

# A Discussion Of Case Law On The Role Of The Court In Resolving Harmful Gender Stereotypes Related To Sexual And Reproductive Rights And Health

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## Abstract

This research looks at how national and sub-national courts, as well as international and regional judicial authorities, have dealt with erroneous gender stereotyping in law, policy, or lower court rulings addressing specific sexual and reproductive health and rights (SRHR) issues.

## I. INTRODUCTION

It also looks at instances where these courts and organisations have participated in erroneous stereotyping, resulting in human rights violations. The article also looks at relevant jurisprudence from international and regional quasi-judicial bodies, as well as human rights proceedings. Finally, the paper seeks to investigate remedies and provide recommendations on the role of the judiciary in dealing with unjust stereotyping in such situations.

Improper orientation generalizing is a boundless infringement of basic freedoms. According to the findings of this study, it is a frequent cause of discrimination against women as well as a factor in violations of rights such as the right to a sufficient standard of living and the freedom from gender-based violence.

Nevertheless, gender stereotypes and stereotyping are frequently misunderstood in human rights arguments despite the significant harm they cause. For instance, gender stereotypes are frequently misidentified, and there is little in-

depth discussion of the numerous ways in which gender stereotypes and gender stereotyping harm women. Gender stereotypes are also frequently overlooked as a cause of human rights violations.

Besides, there is shockingly minimal comprehension of the full degree and expansiveness of worldwide common liberties commitments connected with generalizations and generalizing, with a large part of the concentration to date restricted to the commitments listed in the Show on the Disposal of Victimization Ladies (CEDAW).

### **1. Generalizing, their connections to common freedoms and the job of the legal executive**

Orientation generalization alludes to a generalized point of view or predisposition about elements or qualities held by people, or the jobs that are or ought to be satisfied by people, individually. Orientation generalizations are social and social originations of people in light of contrasts in their physical, natural, mental, sexual, and social jobs.

It is harmful when a gender stereotype prevents an individual from developing personal skills, pursuing professional careers, and deciding on their life and goals. Unsafe generalizations can be antagonistic/negative (for instance, ladies are irrational) or seem harmless (for instance, ladies are mindful).

Gender stereotyping is a major obstacle to the practical implementation of human rights. It is the process of assigning features, characteristics, or responsibilities to people based on their assumed membership in a social group of women or men. It is wrong when gender stereotypes result in human rights and fundamental freedoms being violated.

The damage is made by applying a generalized conviction to an individual so that it adversely influences the acknowledgment, exercise, or pleasure in their privileges and opportunities (e.g., through regulations and strategies that address a generalization and result in a break of common freedoms). In occasion, in court procedures, suspicions about people might be shaped in light of orientation and different generalizations (see Table 1).

In spite of the fact that orientation generalizations influence ladies', men's, young ladies', young men', and the people who relate to other personalities' satisfaction in sexual and

regenerative wellbeing and freedoms, disavowal and maltreatments of these privileges lopsidedly hurt ladies and young ladies. This is because patriarchal ideas about women's roles in the family, including reproduction, and deeply ingrained social ideals about women's sexuality are to blame.

Inferences and stereotypes frequently interact with one another. It is pivotal to recall that the assumptions and ends introduced underneath are occasions and not thorough.

**Table 1 Stereotypes, group preconceptions, and inferences are all examples of stereotypes**

<b>Stereotype</b>	<b>Women are emotionally volatile</b>	<b>Women are chaste</b>	<b>Women are primarily destined to be mothers</b>	<b>LGB persons are abnormal or deviant</b>
<b>(Group) assumption</b>	Women are unable to make sensible judgments.	Contraception should not be required for unmarried women.	Women are better caregivers than males.	People require protection against LGB individuals.
<b>Inferences (about an individual)</b>	A woman should not be trusted to make responsible health decisions for herself, but should be monitored by her husband, doctor, or other authoritative person.	Unmarried women seeking contraception are promiscuous.	Women should be given preference when it comes to custody rights.	Same-sex behavior should be forbidden.

The word legal generalizing is utilized in this review to allude to the act of judges crediting explicit highlights, qualities, or obligations to an individual simply because of her or his enrollment in a specific gathering (e.g., ladies). It is additionally used to portray the propensity for judges keeping up with harming biases by neglecting to challenge generalizing, for example, by lower courts or gatherings to lawful cycles.

By identifying and addressing stereotypes and ensuring that legislation, norms, and practices adhere to human rights and constitutional guarantees, lower courts can make a significant contribution to addressing the structural causes of SRHR violations, articulating relevant State obligations, and adopting appropriate, effective, and meaningful remedies.

Medical, public health, or other scientific findings, including social science, were utilized in many of the instances examined below in which courts and quasi-judicial agencies detected and corrected SRHR stereotyping. They have likewise ensured that the voices and encounters of individuals who have been most influenced decide the regulative or strategy reaction to a particular issue.

### **Gender Stereotypes, Assumptions, and Laws Regarding Sexual Violence against Women**

The worldwide predominance of rape against ladies stays high. In some jurisdictions, one in three women will experience sexual abuse in her lifetime, while in others, the number rises to two in three, according to evidence. However, precise and complete statistics on the rates of sexual assault are sometimes unavailable.

In the meantime, the rate at which rape against ladies is accounted for to specialists, examined completely, and wrongdoers took to jail is scandalously low. When women are the victims of sexual assault, they frequently do not seek justice or accountability from the law, and even when they do, the process can sometimes be stymied by a number of obstacles. Sexual viciousness against ladies has assorted and muddled major causes and chance elements.

In the same way that numerous comprehensive and integrated strategies and actions are required to, on the one hand, lessen the frequency of such violence and, on the other, guarantee criminal accountability and women's access to justice. One part of the activities important to forestall, address, and fix such viciousness is to guarantee that pertinent criminal regulations and cycles mirror the truth of the wrongdoings and are powerful and suitable.

It is fundamental to permit victimizers to be considered responsible, particularly through arraignment in the law enforcement framework. Additionally, it is an essential part of the measures taken to end the cycle of prejudice against

women that is both sparked by and perpetuated by acts of sexual violence.

Human rights standards and bodies have also increasingly emphasized the state's obligation to respect and protect the rights of victims and witnesses in accordance with the rights of the accused and the requirements of a fair trial. In addition, the state has a duty to provide witness protection whenever it is necessary.

In the context of the topic of this briefing paper, two aspects of the right to a fair trial are particularly pertinent:

- **Presumption of innocence:** Under international law, among other things, the right to a fair trial demands that everyone be deemed innocent and regarded as innocent unless they are convicted according to law through processes that fulfil minimum statutory conditions of fairness. This implies that the prosecution bears the duty of proving the charge, and a court may not convict until guilt is shown beyond a reasonable doubt.
- **The accused's right to question witnesses and refute opposing evidence:** In addition, a person's right to a fair trial requires them to be able to bring and question defense witnesses as well as to question witnesses who are being accused of a crime. The defense can challenge the evidence against the accused because they can question witnesses for the prosecution.

It increases the likelihood that the verdict will be based on all relevant evidence and strengthens the rights to a defense and the presumption of innocence. This right must be protected in a way that is in line with the same obligations that states have to protect witnesses when they need it and to respect and protect the rights of witnesses and victims. States are obligated by international law and norms to take a variety of concrete steps to safeguard the rights of victims and witnesses. Particular obligations frequently apply to victims of gender-based violence.

## **II. STEREOTYPES OF GENDER AND REPRODUCTIVE AND SEXUAL HEALTH ISSUES**

### **1. Reproduction-related stereotypes**

Women and gender nonconforming people have had particularly frequent and persistent difficulties exercising their SRHR due to strong assumptions about sexuality, pregnancy, and parenthood. To the disservice of specific gatherings of ladies, these generalizations are exacerbated by suppositions about different characteristics like age, HIV status, nationality, and incapacity.

CEDAW has recognized that "orientation generalizations might affect lady's capacity for going with free and very much educated decisions and choices about their medical care, sexuality, and propagation, and, accordingly, on their independence to decide their own jobs in the public arena" (see Table 2)."

**Table 2 Common reproductive stereotypes and the ensuing conclusions that impair human rights**

Stereotype	Inference examples
Women and teenage girls are emotionally volatile and unable to make sensible decisions.	<ul style="list-style-type: none"> <li>• Access to reproductive and sexual healthcare need the approval of a third party, such as their husbands, parents, or guardians.</li> </ul>
Choices about their sexual and reproductive life.	<ul style="list-style-type: none"> <li>• Doctors and other members of the medical profession are</li> <li>• Justified in making judgments for women without their informed permission (referred to as "medical paternalism").</li> <li>• Giving teenagers personal information and services regarding sexual and reproductive health will lead to irresponsible behaviour.</li> </ul>

Transgender persons are aberrant, deviant, or medically abnormal.	<ul style="list-style-type: none"> <li>Transgender persons should be sterilized in order to prevent them from reproducing.</li> </ul>
The natural duty of women in society is to reproduce and be mothers.	<ul style="list-style-type: none"> <li>Women ought to endure a pregnancy to term at all expenses especially if it endangers their health and lives; they should prioritize fetal protection in all circumstances.</li> <li>Contraception should not be used by married women.</li> </ul>
Women should be virginal.	<ul style="list-style-type: none"> <li>Access to contraceptive information and services should be prohibited to unmarried women and teenage girls.</li> <li>services to keep their promiscuity at bay</li> </ul>
HIV-positive women are promiscuous or drug users, and so reckless.	<ul style="list-style-type: none"> <li>Women living with HIV should not have children and should hence be sterilized.</li> </ul>
Women with disabilities are asexual, sexually inactive, or over sexual, are unable to appreciate the obligations of parenthood, are unable to grant independent consent to sexual and reproductive health treatments, and must be safeguarded.	<ul style="list-style-type: none"> <li>Women with impairments should be sterilized to protect them from the consequences of sexual assault.</li> </ul>
Roma women are careless and promiscuous, "fertile" and unable to make sensible reproductive decisions.	<ul style="list-style-type: none"> <li>Roma women should have their cervixes removed.</li> </ul>
Women in poverty are reckless and are more inclined to abuse social services.	<ul style="list-style-type: none"> <li>Women in poverty should be viewed with mistrust by health-care practitioners.</li> </ul>

In Christian Legal counselors Affiliation v Public Priest of Wellbeing and Others, a case brought before the South African

High Court Transvaal Division, the candidates guaranteed that the arrangements of the early termination regulation that permit fetus removal for youths without 'parental assent or control' disregarded Established privileges to family and parental consideration, to be liberated from abuse, disregard, and misuse, and to the wellbeing of the youngster.

They fought that pregnant young ladies can't come to an informed conclusion about ending their pregnancy without parental endorsement or control since they miss the mark on capacity to "appreciate the requirement for and worth of parental consideration" and proposition assent that is to their greatest advantage.

The Court's dismissal of this contention was critical in tending to suppositions about youngsters' thinking skills as unintelligible with their sacred privileges, especially the opportunity to pursue conceptive choices and command over one's own body.

"The argument that the elements of the Act under assault are unconstitutional because they do not protect the child's best interests is untenable. The legislative option chosen in the Act serves the best interests of the pregnant girl child (section 28(2)) since it is flexible enough to identify and accommodate a girl child's specific situation based on her intellectual, psychological, and emotional make-up, as well as her actual majority. A rigorous age-based strategy that takes no, little, or inadequate account of the pregnant minor girl's specific idiosyncrasies cannot be in her best interests."

In contrast, the Filipino Supreme Court declared in the 2014 case of *Imbong v Ochoa* that all adolescents must get parental or guardian approval before using contemporary contraception. The Court ruled that provisions of the reproductive health law that permitted access to contraceptives without parental authorization were unconstitutional and "anti-family." The case reinforced the image of adolescent females as incapable of logical decision-making by defending parents' authority to manage their underage daughters.



In *Mellet v. Ireland*, a 2016 individual objection before the Basic liberties Board of trustees, the candidate, who was conveying an embryo with a deadly impedance, had to make a trip abroad to get to legitimate early termination administrations because of Ireland's prohibitive fetus removal regulation, which permits fetus removal just when the lady's own life is jeopardized by proceeded with pregnancy.

It also said that the petitioner's rights to privacy, non-discrimination based on socioeconomic status, and freedom from cruel, inhuman, or degrading treatment had been violated.<sup>35</sup> Many Committee members agreed that there had been violations based on sex and gender discrimination. <sup>36</sup> As per one agreeing view,

“Another premise for alleging gender discrimination is that Ireland's legal system is built on old preconceptions about women's reproductive roles, by elevating the woman's reproductive function above her physical and mental health and autonomy.... Indeed, the State's laws appear to carry such stereotypes to such an extreme that, as in this case, the author's pregnancy was rendered unviable, and any claimed purpose of safeguarding a fetus could not be justified. Requiring the author to carry a fatally impaired pregnancy to term only emphasizes the extent to which the State party has prioritized (whether intentionally or unintentionally) women's reproductive roles as mothers, exposing its claimed justification in this context as a reduction ad absurdum.

The Committee has recognized that

“Inequality in the enjoyment of rights by women across the globe is strongly rooted in tradition, history, and culture, including religious beliefs,” and has urged States parties to ensure that such attitudes are not used to excuse abuses of women's rights. The Committee has previously rejected as discriminatory both laws and practices that reinforced gendered preconceptions about women's social and biological roles... Recognizing that disparities in treatment of women based on gender stereotypes can lead to gender

discrimination is also consistent with the stance of other human rights organizations.”

On account of L.C. v. Peru, the CEDAW Panel discovered that Peru had encroached the common freedoms of a pregnant young person who had been physically manhandled more than once, became pregnant, and was denied lawful fetus removal systems.

The petitioner attempted suicide by jumping from a skyscraper after learning that she was pregnant. In any case, on the grounds that to her pregnancy, medical services experts delayed basic spinal medical procedure to help her restoration.

## **2. Harmful Stereotypes and Assumptions at Work**

These legal provisions and practices reflect a number of detrimental assumptions about the nature of sexual assault and how women should respond to non-consensual sexual contact. According to the Committee for the Elimination of Discrimination against Women, they convey rigid beliefs about what constitutes discrimination against women:

“What women or girls should be or should have done in the face of rape based solely on preconceived assumptions of what constitutes a rape victim or a victim of gender-based violence.”

They address the idea that ladies will or ought to continuously truly oppose rape, and that assuming that sex is really non-consensual, a lady will retaliate and genuinely safeguard herself, driving the guilty party to utilize actual power or the danger of savagery to overwhelm her. The fact that survivors of sexual assault crimes are influenced in a variety of ways by fear, shock, and power dynamics and that compulsion frequently involves a variety of nonviolent threats, intimidation, and duress is obscured by these beliefs.

Survivors will be unable to genuinely battle rape much of the time, and guilty parties may not necessarily in all cases resort to viciousness or dangers of brutality. As indicated by the Global Criminal Court for Rwanda,

“Threats, intimidation, extortion, and other types of pressure that play on fear or desperation may be considered coercion, and coercion may be inherent in some situations.”

It also disputed the assumption that essentialism deprives women of autonomy in making judgments regarding their reproductive capability in opining,

“The right to be a mother, or the right to choose parenthood as a "life choice," is a very personal decision for each woman. ... As a result, the Constitution forbids the state, the family, the workplace, or educational institutions from enacting any legislation or policy that violates a woman's freedom to choose to be a mother or interferes with the proper enjoyment of motherhood.

Any prejudiced or undesirable treatment of a woman based on special circumstances she may face when deciding to choose to become a mother (for example, at a young age, within marriage or not, with or without a partner, while working, etc.) is a flagrant violation of the constitutional right to free development of the individual.”

Several gender stereotypes that might block the full enjoyment of human rights, as proven throughout this research, focus on sex, sex role, and sexual traits of men and women. Courts can and may have a major transformational impact in advancing equality across society by clearly recognizing, contesting, and granting appropriate remedies to overcome stereotyping, as detailed more below.

According to the CEDAW Committee,

“Stereotyping undermines the legal system's impartiality and integrity, which can lead to miscarriages of justice, including the victimization of complainants...Women should be able to rely on a judicial system devoid of myths and preconceptions, as well as a judiciary whose impartiality is not tainted by these skewed notions. Eliminating judicial stereotyping in the legal system is an important step toward guaranteeing equity and justice for victims and survivors.”

It also included a dedicated chapter on stereotyping which provides concrete guidance on how judges can identify stereotypes and avoid stereotyping in their legal reasoning,

including in cases related to sexual and reproductive rights. The Gender Equality Unit is monitoring the protocol's implementation and, to this end, has asked judges to provide copies of decisions applying the protocol.

Human rights advocates can play an important role in building judicial capacity to address stereotyping. This might include working with key bodies, such as judicial training institutes, that provide education and training to judges. It could also include holding discussions with judiciaries, conducting education, training and awareness-raising programs for the legal profession and disseminating resources on stereotyping, including best practice summaries.

### Conclusion

As has been demonstrated throughout this report, misperceptions and beliefs about the sex, sex role and sexual characteristics of men and women obstruct the full enjoyment of SRHR, operating to marginalize and exclude gender non-conforming individuals and to subordinate and control women and girls. As such, by explicitly identifying, debunking, and awarding effective remedies to address stereotypes, courts have and can have a critically important transformative impact in catalyzing the elimination of gender stereotypes and ensuring equality throughout society.

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