Nigeria in section 16 (2), stated that employment benefits should be provided for all citizens. The 1989 constitution reiterated the same provision in section 17 (2)d. While Section (3)a of the 1999 constitution emphasised same provision. Based on the aforementioned provisions in the constitution, there is an indication of government's intentions to see that the unemployed citizens are being taken care of. However, the question is how realistic are these statements? Are they merely policy statements or documents which are never implemented? Akukwe (1992), opined that the Federal Government is saddled with responsibility providing welfare to all the segments of her citizens. This could be achieved by promulgating laws, good policy guidelines, sufficient funds, and direct services. In April 1986, General Babangida constituted a Committee on Strategy for Dealing with mass unemployment in Nigeria (COSDUM). The committee was charged with working on the following:

- Encouragement of self-employment by ensuring that higher institutions produced graduates with relevant skills;

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- Discouraging geographical obstacles to employment through working out a system which enables Nigerians to work in any state irrespective of their state of origin;
- Encouragement of technologies that are more labour-based and at the same time efficient;
- Revitalizing the employment exchange with a view to making their use legislatively obligatory; and
- Greater screening of expatriate employees to facilitate a zero-based expiation quota budget. These were meant to be achieved through the cooperation of government relevant bodies and companies employing expatriates (Nwokoye, 1986).

The worthiness of the programme was believed to be towards a long-term approach to the constraints of lack of employment in the country. Based on the outcome of the committee in 1987, the National Directorate of Employment (NDE) was launched. The NDE has four major programmes.

- National Youth Employment and Vocational Skill Development Programme;
- Special Public Works Progrramme
- Small-Scale Industries Development
- Agricultural Sector Programme (Ola, 1988).

With the establishment of the NDE, the Babangida Administration seemed to have addressed the problems of youth unemployment for the first time in Nigeria. Also, the Babangida administration embarked on the campaign enjoining the unemployed to work towards self-employment or go back to their farms. There are obvious difficulties which the government may not have considered before the said programme. Some of these include the fact of non-availability of free land. Most of the individuals coming out of school cannot get enough land for mechanized farming that can provide food production. Furthermore, after the Babangida administration, succeeding governments in their various strategies focused on poverty and unemployment. In early 1999, NAPEP was conceived and launched. NEEDS was later launched by Obasanjo's government, where wealth creation and employment generation were pursued with vigour. The administration of Yar'adua, in its seven-point agenda also had the programme of addressing unemployment in Nigeria. In relation with the function of human capital and the recognition of youth self-sufficiency as an instrument to attain economic development, the government in the past introduced several empowerment programmes for the youth which are listed below:

- National Directorate of Employment (NDE). This agency of government was introduced and saddled with the responsibility of providing employment for the youth or the retired persons in Nigeria. It is expected that NDE trained those selected in their chosen vocations but much have not been seen to that effect.
- Small and Medium Enterprise Development Agency of Nigeria (SMEDAN). This agency of government was introduced by SMEDAN act of 2003 to stimulate the growth of MSME segment of the national economy. SMEDAN is saddled with the role of ensuring effective micro, small and medium enterprises segment that will promote economic development and ensure self-sufficiency of persons in the country.
- Youth Empowerment Programme. The National Information Technology (IT) this programme is to empower Nigerian youth on the technology skills they required in order to compete global.
- Youth Empowerment Network. This programme was introduced by the Federal and State government in Nigeria under the Millennium Declaration to provide an enabling environment for the youth to secure employment anywhere in the country.
- National Poverty Eradication Programme (NAPEP). This programme was established by the Federal government in Nigeria to provide employment for the youth in order to reduce poverty.
- Amnesty Programme of the Federal Government introduced by the then government ofLate Umar Yar'adua and continued by his successor Goodluck Jonathan, with the objective of incorporating the Militant of the Niger Delta into the economic sector of the country. This has also produced result. Also, the introduction of free education for the Alimajiri and street children in Northern part of the country is geared towards empowerment (FGN, 1999; 2004).

In addition, the Federal Government of Nigeria in recent times introduced Youth and Women Employment (PW/WYE) section of the Subsidy Reinvestment and Empowerment Programme (SURE-P) established the Graduate Internship Programme. This Graduate Internship Programme (GIP) is geared towards providing graduate youths in Nigeria an avenue to be engaged in governmental and non-governmental organisations segment to promote human resource management. The programme is expected to recruit 50,000 youth nationwide in order to utilize their skills in providing employment for them on a short term basis. The GIP is to provide a placement for the youth for a period of one year to undergo training either in public or private sector where their skills will be improved on. Equally, SURE-P programme is designed to accommodate the unskilled and under-employed peasant women and youth in the society by providing avenue for them in Public Works Programme and training in organisations. This programme is expected to recruit 50,000 skilled employment and 320,000 unskilled employment openings for youths and women in governmental and non-governmental organisations. This

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effort of the Federal government is to be achieved in collaboration with the other levels of government in Nigeria and the private sector (FGN, 2012).

Empirically, a study carried out by Ezekiel and Edwin (2016), established that there has not been any form of continuity in succeeding administration intervention programme in ensuring the growth of SMEs in the country. Several programmes have been introduced with huge financial commitment and strategy plans design to achieve its stated objectives however, the succeeding administration often cancels them and a new one put in place. It is also discovered that the curriculums in our institutions of learning do not design programmes to inculcate self-sufficiency. Therefore, considerable number of youths are graduating from school without employment, financial strength and required skills to start their own businesses.

The national environment in terms of political will as well as the economy have not helped to promote desirable growth of SMEs. An absence of adequate structures in the nation has been the constraints of business activities. Epileptic power supply, or total outage of light, lack of good road network and unavailability of water supply have been the bedrock of constraints affecting the growth of SMEs in the nation. Religion and ethnic crises in the country have not aided the development of SMEs. This is so clear in the North-Eastern part of the nation where a lot of youths have relocated to the Southern part of the nation due to Boko Haram insurgency. Inability to secure loan has also hindered so many graduates with potential vocational skills to thrive. Access to loan from governmental agencies has been nepotised, therefore those that need financial start-up for their business activities could not secure it.

It is evident from the work of Emanuel and Muhammed (2009) that Nigeria has experienced several programmes and policies geared towards reducing the poverty rate of the nation from past administrations. However, despite the intervention programmes introduced by the government, the poverty rate of the country has not reduced. Economic summit group in Nigeria while evaluating the government of the then president Olusegun Obasanjo revealed that his administration has not reduced the poverty rate of the country. It is against this depressing effort of the government in their action to combat poverty in the country that Non-Governmental Organisations (NGOs) intervene to complement government's effort. Based on the findings of this research work, it is revealed that the non-governmental organizations can contribute their quota in reducing the poverty rate of the country. Based on these efforts by the governments, it becomes imperative to assess the performance of the intervention programmes vis-à-vis its acceptability and challenges. However, individual young people, youth groups and communities seem not to experience this intervention programmes the same way due to differences such as race, political class and affiliation, gender, culture and physical health status. It is against this backdrop that this study examined the instrumentality of government policy intervention programmes of Ogun State, its acceptability and challenges.

III. Statement of the Problem

Responsiveness of government towards issues that bother on socio-economic empowerment of the citizens particularly the youth in terms of drastic reduction in unemployment and social vices is a key determinant of good governance. Youth empowerment is a means of encouraging youths to do great things for themselves and also to make great impact on their society by creating enabling environment, which will help young people to make important and vital decisions of life by themselves. In an attempt to empower the youths, most governments have embarked on policy intervention programmes that support youth empowerment and self-reliance. This has resulted to establishment of Small and Medium Enterprises in many ways. Based on the foregoing, the Nigerian government and Ogun state government in particular, over the years, have not been insensitive to the problem. The governments have launched a number of intervention programmes towards youth empowerment. The goal of these intervention programmes is to solve the issue of unemployment among the Nigerian youth. However, the establishment and implementation of these intervention programmes by the government seems to have generated lots of diversities. For some, the number of intervention programmes is effective in their own rights and the increasing level of unemployment could probably be attributed to population explosion and the number of school leavers that are turned out on yearly basis without corresponding job placement. Others think that the beneficiaries of the intervention programmes are one-dimensional in efficacy; they favour some categories of youth that run along gender and educational lines. Yet others are of the view that the various government intervention programmes have failed in their objectives of solving the constraints of lack of employment among youth in the country. Therefore, an attempt to assess the available government policy intervention programmes, determine the distribution of the intervention programmes and ascertain the extent to which these have been embraced by the youth and other challenges associated with it becomes imperative.

a) Research Questions

1. What are the available government policy intervention programmes in Ogun State?
2. What is youths' acceptability of the government policy intervention programmes?

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3. What challenges are being encountered in the course of running the policy intervention programmes?

IV. Methodology

The study adopted the qualitative research design using narrative approach. The design gives room for collecting qualitative data, analyse and interpret the overall results to determine their relatedness. Sequel to this, the researchers were able to have an in-depth assessment and analysis of government intervention programmes for the purpose of describing and interpreting the existing conditions. The population of the study consisted of male and female youths beneficiaries within the age range of 18 to 35 years in Ogun State. The choice of the youth's age bracket was informed by the classification of the National Population Commission in 2013.The research was conducted in two Local Government Areas each selected from the three senatorial districts of Ogun state, namely: Abeokuta South and Abeokuta North in the Ogun Central Senatorial district; Ijebu Ode and Ijebu East in the Ogun East Senatorial district; Egbado North and Egbado South in the Ogun West Senatorial district. The multistage sampling procedure and simple random sampling technique were adopted. The sample frame was drawn at 0.05 significance level using Sample Size Calculator, a scientific software developed for determining the actual sample for a study and to reflect the population as precisely as needed. The distribution of the selected Local Government Areas and their Senatorial Districts is presented in Table 1.

Table1: Distribution of Local Government Areas by Senatorial Districts

Senatorial District	Local Government Areas	Decision and Reason
Ogun East	Ijebu-Ode	Selected–Proximity& Convenience
	Shagamu	Selected–Proximity& Convenience
	Remo North	Not Selected
	Ikenne	Not Selected
	Odoogbolu	Not Selected
	Ijebu East	Not Selected
	Ijebu North-East	Not Selected
	Ijebu Waterside	Not Selected
Ogun West	Yewa North	Selected–Proximity& Convenience
	Yewa South	Not Selected
	ImekoAfon	Not Selected
	Ado-Odo Ota	Selected–Proximity& Convenience
	Ipokia	Not Selected
Ogun Central	Abeokuta North	Not Selected
	Abeokuta South	Selected–Proximity& Convenience
	Ewekoro	Not Selected
	Ifo-Ota	Not Selected
	Odeeda	Not Selected
	Obafemi-Owode	Selected–Proximity& Convenience
	Oke-Ogun	Not Selected

Source: Ogun Website, 2018

A self-designed instrument titled: Government Intervention Programme and Challenges Assessment (GIPCA) for Focus Group Discussion was designed to generate responses on questions relating to government intervention programme. To ascertain the credibility (reliability) of the instrument, it was subjected to member check, a measure of qualitative instrument with which credibility is determined. The instrument was administered on the targeted respondents (Focus Discussion Group). Data collected were analyzed using narrative approach.

V. Results and Discussion of Findings

A content analysis of GIP-FGDG was done to aid the findings of this study. A focus group consisting of 60 participating youths from six Local Government Areas in Ogun State were involved in the discussion. Two government officers were also engaged in the interview conducted. Each of the research questions was thrown open for discussion in the Focus Group and to interview the Desk Officers. The findings are presented as follow:

What are the available government intervention programmes in Ogun State? To answer this question, participants' responses were analyzed using content analysis. The results and findings are presented as follow:

> *The intervention programmes were in the areas of sport of different kinds, education development and job creation via voluntary teachers' corps scheme for Nigerian Certificate in Education (NCE) degree holders, rural school-study for the Graduates, agriculture and agro allied matters, painting and decorations, clothing and textiles, adire and batik*

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making, works and services via Ogun Road Maintenance Agency (OGROMA). Others include construction services (building of low cost housing scheme and the likes)'.

From the interaction with the Ogun State youths who were beneficiaries of the VTCS in the selected Local Government areas, it was gathered that there were a lot of government intervention programmes.

What is the level of youth acceptability of the government intervention programme? To answer this, participants' responses were analyzed via content analysis. The results are presented as follow:

In this programme, we youths were exposed to a programme tagged VTCS with the intent of practicing our profession. To us, this is one of the wonderful intervention programmes that we cannot forget so soon. This programme was all about giving opportunity to us as youths to engage in voluntary teaching scheme with payment of stipend to keep our body and soul together and to enable us meet the basic needs. The other interesting aspect of this programme was that Ogun State government injected us into the Teaching Service Commission at exact after the one-year voluntary service.

It was established from the Focus Group Discussion with the Ogun State youths together with researcher personal observation that, larger percentages of the youths were well disposed to the government intervention programme because of their inherent empowerment prospects. Of major interest to the researcher was the aspect of voluntary teachers' corps scheme employed by Ogun State as an intervention programme to empower the youths. They said further:

Ogun State government had gone a long way to reduce unemployment among us and we the youths will forever remain grateful for this in Ogun State. Considering the large number of those of us given the job, 4,500 out of 6,000 that applied, it was indeed a welcome gesture. We would be readily available to accept more of this anytime such is introduced to us.

What are the challenges faced by the government in executing the intervention programme? To answer this, participants' responses were analyzed via content analysis. The results are presented as follow:

One of the challenges was that the youths who came out for the programme were much more than the vacancies available. At the initial stage, government of Ogun offered 4,500 out of the 6,000 that applied. To accommodate more of the youth, the Ogun State government further created the Rural School-Study scheme again which absorbed 1,000 into the schools system. However, when we look at the other intervention programmes having to do with skills acquisition, it became a herculean task seeing all of them through. The materials and the resources available could not go round, to the extent that the resources and materials available for the programme were overstretched.

The youths further in their discussion said:

We only pray for these programmes not to be terminated hence, we would begin to experience discomfort about the tendency of discontinuity of the programme. Moreover, post training equipment available was far lesser than the number of the youth that came for the programme. If adequate measure was not taken by the government in Ogun State, the programme would amount to white elephant project that would yield little or no result.

To us the officials our greatest challenge was in the use of politics. Many times, the political party leaders will come with long lists of names that may not even physically exist just to create ghost worker syndrome. Some of our colleagues were even threatened of losing their jobs. Another challenge was the fact that some gainfully employed youths still showed up pretending not to have a job anywhere. Most annoying thing was the use of fake identities (names, addresses, phone numbers, and the likes). Since we don't know them all, how do we identify them? This caused us to insist on presentation of reference letters from their Baales, Olorituns, Community Leaders and the Kabiyesis. Another embarrassing thing was the loss of confidence in us as officials-in-charge of the programme; even some of our colleagues thought we were trading those opportunities for personal gains.

From the interaction with Ogun State youths in the selected Local Government areas through Focus Group Discussion Guide, it was gathered that Ogun State faced enormous challenges while executing this intervention programme. Corroborating this were the officials interviewed who said:

To aid better discussion, efforts were made in this section to discuss the findings in line with the questions raised to guide the study. The discussion however was done drawing from literature, comments, observations, policy documents and arguments that either support or against the findings of this study. The discussion of findings is presented under related subheadings.

a) *Available Government Policy Intervention Programme in Ogun State*

This study found that there were series of government intervention programmes in Ogun State. Intervention in the area of sport of different kinds, contributions to education development and job creation via voluntary teachers' service scheme, agriculture, painting and decorations, clothing and textiles, works (Ogun Road Maintenance Agency), construction (building of low cost housing and the likes),

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adire and batik making among others. This is in line with the Nigerian National Youth Policy, 2001 to effectively empower young people (between the ages of 18 to 35); by formulating National Policy on Youth Development. Here, emphases on Government Policy Intervention Programmes were equally made by Nigeria's constitution as:

- Various governments at all levels in Nigeria should work seriously to ensure that youth unemployment suffering is brought to bearable level. The 1979 constitution of the Federal Republic of Nigeria in section 16 (2), stated that employment benefits should be provided for all citizens. The 1989 constitution reiterated the same provision in section 17 (2)d. Section (3)a of the 1999 constitution also has same provision. Based on the above statement, in these constitutions, there is an indication of government's intentions to see that the unemployed citizens are being taken care of. Akukwe (1992) also supports the findings that it is the responsibility of the federal, state and local governments to provide welfare to all the segments of her citizens. This is by providing wise laws, good policy guidelines, sufficient funds, and direct service.

b) *Level of Youth Acceptability of the Government Policy Intervention Programme*

It was gathered that a larger percentage of the youth were well disposed to the government intervention programme because of the inherent empowerment prospects. Of major interest to the researchers was the aspect of Voluntary Teachers' Corps Scheme employed by Ogun State as an intervention programme to empower the youth. In this programme the youths were exposed to a programme called VTCS, which gave them opportunities to engage in voluntary teaching with stipend to keep body and soul together. The most interesting aspect of this programme was that Ogun State government injected the youth engaged in the scheme as full staff after the one-year voluntary service. In the same vein, Ogun State youths further their discussion by appraising the intervention programme of Ogun State government that the programme had gone a long way to reduce unemployment among the youth in Ogun State.

However, the youths are faced with difficulties such as poverty, unemployment and funding needed to move the country forward are lagging. Resultantly, in Nigeria today millions of graduates are without employment, some have tried their efforts to secure employment for years but all proved abortive. This has led to increase in crime rate as the unemployed youth see these as alternative for survival in a complex society to engage in crime such as prostitution, pipeline vandalisation, armed robbery, oil bunkering and car snatching among the unemployed youths. This condition is militating against the development of an individual in the country thus, there is need for self-sufficiency via youth and women vocational training and empowerment. Hence, women and youth empowerment is seen as vital instrument for self-reliance and means to eradicate poverty and social vices and for individual to live a fulfilling life in the country. Investment in youth and women in form of vocational training and empowerment will aid the growth and development of the nation in a long term. Therefore, ensuring that the youth are engaged in vocational training is imperative for nation growth and reduction of poverty.

c) *Challenges Faced by the Government in Executing the Intervention Programme*

It was gathered that Ogun State faced enormous challenges while executing this intervention programme. One of the challenges was that the youth that came out for the programme were much more than the vacancies, materials and the resources available to the extent that the resources and materials available for the programme were overstretched. The youth further in their discussion established their discomfort about the tendency of discontinuity of the programme. They concluded that if adequate measure was not taken by the government in Ogun State, the programme would amount to white elephant project that would yield little or no result. This is in line with Patrerson (2006) who said Youth programme has several functions. One youth programme constraints is to consolidate society's obligation with the desire to let the youth take responsibilities for themselves. Young people are reliant on the adults for their material success and also for their spiritual growth. Hence, it is imperative that youth isn't related to reliance and adulthood with independence. There is a common reliance between youngsters and grown-ups.

United Nations Group (UNG) 2003, also supported the fact that there is no known single meaning to the word youth policy, it is used in different way by different people. This implies that the condition of youth is very imperative in all sector of the national economy. The development of government policy on youth programme can be viewed as influence to this vectorisation, where the desire was to make a widespread perception based on the individual state of each young person and to enable collaboration among diverse divisions.

VI. Conclusion

This study concluded that the intervention programme in Ogun State affected the youth positively because it created jobs for them and gave ways for skills acquisition. Ogun State youths had a wide acceptance for the programme because they were well disposed to it. However, Ogun State government faced series of challenges while executing the programme because resources available for the programme could

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not cater for the avalanche of youths that came out for the programme. Moreover, politicization of the programme appeared quite obvious fired by series of pranks by some youths.

VII. Recommendations

The paper recommended that Ogun State government should sustain the intervention programmes so that the youths in Ogun State would continue to benefit from the programme. Ogun State should reorient the youths in the State to see good things in the government intervention programme. Also, Ogun State government should invest more resources in the programme so that it would be able to accommodate more of the youth in the state.

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9. Produce good diagrams of your own: Always try to include good charts or diagrams in your paper to improve quality. Using several unnecessary diagrams will degrade the quality of your paper by creating a hodgepodge. So always try to include diagrams which were made by you to improve the readability of your paper. Use of direct quotes: When you do research relevant to literature, history, or current affairs, then use of quotes becomes essential, but if the study is relevant to science, use of quotes is not preferable.

10. Use proper verb tense: Use proper verb tenses in your paper. Use past tense to present those events that have happened. Use present tense to indicate events that are going on. Use future tense to indicate events that will happen in the future. Use of wrong tenses will confuse the evaluator. Avoid sentences that are incomplete.

11. Pick a good study spot: Always try to pick a spot for your research which is quiet. Not every spot is good for studying.

12. Know what you know: Always try to know what you know by making objectives, otherwise you will be confused and unable to achieve your target.

13. Use good grammar: Always use good grammar and words that will have a positive impact on the evaluator; use of good vocabulary does not mean using tough words which the evaluator has to find in a dictionary. Do not fragment sentences. Eliminate one-word sentences. Do not ever use a big word when a smaller one would suffice.

Verbs have to be in agreement with their subjects. In a research paper, do not start sentences with conjunctions or finish them with prepositions. When writing formally, it is advisable to never split an infinitive because someone will (wrongly) complain. Avoid clichés like a disease. Always shun irritating alliteration. Use language which is simple and straightforward. Put together a neat summary.

14. Arrangement of information: Each section of the main body should start with an opening sentence, and there should be a changeover at the end of the section. Give only valid and powerful arguments for your topic. You may also maintain your arguments with records.

15. Never start at the last minute: Always allow enough time for research work. Leaving everything to the last minute will degrade your paper and spoil your work.

16. Multitasking in research is not good: Doing several things at the same time is a bad habit in the case of research activity. Research is an area where everything has a particular time slot. Divide your research work into parts, and do a particular part in a particular time slot.

17. Never copy others' work: Never copy others' work and give it your name because if the evaluator has seen it anywhere, you will be in trouble. Take proper rest and food: No matter how many hours you spend on your research activity, if you are not taking care of your health, then all your efforts will have been in vain. For quality research, take proper rest and food.

18. Go to seminars: Attend seminars if the topic is relevant to your research area. Utilize all your resources.
Refresh your mind after intervals: Try to give your mind a rest by listening to soft music or sleeping in intervals. This will also improve your memory. Acquire colleagues: Always try to acquire colleagues. No matter how sharp you are, if you acquire colleagues, they can give you ideas which will be helpful to your research.

19. Think technically: Always think technically. If anything happens, search for its reasons, benefits, and demerits. Think and then print: When you go to print your paper, check that tables are not split, headings are not detached from their descriptions, and page sequence is maintained.

20. Adding unnecessary information: Do not add unnecessary information like "I have used MS Excel to draw graphs." Irrelevant and inappropriate material is superfluous. Foreign terminology and phrases are not apropos. One should never take a broad view. Analogy is like feathers on a snake. Use words properly, regardless of how others use them. Remove quotations. Puns are for kids, not grunt readers. Never oversimplify: When adding material to your research paper, never go for oversimplification; this will definitely irritate the evaluator. Be specific. Never use rhythmic redundancies. Contractions shouldn't be used in a research paper. Comparisons are as terrible as clichés. Give up ampersands, abbreviations, and so on. Remove commas that are not necessary. Parenthetical words should be between brackets or commas. Understatement is always the best way to put forward earth-shaking thoughts. Give a detailed literary review.

21. Report concluded results: Use concluded results. From raw data, filter the results, and then conclude your studies based on measurements and observations taken. An appropriate number of decimal places should be used. Parenthetical remarks are prohibited here. Proofread carefully at the final stage. At the end, give an outline to your arguments. Spot perspectives of further study of the subject. Justify your conclusion at the bottom sufficiently, which will probably include examples.

22. Upon conclusion: Once you have concluded your research, the next most important step is to present your findings. Presentation is extremely important as it is the definite medium though which your research is going to be in print for the rest of the crowd. Care should be taken to categorize your thoughts well and present them in a logical and neat manner. A good quality research paper format is essential because it serves to highlight your research paper and bring to light all necessary aspects of your research.

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Informal Guidelines of Research Paper Writing

Key points to remember:

- Submit all work in its final form.
- Write your paper in the form which is presented in the guidelines using the template.
- Please note the criteria peer reviewers will use for grading the final paper.

Final points:

One purpose of organizing a research paper is to let people interpret your efforts selectively. The journal requires the following sections, submitted in the order listed, with each section starting on a new page:

The introduction: This will be compiled from reference matter and reflect the design processes or outline of basis that directed you to make a study. As you carry out the process of study, the method and process section will be constructed like that. The results segment will show related statistics in nearly sequential order and direct reviewers to similar intellectual paths throughout the data that you gathered to carry out your study.

The discussion section:

This will provide understanding of the data and projections as to the implications of the results. The use of good quality references throughout the paper will give the effort trustworthiness by representing an alertness to prior workings.

Writing a research paper is not an easy job, no matter how trouble-free the actual research or concept. Practice, excellent preparation, and controlled record-keeping are the only means to make straightforward progression.

General style:

Specific editorial column necessities for compliance of a manuscript will always take over from directions in these general guidelines.

To make a paper clear: Adhere to recommended page limits.



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Mistakes to avoid:

- Insertion of a title at the foot of a page with subsequent text on the next page.
- Separating a table, chart, or figure—confine each to a single page.
- Submitting a manuscript with pages out of sequence.
- In every section of your document, use standard writing style, including articles ("a" and "the").
- Keep paying attention to the topic of the paper.
- Use paragraphs to split each significant point (excluding the abstract).
- Align the primary line of each section.
- Present your points in sound order.
- Use present tense to report well-accepted matters.
- Use past tense to describe specific results.
- Do not use familiar wording; don't address the reviewer directly. Don't use slang or superlatives.
- Avoid use of extra pictures—include only those figures essential to presenting results.

Title page:

Choose a revealing title. It should be short and include the name(s) and address(es) of all authors. It should not have acronyms or abbreviations or exceed two printed lines.

Abstract: This summary should be two hundred words or less. It should clearly and briefly explain the key findings reported in the manuscript and must have precise statistics. It should not have acronyms or abbreviations. It should be logical in itself. Do not cite references at this point.

An abstract is a brief, distinct paragraph summary of finished work or work in development. In a minute or less, a reviewer can be taught the foundation behind the study, common approaches to the problem, relevant results, and significant conclusions or new questions.

Write your summary when your paper is completed because how can you write the summary of anything which is not yet written? Wealth of terminology is very essential in abstract. Use comprehensive sentences, and do not sacrifice readability for brevity; you can maintain it succinctly by phrasing sentences so that they provide more than a lone rationale. The author can at this moment go straight to shortening the outcome. Sum up the study with the subsequent elements in any summary. Try to limit the initial two items to no more than one line each.

Reason for writing the article—theory, overall issue, purpose.

- Fundamental goal.
- To-the-point depiction of the research.
- Consequences, including definite statistics—if the consequences are quantitative in nature, account for this; results of any numerical analysis should be reported. Significant conclusions or questions that emerge from the research.

Approach:

- Single section and succinct.
- An outline of the job done is always written in past tense.
- Concentrate on shortening results—limit background information to a verdict or two.
- Exact spelling, clarity of sentences and phrases, and appropriate reporting of quantities (proper units, important statistics) are just as significant in an abstract as they are anywhere else.

Introduction:

The introduction should "introduce" the manuscript. The reviewer should be presented with sufficient background information to be capable of comprehending and calculating the purpose of your study without having to refer to other works. The basis for the study should be offered. Give the most important references, but avoid making a comprehensive appraisal of the topic. Describe the problem visibly. If the problem is not acknowledged in a logical, reasonable way, the reviewer will give no attention to your results. Speak in common terms about techniques used to explain the problem, if needed, but do not present any particulars about the protocols here.

The following approach can create a valuable beginning:

- Explain the value (significance) of the study.
- Defend the model—why did you employ this particular system or method? What is its compensation? Remark upon its appropriateness from an abstract point of view as well as pointing out sensible reasons for using it.
- Present a justification. State your particular theory(-ies) or aim(s), and describe the logic that led you to choose them.
- Briefly explain the study's tentative purpose and how it meets the declared objectives.

Approach:

Use past tense except for when referring to recognized facts. After all, the manuscript will be submitted after the entire job is done. Sort out your thoughts; manufacture one key point for every section. If you make the four points listed above, you will need at least four paragraphs. Present surrounding information only when it is necessary to support a situation. The reviewer does not desire to read everything you know about a topic. Shape the theory specifically—do not take a broad view.

As always, give awareness to spelling, simplicity, and correctness of sentences and phrases.

Procedures (methods and materials):

This part is supposed to be the easiest to carve if you have good skills. A soundly written procedures segment allows a capable scientist to replicate your results. Present precise information about your supplies. The suppliers and clarity of reagents can be helpful bits of information. Present methods in sequential order, but linked methodologies can be grouped as a segment. Be concise when relating the protocols. Attempt to give the least amount of information that would permit another capable scientist to replicate your outcome, but be cautious that vital information is integrated. The use of subheadings is suggested and ought to be synchronized with the results section.

When a technique is used that has been well-described in another section, mention the specific item describing the way, but draw the basic principle while stating the situation. The purpose is to show all particular resources and broad procedures so that another person may use some or all of the methods in one more study or referee the scientific value of your work. It is not to be a step-by-step report of the whole thing you did, nor is a methods section a set of orders.

Materials:

Materials may be reported in part of a section or else they may be recognized along with your measures.

Methods:

- Report the method and not the particulars of each process that engaged the same methodology.
- Describe the method entirely.
- To be succinct, present methods under headings dedicated to specific dealings or groups of measures.
- Simplify—detail how procedures were completed, not how they were performed on a particular day.
- If well-known procedures were used, account for the procedure by name, possibly with a reference, and that's all.

Approach:

It is embarrassing to use vigorous voice when documenting methods without using first person, which would focus the reviewer's interest on the researcher rather than the job. As a result, when writing up the methods, most authors use third person passive voice.

Use standard style in this and every other part of the paper—avoid familiar lists, and use full sentences.

What to keep away from:

- Resources and methods are not a set of information.
- Skip all descriptive information and surroundings—save it for the argument.
- Leave out information that is immaterial to a third party.



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Results:

The principle of a results segment is to present and demonstrate your conclusion. Create this part as entirely objective details of the outcome, and save all understanding for the discussion.

The page length of this segment is set by the sum and types of data to be reported. Use statistics and tables, if suitable, to present consequences most efficiently.

You must clearly differentiate material which would usually be incorporated in a study editorial from any unprocessed data or additional appendix matter that would not be available. In fact, such matters should not be submitted at all except if requested by the instructor.

Content:

- Sum up your conclusions in text and demonstrate them, if suitable, with figures and tables.
- In the manuscript, explain each of your consequences, and point the reader to remarks that are most appropriate.
- Present a background, such as by describing the question that was addressed by creation of an exacting study.
- Explain results of control experiments and give remarks that are not accessible in a prescribed figure or table, if appropriate.
- Examine your data, then prepare the analyzed (transformed) data in the form of a figure (graph), table, or manuscript.

What to stay away from:

- Do not discuss or infer your outcome, report surrounding information, or try to explain anything.
- Do not include raw data or intermediate calculations in a research manuscript.
- Do not present similar data more than once.
- A manuscript should complement any figures or tables, not duplicate information.
- Never confuse figures with tables—there is a difference.

Approach:

As always, use past tense when you submit your results, and put the whole thing in a reasonable order.

Put figures and tables, appropriately numbered, in order at the end of the report.

If you desire, you may place your figures and tables properly within the text of your results section.

Figures and tables:

If you put figures and tables at the end of some details, make certain that they are visibly distinguished from any attached appendix materials, such as raw facts. Whatever the position, each table must be titled, numbered one after the other, and include a heading. All figures and tables must be divided from the text.

Discussion:

The discussion is expected to be the trickiest segment to write. A lot of papers submitted to the journal are discarded based on problems with the discussion. There is no rule for how long an argument should be.

Position your understanding of the outcome visibly to lead the reviewer through your conclusions, and then finish the paper with a summing up of the implications of the study. The purpose here is to offer an understanding of your results and support all of your conclusions, using facts from your research and generally accepted information, if suitable. The implication of results should be fully described.

Infer your data in the conversation in suitable depth. This means that when you clarify an observable fact, you must explain mechanisms that may account for the observation. If your results vary from your prospect, make clear why that may have happened. If your results agree, then explain the theory that the proof supported. It is never suitable to just state that the data approved the prospect, and let it drop at that. Make a decision as to whether each premise is supported or discarded or if you cannot make a conclusion with assurance. Do not just dismiss a study or part of a study as "uncertain."



Research papers are not acknowledged if the work is imperfect. Draw what conclusions you can based upon the results that you have, and take care of the study as a finished work.

- You may propose future guidelines, such as how an experiment might be personalized to accomplish a new idea.
- Give details of all of your remarks as much as possible, focusing on mechanisms.
- Make a decision as to whether the tentative design sufficiently addressed the theory and whether or not it was correctly restricted. Try to present substitute explanations if they are sensible alternatives.
- One piece of research will not counter an overall question, so maintain the large picture in mind. Where do you go next? The best studies unlock new avenues of study. What questions remain?
- Recommendations for detailed papers will offer supplementary suggestions.

Approach:

When you refer to information, differentiate data generated by your own studies from other available information. Present work done by specific persons (including you) in past tense.

Describe generally acknowledged facts and main beliefs in present tense.

The Administration Rules

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Topics	Grades		
	A-B	**C-D**	**E-F**
Abstract	Clear and concise with appropriate content, Correct format. 200 words or below	Unclear summary and no specific data, Incorrect form Above 200 words	No specific data with ambiguous information Above 250 words
Introduction	Containing all background details with clear goal and appropriate details, flow specification, no grammar and spelling mistake, well organized sentence and paragraph, reference cited	Unclear and confusing data, appropriate format, grammar and spelling errors with unorganized matter	Out of place depth and content, hazy format
Methods and Procedures	Clear and to the point with well arranged paragraph, precision and accuracy of facts and figures, well organized subheads	Difficult to comprehend with embarrassed text, too much explanation but completed	Incorrect and unorganized structure with hazy meaning
Result	Well organized, Clear and specific, Correct units with precision, correct data, well structuring of paragraph, no grammar and spelling mistake	Complete and embarrassed text, difficult to comprehend	Irregular format with wrong facts and figures
Discussion	Well organized, meaningful specification, sound conclusion, logical and concise explanation, highly structured paragraph reference cited	Wordy, unclear conclusion, spurious	Conclusion is not cited, unorganized, difficult to comprehend
References	Complete and correct format, well organized	Beside the point, Incomplete	Wrong format and structuring

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