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THE RIGHT OF WOMEN IN THE UNITED STATES TO CHILDCARE

Authored By - Akanksha

ABSTRACT

This essay makes the case that the United States is required by international law to develop a comprehensive policy that guarantees women's access to affordable child care. Women are prevented from fully participating in public life because they bear a disproportionate share of the burden of providing unpaid and undervalued child care. For women of colour, these discriminatory impacts compound. Notwithstanding its affluence, the United States violates its duties under the American Declaration, ICCPR, ICERD, and customary international law and is outside the norms of international decency. The importance of this argument for the United States is added lacking texture in this essay using intersectionality analysis and the due diligence concept. In her bid for president in 2020, Senator Elizabeth Warren has a strategy that complies with the US's commitments under the Affirmative Action Act. The United States would also support its allies and advance its own economic, political, and security interests by implementing this plan. The lack of funding for child care in the United States has been exposed by COVID-19. The lack of easily available and reasonably priced child care is currently forcing individual parents and the labour market to make adjustments. Many day-care centres are in trouble and some are shuttered. The ability of women to engage in public life on an equal basis with men is severely impacted by this crisis. Unfairly more women than males are responsible for child care. Minority women are particularly hard struck by the child care issue because they are more likely to be single mothers, have low-paying employment, and lack access to child care.

INTRODUCTION

In light of these difficulties, Senator Elizabeth Warren put up a thorough plan establishing a right to easily accessible and reasonably priced child care as part of her campaign for the Democratic Party's presidential candidature. In this essay, the right to child care is identified as a women's right under international law. The American Declaration, the International

Covenant on Civil and Political Rights (ICCPR), and the Inter-national Convention on the Elimination of All Forms of Racial Discrimination are all treaties to which the United States is a party (ICERD). These agreements forbid discrimination and mandate that the US take action to advance real gender equality while taking into account the effects on women of colour. To achieve these ends, child care policy is essential.

The United States must abide by the obligations under customary international law embodied in these treaties, including the right to child care, despite being an outlier for not ratifying the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the International Convention on Economic, Social, and Cultural Rights (ESCR). This essay's first section looks at Senator Warren's proposal, the absence of proper child care, and how it affects women's equality. The second section of this essay makes the case that international law establishes a right for women to accessible and cheap child care while also examining any competing interests, such as maintaining the stigma of vulnerability, downplaying the quality of care, and resource allocation. . By demonstrating that Senator Warren's proposal satisfies the United States' commitment under international law to women to establish proper child care policies, this essay advances the field of studies in this subject. States are required to act responsibly where a right establishes an affirmative commitment. Since doing so is both the correct thing to do in terms of international law and furthers American societal goals, the United States should embrace comprehensive child care policies.

I. SENATOR WARREN'S PROPOSAL, THE CHILD CARE CRISIS, AND ITS IMPACT ON WOMEN

A. Poor Child Care Perpetuates Discrimination against Women and Poses a Structural Barrier to their Equal Participation in Public Life.

The United States has not addressed child care in its entirety since President Nixon rejected the Comprehensive Child Development Act in 1971 because to worries about the maintenance of the family. Without an adequate child care system, women cannot fully participate in public life because they are disproportionately responsible for this job¹. This nation does not offer universal pre-kindergarten, and the cost of care, when it is offered, is high. Care workers, who are disproportionately women of colour, are underpaid and struggle to maintain their own households despite this high expense. Unlike to other developed countries, women in the US

¹ Child Development Act, 1971

have lost ground in the workforce in terms of employment and financial security since the turn of the past century.

B. B. Intersectional analysis shows that minority women are particularly burdened by the child care crisis

71% of black mothers and 41% of Latina mothers in the United States provide the majority of the family's financial assistance. Minority women experience a variety of forms of discrimination in the workplace. Compared to the white population, the pandemic is having a greater negative effect on the health of the Black community. Many Black women and their families are experiencing psychological suffering as a result of the racial justice concerns that are currently dominating political and cultural life in the United States. Black and Latina women is disproportionately underrepresented among those who work in child care, own child care enterprises, reside in poverty, and have access to child care. According to these figures, minority women are disproportionately affected when this systemic hindrance is ignored. As a result of a data gap—fewer minority women policymakers are present at the table—this structural exclusion of minority women from full participation in public life is both a cause and an effect of discrimination. It makes it more difficult for minority women to participate in public life.

C. The Child Care Crisis Proposal from Senator Warren

According to Senator Warren's complete plan, universal child care for kids ages 0 to 5 would be free for families earning "200% of the federal poverty line" and would cost households earning more than that amount "no more than 7%" of their household income. The concept raises the compensation of healthcare professionals, establishes national standards for quality, and offers significant federal funding (paid for primarily by taxes on the nation's wealthiest People) to collaborate with regional providers. Senator Warren was personally affected by this obstacle; without her Aunt Bee, who looked after her small children while she started her legal career, Senator Warren may not have attained her current position of prominence in public life. Regrettably, not much has changed since Senator Warren began her career, and as her narrative emphasises, due of the United States' disregard for this issue, women are all-too-often excluded from public life. The idea that child care should be a right is the foundation of Senator Warren's proposal. The basis of that right for women as a human right is examined in this essay.

II. EQUAL OPPORTUNITY AND ANTI-DISCRIMINATION CREATE A POSITIVE COMMITMENT TO IMPLEMENT SUITABLE CHILDCARE POLICY

A. *The Lenahan Case: How the American Declaration Integrates Customary International Law and Positive Duties*

A negative responsibility only requires a state to refrain from violating a certain right, whereas a positive obligation calls for the state to take proactive action. International human rights law imposes affirmative obligations, as *Jessica Lenahan (Gonzales) v. United States* makes apparent. A state is required to exercise due diligence when there is an affirmative commitment. In *Lenahan*, the Inter-American Commission on Human Rights (Commission) looked at whether or whether the United States was subject to the standards of customary international law and, if so, whether an obligation of due diligence was owed. Whereas a positive obligation compels the state to act actively, a negative responsibility just calls for the state to refrain from breaching a certain right. As *Jessica Lenahan (Gonzales) v. United States* demonstrates, affirmative obligations are imposed under international human rights law. If there is an affirmative commitment, a state must exercise due diligence.

The Inter-American Commission on Human Rights (Commission) examined *Lenahan* to determine whether the United States was bound by customary international law and, if so, whether it owed a duty of diligence. By neglecting to look into and uphold the restraining order, *Jessica Lenahan* claimed that the United States engaged in discrimination against her and denied her equality. The United States contended that the American Declaration's aspirational, non-binding equality and anti-discrimination principles were inadequate to protect citizens from domestic violence. The due diligence principle, according to the United States, is not sufficiently specific.

The Commission found an affirmative obligation and rejected the United States' objections. This obligation included the responsibility to put an end to discrimination and provide legal equality. It also stated that non-discrimination was "the cornerstone of the universal... protection of human rights" and "a fundamental element of the inter-American system of human rights." The Commission emphasised that it has repeatedly discovered that this idea requires positive policy and legislation that adopts suitable measures required to uphold these rights, rather than being just a negative requirement to not infringe on them. A "strong [and well-recognized] relationship between the problems of crime and violence against women" was

discovered by the Commission.

The right to child care is covered by the American Declaration's anti-discrimination and equality clauses, which the Commission argues contains the due diligence obligation. Discrimination, inequality, and the absence of a sufficient child care policy in the United States are all closely related. Examples of stereotyped bias and discrimination against women for playing the role of mothers abound in employment discrimination law. Congress has tackled discrimination against mothers and expectant moms in the workplace because it is aware of the issue. It is acknowledged by the Supreme Court that preconceptions about mothers and Pregnant women are common in the workforce. These prejudices are reinforced by and continue the systemic inequity that women experience by failing to shoulder society's responsibility for child care.

The separate spheres belief system, which confines women to the house and promotes males to positions in public life, effectively gives men more power and financial advantage, is the foundation of this problem. In America, there is opposition to increasing women's equality in order to protect women's status in the home. Pioneering feminists frequently had to conform to the male employment model by demonstrating that they were equally free of parental responsibilities as their male colleagues. This conflict gave rise to the viewpoint that women's problems with economic integration can be solved by acting more like archetypal men.

Due to the dominance of this viewpoint, the United States was unable to address the structural barriers that impede women from achieving equality. The ability or inability of a particular woman to balance home and child care obligations with career objectives is seen as the product of her own decisions and actions rather than the underlying institutional impediments. Hence, women's advancement towards equality in terms of economic power and leadership roles has stalled in the US. More of the burden of child care continues to fall on women. Also, the cost of pre-school and infant care puts many working families out of their price range. Reevaluating the importance of care work would benefit everyone in society, including men and children, while addressing structural barriers that women experience.

Similar to Lenahan, there is a clear connection between gender disparity, child care policy inadequacy, and discrimination against women. According to the American Declaration, the United States has an obligation to take proper affirmative action. This essay examines how the

body of international law perceives the right of women to child care after discovering a clear connection between gender discrimination, inequality, and poor child care policies.

B. CEDAW Highlights Customary Duties that the United States Is Required to Obey

The CEDAW convention provides a customary source of responsibilities under international law that are obligatory on the United States under the Lenahan concept, notwithstanding the fact that it has not been ratified by the United States. International morality, rather than formally obtaining consent, serves as the foundation for the binding nature. The large amount of legislation passed to implement women's equality is evidence of the moral consensus on the issue. Even in countries where it is not adopted, CEDAW offers the consensus idea a concrete definition.

According to the CEDAW, States Parties are obligated to "guarantee the equal rights of men and women to enjoy all economic, social, cultural, civil, and political rights," as well as "the dignity and worth of the human person [,]" as well as "the equal rights of men and women." According to CEDAW, "extensive discrimination against women continues to exist" despite attempts and affirmations of equality. The preamble of the treaty expressly discusses the function of maternity in the context of family and society:

The social significance of maternity, the role of both parents in the family and in the upbringing of children, the fact that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole, and bearing in mind the great contribution of women to the welfare of the family and to the development of society, which has not yet been fully recognised

The undervaluing of child care must be reversed, as made clear by this remark. The preamble expresses the need for structural change to erode the barriers between the two spheres of society and to remedy the artificial devaluation of child care, which has historically been confined to the domain of the second sex. This statement on the right of woman to participate in public life on an equal footing with man is best understood when read in conjunction with the preamble. Importantly, CEDAW also establishes a criteria for where discrimination may occur by defining the word in Article 1 of the treaty². Any distinction, exclusion, or restriction based on sex that "has the effect or intention of weakening or nullifying [women's equal participation]

² Convention on the Elimination of All Forms of Discrimination against Women, 1979

in the political, economic, social, cultural, civic, or any other area" is considered discriminatory. The phrase "effect or purpose" is significant since it acknowledges both substantive and formal equality. A problem that limits women's ability to participate in public life on an equal basis with men is the shortage of child care. So, putting child care last is discriminatory regardless of the state's motivation.

Article 2 mandates that states "pursue a policy of eliminating discrimination [,]" including through the adoption of "ap- propriate legislation," "by all suitable measures and without delay." States are obligated by Article 3 to adopt "all relevant steps" to ensure that women can participate fully in public life on an equal basis with men.

In Article 11, CEDAW states that states must "take appropriate measures" to create social programmes "to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child care providers" in order to "prevent discrimination" and "ensure [women's] "effective right to work."

The connections that CEDAW makes between inequality, discrimination, and child care, despite the fact that it is not a legally enforceable convention, support the idea that the United States has a moral duty to take action.

C. The Relationship Between Economic, Civil, and Political Rights Provides Justification for Sufficient Child Care Policy

In 1992, the ICCPR was approved by the United States. The ICCPR became the supreme law of the nation upon ratification, and the United States is now required to abide by its provisions to the same extent as other federal legislation. State parties must "undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant," according to Article 3 of the IC-CPR. In addition, Article 26 states that "[a]ll persons are equal before the law" and have the right to an equitable and effective deterrent to discrimination.

ICCPR obligations are clarified in General Comment 28 of the Human Rights Committee. This guidance makes it clear that removing structural barriers counts as compliance. The lack of child care is a structural barrier to women's involvement in the labour market and in political life, and as such, it must be remedied in accordance with this treaty.

Notwithstanding the fact that the United States is not a signatory to the ESCR, it provides another body of international customary law that supports the notion that there is a right to sufficient child care. Article 7 covers the right of women to equal job prospects as those of males, as well as the right of everyone to "a decent life" and opportunities for advancement that are only constrained by "seniority and competence." Women do not now enjoy these rights since they bear a disproportionate share of the burden of providing for children. According to Article 10, which defines the family as the "fundamental group unit of society," states are required to help families satisfy the medical and educational needs of their children.

The protections of equality and against discrimination do not fall under the progressive—rather than immediate—nature of the ESCR duties. Both of these ideas, as was previously mentioned, apply to child care. Even if this weren't the case, the ESCR's progressive nature shouldn't be interpreted as a defence of inaction. Progressive compliance might, at most, allow for opposing resource allocation issues. These issues may warrant flexibility and effectiveness in child care policy, but not a disregard for accessibility and affordability. The proposal from Senator Warren satisfies the demands. Nonetheless, it is true to argue that a political compromise could result in a plan with slightly less money or slightly higher costs borne by individual parents.

The ICERD forbids discrimination on the basis of race, mandates equality for all races, and emphasises that this right to equality must also extend to economic, social, and cultural rights. This convention requires that, when the "circumstances so warrant," State Parties adopt "concrete steps" to advance and defend the economic, social, and cultural rights of particular racial groupings or members of that group. Adoption of a sufficient child care policy is warranted by the situation in the United States in order to safeguard women of colour. Due to historical access obstacles and ongoing discrimination, minority women would continue to experience structural disadvantages in terms of economic, social, and cultural equality in the absence of such policy.

D. The Purpose of the Policy on the Right to Appropriate Child Care

Accessibility and affordability must be part of the definition of the right to child care. These requirements are met by Senator Warren's proposal, making it a suitable policy that has to be implemented right once. There is a distinction between ensuring that child care is accessible and available and supporting child care. The government could theoretically claim that it only needs to ensure that care is available if the private sector were to offer cheap care. Yet because

the private sector has failed to offer reasonably priced child care, the government must step in and give funds.

The conclusion that accessibility and affordability are both crucial are reinforced by comparison to other states. Germany established universal childcare for kids under three in 2013, and studies show that between 2013 and 2017, women's economic success increased as a result. Increased availability for low-income families was demonstrated by Chile's extension of its free child care programme, and a Nairobi programme that gave women vouchers for child care services over time had a favourable effect on those women's employment. On the other hand, the United States ranks thirty-third out of thirty-three OECD countries in terms of public investment in child care, and its parents have the third highest child care costs, shelling out an average of 33.2% of family income for child care.

Finding the right to child care as a woman's right could have the disadvantage of downplaying the child's right and the accompanying responsibility to provide high-quality care. Yet, I do not advocate for policy to be solely based on women's rights, and I acknowledge, as does international law, that a comprehensive rights approach is necessary. Yet we must not lose sight of the implications for women of the access to child care.

III. ECONOMIC, POLITICAL, AND SECURITY INTERESTS OF THE UNITED STATES

State funding for child care is not just the morally correct thing to do, but also the sensible thing to do, as evidence from other nations reveals. To compete and lead the world in the information era, the United States needs to tap into the ideas, initiatives, and skills of its whole people. There is widespread cultural awareness of how well women led throughout the COVID-19 crisis. A missed opportunity is the institutional discrimination against women that results from poor child care policies. For over 40 years, women have outpaced males in earning college degrees, and they are expected to surpass men in the number of college-educated workers in the labour sector.

The 2018 National Defence Strategy (NDS) of the United States acknowledges the global power rivalry with China and Russia and states that in order to compete, the United States must combine its diplomatic, economic, and military might. All domains, including "space [] and cyberspace[.]" are acknowledged by the NDS as being "contested." Advanced computers, "big

data" analytics, artificial intelligence, autonomy, robots, and biotechnology are just a few of the quickly developing new technologies that are transforming the nature of combat. The strategic goals of the United States include increasing influence, supporting allies, and modernising culture to improve performance. These goals are compatible with increasing women's involvement in public life. The mobilisation of women's economic participation during World War II and the temporary state-supported, easily accessible, and reasonably priced child care facilities established for this effort serve as a historical analogy. The United States committed to completely integrating women and gender views at all levels of security decision-making and practise with the implementation of the first-ever Women, Peace, and Security statute in 2017. To accomplish those goals, a comprehensive child care policy is a logical first step.

CONCLUSION

In order to fulfil its affirmative commitments to end discrimination and promote women's equal participation in society, the United States should proceed to implement Senator Elizabeth Warren's plan (or one similar to it). Although the United States currently offers some protection from discrimination, it has failed to recognise the importance of caregiving duties and to adopt legislation that makes parenthood compatible with success in public life. This undermines the moral requirement of equality and has a disproportionately negative impact on and level of discrimination against women, particularly minority women. Furthermore, it is foolish to design a modern society in a way that limits the most educated population segment's involvement and prevents individuals who care for others from supporting themselves as well.