Appraisal of the Implication of Autonomy Theory in Women and Minority Rights Law

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Abstract

Autonomy theory shifts the emphasis from women having what men have to women being able to stand on their own make their own decision and pursue their own notion of a life well lived women's rights advocates make similar assumption when they argue that women should have freedom to control their own lives and make their own reproductive choices. Therefore, the aim of this article was to deal with sex and consent, pregnancy and autonomy, economic autonomy and women's poverty, the challenges in the implementation of the autonomy theory and the solution to these challenges. The research methodology was doctrinal approach, using expository and analytical research design. The main sources of data collection were various legal literatures, both from the physical library and the e-library. it was found that the concept of autonomy has been developed in decisions concerning sexual and reproductive rights, including those connected to assisted reproduction techniques, access to abortion services, informed consent, and sex education, as well as the element of non-consent in sexual violence laws. It is also found that the doctrine has been embraced in decisions concerning LGBTIQ+ communities, interconnected often with the exercise of gender identity and expression and the rights to live free from violence and discrimination. It was recommended that in order to cure the defect of Autonomy theory, government should be responsive to provide and cater for women to cure the defect of poverty. Thus, the government should provide a regulatory machine to cure the defect of lack of manpower and inefficiency in workplaces as a result of women's limit of productivity.

Key Words: Autonomy, Implication, Law, Minority, Rights, Theory, Women

1. Introduction

For women's rights advocates, equality is a critical value, but so, is autonomy. This topic shifts the emphasis from women having what have to women being able to stand on their own, make their own decisions and pursue their own notion of a life well lived. The law governing contracts, torts and crimes typically assumes that the individual is capable of formulating a specific intent to act, of exercising free choice or consent and of behaving as a reasonable person. Women's right advocates make similar assumptions when they argue that women should have freedom to control their own lives and make their own reproductive choices.[1]

Typically autonomy is thought to reside in the individual person and means the rights to be free from interference by others. The contemporary women's right movement however, has often considered relationship as the foundation of autonomy rights and has argued for concepts of

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[1] C P Iloka, "Advancing the Rights of Women beyond their Challenges in the Nigerian Political Scene: A Focus on the Affirmative Action" (2022) (6) (1) *Chukwuemeka Odumegwu Ojukwu University Law Journal*, available at <https://scholar.google.com/scholar?oi=bibs&cluster=17742611863979042170&btnI=1&hl=en> accessed 20 December 2024.

autonomy that encompass the freedom to flourish in a positive sense, not just freedom from the interference of others. This paper will be looking at sex and consent, pregnancy and Autonomy, Economics Autonomy and women's poverty the challenges in the implementation of the autonomy theory and the solutions to these challenges.[2]

2. Anatomy of Autonomy Theory by Application

2.1 Sex and Consent

One of the most difficult and contested issues in the law of rape is that of consent. This topic begins with the law of statutory rape which presumes the law of consent to sex by victims below a certain age. Traditionally, only a woman could be the victim of statutory rape, and only a man could be charged with the crime. According to governmental and crime centre research in America, about 16 to 18 percent of American men have experience an attempted or completed rape. Rates for African American women are slightly higher (22 percent) and for Hispanic women are slightly lower (14 percent) than for white women (18percent). About 12 percent of victims are 10 years old or younger, 30 percent arc 11 to 17, and 37 percent arc 18 to 24. Explanations for rape fall along three main dimensions: individual, socio-biological and cultural.[3]

At the individual level: profiles of rapists indicate that many are primary attracted to power; they want the feeling of domination, adventure and self-esteem that comes from coercive sex. Other men emphasize anger, rape as a means to punish or avenge some wrongby a particular woman, women in general or another adversary. Most rapists blame their victims and some stress situational influences such as peer pressure or drug and alcohol abuse. Exposure to family violence during childhood increases the likelihood that men will engage in sexually violent activities as adults.[4]

The sociological explanation is that, at an evolutionary level men having intercourse with a large number of fertile females have favourable reproductive consequences. For men who have difficulty attracting wiling partners, coercive sex is adaptive and likely to be favoured by natural selection[5] critics of this account note that they do not explain the substantial variation in rape rates across time and culture, or the frequency of sexual assault involving non-vaginal intercourse or female victims too young or too old to ear children.[6]

Cultural explanations stress the eroticization of male aggression in popular films, television, fiction and video games, as well as-gender stereotypes in media coverage of sexual assault.[7] Such frames also underscore the role of male-dominated institutions such as the military, fraternities and athletic teams in fostering attitudes that legitimate male sexual aggression. A major issue is what

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[2] C P Iloka, "Affirmative Action and the Role of Lawyers in Fostering Women's Participation in Election Processes in Nigeria: A Critical Analysis" (2023) (4) (11) *ACARELAR*, available at <https://scholar.google.com/scholar?oi=bibs&cluster=14738547023638795274&btnI=1&hl=en> accessed 20 December 2024.

[3] C P Iloka, "Affirmative Action and the Role of the Legislature in Promoting Women Participation in Election Processes in Nigeria" (2022) (4) *IJOCLLEP*, available at *Google Scholar* <https://scholar.google.com/scholar?oi=bibs&cluster=9692119633994661529&btnI=1&hl=en> accessed 20 December 2024.

[4] *Deborah L. Rhode, speaking of sex: The Denial of Gender* Equality 121[1997].

[5] *Own D. Jones &Timothy H. Goldsmith, Law and behavioral* Biology, 105 Colum L. Rev. 405 [2005].

[6] C P Iloka, "Appraisal of the Legal Framework of the Sexual and Reproductive Health Rights of Women in Nigeria" (2023) (4) (1) *Chukwuemeka Odumegwu Ojukwu University Journal of Private and Public Law* available at <https://scholar.google.com/citations?view_op=view_citation&hl=en&user=st6bmz4AAAAJ&citation_for_view=st6bmz4AAAAJ:hqOjcs7Dif8C> accessed 19 December 2024.

[7] *Helen Benedict, Virgin or Vamp: How the Press covers* sex crimes [1992].

constitutes the line between coercive and consensual sex? What makes this line so difficult? Have you ever had an experience where you had difficulty seeing the difference?

2.2 Pregnancy and Autonomy

Women's role in reproduction has always been a factor in limiting her life choices and opportunities. Thus, contraception, pregnancy, abortion and other reproductive issues have been central to controversial debates about women's autonomy. Women's reproductive choices were not broadly stipulated in the United States until the nineteenth century. The momentum for legal control of women's options came largely from moral reformers and physicians who in response to the increased demand by women for contraception and abortion, wanted to assert technical, ethical and social superiority over their competitors.[8]

In 1983, the U.S Congress passed a law which prohibited dissemination of information about abort and contraception. In the early twentieth century, feminist pioneers such as Margaret Sager used arguments in favour of birth control in an effort to overturn the above regulation to assert women's rights to control their own bodies. As a result of this, throughout the early twentieth century fertility control emerged as a right for the privileged and a duty for the poor. By the middle of the twentieth century, more liberal sexual moves opportunities for women in paid employment, economic pressure within families to control fertility and the availability of oral conception, helped liberalize public attitudes and practices, but many state laws banning contraception remained on the books. The questions are: should there be a constitutional right of privacy? If so, how broadly should it be defined? What is the relationship between women's rights to privacy and her right to equality?[9]

2.3 Economy Autonomy and women's poverty

One of the most significant impairments of women's autonomy is not primarily legal but economic. This section explores the welfare system and its impact on poverty among women and their children. Welfare began in the United States as part of state mother's pensions' programs for destitute families. Use of the term “pension" connoted that the payment was a substitute for money that might otherwise be received in paid employment. Impact in these early programs was the understanding that childbearing was work and tat a mother's devotion to the care of her children was important.[10]

The initial purpose was to relieve impoverishment caused by mothers having been widowed or abandoned, black migrants and unwed mothers were systematically excluded cither by failure to publish program in locations where these regulations were concentrated or through discriminatory eligibility requirements, including residency and moral character requirements. In 1931, the first national survey of mother's pensions, broken down by race found the only 3 percent of recipients were black.[11]

With the civil rights movement of the 1960s came successful legal challenges to welfare criteria that excluded racial and ethnic minorities. As a result, an increasing proportion of welfare

[8] C P Iloka, “Contemporary Issues on Reproductive and Sexual Health Vis-À-Vis the Rights of Women in Nigeria” (2022) (13) (2) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, available at <https://scholar.google.com/citations?view_op=view_citation&hl=en&user=st6bmz4AAAAJ&citation_for_view=st6bmz4AAAAJ:_FxGoFyzp5QC> accessed 19 December 2024.

[9] *Ibid.*

[10] C P Iloka, “Discriminatory Practices and Policies Inimical to Womenâ€™ S Right in Nigeria” (2021) (3) (1) *Journal of Commercial and Property Law*, available at *Google Scholar* <https://scholar.google.com/scholar?oi=bibs&cluster=16417092559272951671&btnI=1&hl=en> accessed 10 December 2024.

[11] *Ibid*.

recipients were never married. By 192, over 60percent of welfare recipients were women of colour. As this demographic transformation occurred, so too did the image of women on welfare, who were often viewed as lazy, promiscuous and socially irresponsible. Accordingly, attention began to focus less on child welfare and more on mothers' sexual and procreative practices.[12]

In 1996, national welfare policy shifted significantly. Rather than a potentially long term public entitlement of support for poor, single-parent families, it became a time limited benefit that assumed that every able-bodied parent should work to support his or her own children. This section examines this shift, as well as broader questions concerning autonomy and welfare policy.[13]

In what way docs the goal of promoting economic self-sufficiency conflict with the goal of providing adequate support for children and their caretakers? Which is the more important objective? Does the emphasis on work serve women well or is the model of public subsidy for care of dependants a better emphasis? To what extent should the federal government promote marriage as a means of ensuring stability (including economic stability) for children?

3. The Challenges in the Implementation of the Autonomy Theory

3.1 Biological differences

This is one of the challenges in the implementation of the Autonomy theory. This theory advocates women having their own freedom to control their own lives but the various biological differences in women tend to hamper the implementation of this theory for example, conception, monthly cycle, etc. All these tend to limit women to have control of their own lives.[14]

3.2 Lack of manpower in workplace

Implementing the autonomy theory will bring about lack of manpower in work places as a result of some of the biological differences which hamper their productivity.

3.3 Poverty

Allowing women to have freedom to control their own lives could lead to poverty since their biological feature will limit their productivity.

3.4 Inefficiency in workplaces

Allowing women to control their lives could lead to inefficiency in workplaces as a result of the biological differences.

3.5 Family Challenges

Implementation of Autonomy theory could lead to family challenges. Women allowed to control their lives would, in most circumstance cannot provide for the family because of their limit in production.

4. Appraisal of the Implication of Autonomy Theory in Women and Minority Rights Law

Feminism as a discipline focuses on the significance of gender and the societal inequality resulting from values and assumptions based on gender, feminist scholars are found in all disciplines. As a group, feminists are concerned with the implications of historic and contemporary exploitation of women within society, seeking the empowerment of women and the transformation of institutions dominated by men. In addition, many feminists also use distinctive feminist methods to bring

[12] *Ibid.*
[13] *Ibid.*
[14] *Ibid.*

women's experiences to the foreground, such as consciousness raising or storytelling. Such methods recognize the validity and importance of women's experiences and ground feminist theory and research.[15]

One important characteristic of feminism is that it represents the integration of practice and theory. As noted by historian Linda Gordon, feminism is "an analysis of women's subordination for the purpose of figuring out how to change it." The recognized desirability of this practical aspect has made many feminists gravitate toward law and legal reform as objects of study and action. They have had many successes within law. In fact, it is fair to state that feminism, along with economics and, to some extent, psychology, has had a visible and immediate impact on law over the past several decades. The effect is apparent not only in the academic and in legal scholarship, but in the doctrine employed by courts and developed by legislative bodies. The very institutions of law have been assessed and, occasionally, revised in the light of feminist insights and arguments.[16]

The fact that feminism has had an impact is not surprising given the huge influx of women into law schools beginning in the 1970s. While there were women in law schools prior to this period, their numbers have increased significantly during this time. Further, women have been integrated into the profession at all levels. In the first wave of women to attend law school, many were explicitly interested in a feminist political agenda. They came to law schools with the mantra that "the personal is the political" ringing resolutely in their ears. They were interested in reform and the role that law would play in the project of engineering a more gender-equal society. These early feminists were optimistic about using law to attain gender equality.[17]

The strategies of early legal feminist reformers were varied and their perspectives were not always compatible. One basic divide that emerged early in the articulation of a legal approach to feminist theory is still significant today—the issue of gender difference. What were the differences between women and men? How were they to be addressed? The majority of early feminist legal theorists adopted a discrimination model to the issue of gender. Their objective was to outlaw biased treatment and provide laws that allowed women equal opportunities with men.[18]

This group of feminist legal scholars and practitioners were uneasy with too much attention to difference and instead wanted to emphasize women's sameness with men. Less innovators than entrepreneurs within traditional legal principles, these feminists resorted to doctrinal arguments that women and men should be treated the same. Employing and expanding upon existing equal protection jurisprudence, the attack was on differences codified in law as well as on the stereotypes that justified them. The belief was that any recognition of difference or argument for "special treatment" would operate to the disadvantage of women. These feminists attacked discriminatory laws that denied women full participation in public institutions such as the jury (successful) and the military (unsuccessful). They challenged financial and market institutions' different treatment in areas like insurance and finance to make gains in equal treatment in access to employment and pay.[19] Consistent with the primary commitment to equality and gender neutrality, many of the early

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[15] *Berkeley, "Difference, Dominance, Differences: Feminist Theory, Equality, and the Law". Berkeley Journal of Gender, Law & Justice. (2013)* ***5*** *(1). doi:10.15779/Z388C4M.*

[16] C L Sagers, "Review of Postmodern Legal Movements: Law and Jurisprudence at Century's End". *Michigan Law Review* (1997). 95 (6): 1927–1943. doi:10.2307/1290030. JSTOR 1290030.

[17] *Ibid*.

[18] R Hunter, and E Rackley, "Feminist Judgments on the UK Supreme Court". *Canadian Journal of Women and the Law* (2020) 32 (1): 85–113. doi:10.3138/cjwl.32.1.04. ISSN 0832-8781. S2CID 213021194.

[19] Title VII of the Civil Rights Act of 1964.

cases were actually brought on behalf of men excluded from women's institutions or complaining about favored treatment for women.[20]

Other feminist scholars, however, wanted to develop and build upon the concept of gender difference. Gender inequality was not only produced and maintained through exclusion from or discriminatory treatment within existing social structures. Facially neutral rules could also generate inequalities, particularly since women's and men's societal circumstances were so different. Such differences demand different treatment – mere formal equal treatment could not sufficiently address existing structural and ideological inequalities. This strand of feminism sought to question the legitimacy of existing gender norms and their implications for society's institutions and legal structures. The objective was not necessarily to eradicate these norms (a monumental task that has only begun), but to address the implications of gendered institutions. Institutions, including law were not perceived as neutral and potentially helpful in this regard. They were part of the problem as currently constructed.[21]

This group of scholars and activists, labeled "difference feminists," can be further divided according to how they understood the implications of difference. Some, labeled "cultural feminists," argued that women were different from men and had a unique way of "knowing" or feeling. For example, cultural feminist arguments were particularly significant in developing the movement to replace adversariness with mediation and other, gentler, forms of alternative dispute resolution.[22]

By contrast, other arguments that focused on gender differences waged broader critiques of certain substantive areas of law. These attacks were directed at a variety of laws and legal institutions, challenging them as illegitimate because they failed to reflect the differences between women and men. Recognition that differences between women and men existed (whether developed socially or biologically) led some feminists to call for law reforms addressing the position of women and the gendered nature of their lives. The argument was that women occupy a different and inferior or subordinate position in this society and this necessitated "special" concern and responsiveness. Existing laws were attacked as reflective of male bias. Some commentators went so far as to assert that the law itself was male.[23]

Such arguments, delegitimizing existing law and structures, eventually led to reforms that displaced the traditional (male) perspective and effectively transformed the way we think about things such as sexual assault and domestic violence. Family law was another area in which critiques based on the inequity of gender differences were effective. Property division rules at divorce were altered in response to the argument that women as homemakers and mothers made valuable, even if non-monetary, contributions to the family. A focus on gender differences also ushered in "new" legal concepts such as sexual harassment and the battered women's syndrome. Courts began to recognize that a "typical" woman's reaction to an experience of "flirtation" in the workplace or repeated threats and actions of violence at home might not be the same as those of the law's

[20] C P Iloka, "Employment Rights of Women and the Disabled: Curbing Workplace Discrimination" (2023) (3) (1) *De Juriscope Law Journal*, available at *Google Scholar* <https://scholar.google.com/scholar?oi=bibs&cluster=10526685945492522 64&btnI=1&hl=en> accessed 20 December 2024.

[21] A P Harris, "Race and Essentialism in Feminist Legal Theory". *Stanford Law Review* (1990) 42 (3): 581–616. doi:10.2307/1228886. JSTOR 1228886.

[22] *Ibid*.

[23] *Ibid.*

construct—the "reasonable man." These changes in the law show the success that feminists have achieved in working towards challenging the existing nature and structure of the law. As noted over ten years ago in At the Boundaries of the Law, "the task of create and explicate feminist methods and theories that explicitly challenge and compete with the existing totalizing nature of grand legal theory."[24]

There is a tension between the idea of feminism as a method of analysis and gender neutrality or equality as its aspiration. How can the major feminist insight – that women live gendered lives, lives shaped by experiences within a society whose institutions and ideologies are founded upon and incorporate gendered assumptions – be reconciled with the equality paradigm as it is played out in law as sameness or equality of treatment? By and large, there is no reconciliation. Equality norms and gender neutrality prevail; although, there is some minor concession to the realization that women's unequal material circumstances might require some small, preferably temporary, concessions. For example, advocates of affirmative action begin with the premise that equality is not only desirable, but also attainable. The point of affirmative action is remedial—to ensure equal access and equal opportunity for equally distributed meritocracy and ability.[25]

In fact, if we look at the areas which take the idea of gender most seriously and in which it has had the greatest impact, what emerges is an interesting picture. Sexuality, "domestic" violence, and family law are areas that have historically and stereotypically been conceded to women or considered to be of special concern to women. While rape and sexual harassment are "public" events that are sanctioned by law and the focus of regulation and policy, unease with both actions is the result of the fact that we view them as related to "private" activities such as consensual sex and flirtatious seduction. The idea of gender is less visible in situations where we do not view women as victims, as we do in some cases of rape or domestic violence, or where issues do not implicate the domestic sphere of home and family. The dilemma for a feminist is how to bring a gender-focused analysis to bear in the more public and powerful institutional contexts. How can we argue that gender is relevant beyond the sexual, the violent, and the familial?[26]

Women's decision-making autonomy must be considered from an intersectional perspective that recognizes women's plural identities and affords insight into the difficulties that women —in their specificity and diversity— face in accessing decision-making posts. Thus, when looking at the progress made in recent years in women's access to positions of power in the region (such as the proportion of women elected to national parliaments), part of the analysis must be whether that progress meets women's needs and demands and whether it reflects the many cultural and multi-ethnic nature of many of the countries of the region. In the same vein, it should be borne in mind that the State and policies are not neutral, rather they reflect and reproduce the values, norms and biases that prevail in wider society, including what is understood by "feminine" and "masculine".[27]

5. The Way Forward

In order to cure the defect of Autonomy theory, we will need more than a responsive government that will provide and cater for women to cure the defect of poverty. The government should provide

[24] D Cornell, *Beyond Accommodation: Ethical Feminism, Deconstruction and the Law* (Routledge, 1990).
[25] J A Baer, *Our Lives Before the Law: Constructing a Feminist Jurisprudence* (Princeton University Press, 1999) 75.
[26] M A Fineman, "Feminist Legal Theory: Vulnerability and the Human Condition" *Journal of Gender, Social Policy & the Law* (2019) Vol. 13, No. 1.
[27] A Barcena, A Prado, M N Rico and R Perez, "Equality Women's Autonomy Sustainable Development Agenda" *Online Source* <https://repositorio.cepal.org/server/api/core/bitstreams/45d35703-77d8-44ed-b473-a4caa4969d2c/content> accessed 12 September 2024.

a regulatory machine to cure the defect of lack of manpower and inefficiency in workplaces as a result of women's limit of productivity.

The imperative now is to design and implement coordinated action to enhance synergies, forging systemic links between follow-up to the commitments of the 2030 Agenda, the political and programmatic direction of the regional gender agenda, the agreements of the Beijing Platform for Action and the Programme of Action of the International Conference on Population and Development[28], as well as the obligations assumed by States with the signature and ratification of the Convention on the Elimination of All forms of Discrimination Against Women and the Convention of *Belém do Pará*. Building up this articulation will need stronger political commitment from countries, and better coordination and cooperation between sectors, opening up channels between existing regional and global institutions.[29]

The participation of governments alongside diverse social stakeholders is crucial in this process, redeeming the principle of common but differentiated responsibilities between countries. "It is time to identify the right policies and instruments and put them in place. For this, institutions and collective effort will be crucial".[30] This being so, closing gender gaps and broadening the exercise of women's autonomy will take a great deal of boldness and new, fairer and more solidary partnerships within countries and at the regional and international levels, representing a challenge for the capacities of governments, especially in smaller States.[31]

This article proposes a legal approach centered on *intersectional autonomy* as critical to the respect and fulfillment of women's rights. This is part of a modern and evolving gender perspective for women, promoting their decision-making, agency, and leadership in society. Building blocks to this new approach are cognizable in current cases related to the rights of women and gender equality concerns, as will be discussed in this section. Autonomy and intersectionality have become guiding principles in international human rights law case law concerning women's rights.[32] This is a valuable legal tendency, but more integration and coherence between these terms is needed to have a gender perspective with potential for effectiveness and substantive transformations at the national level.

Autonomy is presented in recent global and regional case law as the possibility of women to express their identities, carve their life plans, and exercise their self-determination, free from unjustified government interferences. Autonomy requires having access to information and education to exercise human rights, and privacy and confidentiality when needed. It also entails agency in the ability to make free and independent choices based on this information.[33]

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[28] *Ibid*.

[29] C P Iloka, "The Jurisprudence behind International Legal Framework on the Rights of Women and Children: An Appraisal" (2022) (3) IJOLACLE, available at *Google Scholar* <https://scholar.google.com/scholar?oi=bibs&cluster=14908986982353941386&btnI=1&hl=en> accessed 20 December 2024.

[30] R Celorio, "The New Gender Perspective: The Dawn of Intersectional Autonomy in Women's Rights" (2024) (25) (1) *Chicago Journal of International Law*, p. 12.

[31] *Ibid*.

[32] *Artavia Murillo v. Costa Rica* (Nov. 28, 2012), Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R., Series (ser. C) No. 257, p. 2.

[33] Convention on the Elimination of All Forms of Discrimination against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force Sept. 3, 1981 [hereinafter CEDAW]; Inter-Am. Convention on the Prevention, Punishment, and Eradication of Violence Against Women, art. 6, June 9, 1994, 27 U.S.T. 3301, [hereinafter Convention of Belém do Pará], 1438 U.N.T.S. 63; Protocol to the African Charter on

The concept of autonomy has been developed in decisions concerning sexual and reproductive rights, including those connected to assisted reproduction techniques, access to abortion services, informed consent, and sex education, as well as the element of non-consent in sexual violence laws, as will be discussed shortly. It has also been embraced in decisions concerning LGBTIQ+ communities, interconnected often with the exercise of gender identity and expression and the rights to live free from violence and discrimination.[34]

The author calls this needed approach *intersectional autonomy* because its lens is not homogenous, and its exercise is deeply shaped by age, race, ethnicity, sexual orientation, gender identity and expression, disabilities, refugee, and migrant status, as well as other factors. An intersectional approach is central to recognize the multilayered nature of women's experiences and many recent rulings acknowledge this as critical. This includes identity facets which mold the discrimination experience for women who are girls, Indigenous, afro-descendent, and who belong to LGBTIQ+ groups, among others. Factors such as age, race, ethnicity, gender identity and expression, and others not only aggravate a women's experience, but also shape its manifestations, since these are core parts of their identity. These motives can also determine the extent to which women can exercise their autonomy in decision-making concerning all areas of their lives.[35]

A legal approach guided by intersectional autonomy also calls for living a life with dignity as a goal and a minimum. The pursuit of dignity is an emerging and cross-cutting theme across civil and political rights and economic, social, and cultural rights. It entails women having access to critical economic resources to exercise their free choices and to live free from all forms of violence and discrimination. This is all intimately connected to women's capacity to effectively and meaningfully participate in affairs at the local, national, regional, and international levels, and in the finding of solutions to our social problems.[36]

Human and Peoples' Rights on the Rights of Women in Africa, adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, CAB/LEG/66.6 (Sept. 13, 2000); *reprinted in* 1 Afr. Hum. R. L.J. 40, *entered into force* Nov. 25, 2005; [hereinafter Maputo Protocol]; Council of Europe Convention on preventing and combating violence against women and domestic violence, art. 3(c), May 11, 2001, C.E.T.S. No. 210.210.

[34] For a discussion of the international human rights law regime and the eventual codification of the prohibition of discrimination against women in CEDAW, see Introduction: Discrimination against Women through the Lens of International Human Rights Law, in Women and International Human Rights in Modern Times, 1–3 (Edward Elgar ed. 2022). For references related to the rights of women in the interpretation of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights, see U.N. Human Rights Comm. [UNHRC], General Comment 37 On the Right of Peaceful Assembly, U.N. Doc. CCPR/C/GC/37 p. 90 (Sept. 17, 2020) (underscoring the state obligation to investigate promptly and exhaustively unlawful use of force claims by law enforcement officials involving sexual or gender-based violence in the context of assemblies); Comm. on Econ., Soc., and Cultural Rights, General Comment 22 On the Right to Sexual and Reproductive Health, U.N. Doc. E/C.12/GC/22, pp. 1–21 (May 2, 2016) (discussing the content of the right to sexual and reproductive health for women and girls). For an example of a newer treaty addressing the rights of women.

[35] *CEDAW Comm., Cecilia Kell v. Canada, Communication* 19/2008, U.N. Doc. CEDAW/C/51/D/19/2008.

[36] *Artavia Murillo v. Costa Rica*, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R., Series C No. 257, pp. 142–3, supra note 1 (advancing a far-reaching notion of autonomy in the areas of sexual and reproductive rights and assisted reproduction techniques); *I.V. v. Bolivia*, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R., Series (ser. C,), No. 32, pp. 149–51 (Nov. 30, 2016) (highlighting that women should be free to make autonomous and informed decisions concerning medical procedures); Eur. Ct. H.R., *P. and S. v. Poland*, supra note 21, p. 111 (Oct. 30, 2012) (underscoring the key nature of access to reliable information on sexual and reproductive health services like legal abortions to exercise personal autonomy); African Committee of Experts on the Rights and Welfare of the Child (ACERWC), Communication No. 0012/Com/001/2019, *Legal and Human Rights Centre and Centre for Reproductive Rights (on behalf of Tanzanian girls) v. United Republic of Tanzania*, pp. 75–88 (Apr. 1, 2022) [hereinafter ACERWC, Decision in matter of *Legal*

6. Conclusion

It is advocated that when all these are done, we will have a balanced and efficient work force. Democracy undoubtedly owes a historical debt to the women in terms of their aspiration to fully exercise citizenship and equality. Women continue to demand more and better political representation, better access to production resources and income, societal recognition of their contributions, redistribution of the time spent on domestic and care work, and more effective responses by State institutions to their needs and interests. They demand this in order to live with dignity and steer their own destinies. Equality and fulfilment of human rights are foundational principles of democracy and sustainable development, and women's exercise of rights and autonomy is a sure indicator of their consolidation.[37]

The jurisprudence has set important legal standards mandating states to act with due diligence to prevent and respond to the alarming problems of violence and discrimination, to guarantee an access to justice when these acts occur, and the overarching duty to protect a range of civil, political, economic, social, and cultural rights. This foundational jurisprudence has been critical to solidify the conception that women's rights are indeed human rights, and that violence and discrimination are public problems which need prompt and exhaustive state measures. Women and girls still suffer daily appalling forms of violence and discrimination, which evidences the value of the body of international legal standards already set concerning women's rights.

However, the turn that we are seeing in jurisprudence to obstacles in the exercise of personal autonomy for women is paramount. In the end, women and girls should be able to freely make choices in all societies, and have the education, information, and conditions to do so. Without autonomy, there can be no real fulfilment of women's rights. Solely addressing human rights concerns when violations have already occurred is only a parcel of what women's rights should be in practice. A focus on intersectional autonomy advances the goal of ensuring that women and girls exercise their agency, self-direction, and self-government in critical areas of their lives. Women and girls should be free to carve life plans based on free choices in areas such as the family, education, employment, health, sexual orientation and gender identity, religion, culture, economics, and politics. These choices extend to individual areas, as well as relational ones, which can involve joining groups and associations, and mobilizing to protect human rights.

Caselaw can be an important strategy in guiding states on the content of their negative and positive obligations to ensure the full respect of women's intersectional autonomy. States should refrain from all forms of unjustified interferences with women's choices, including the Executive, Legislative, and Judicial Branches, in areas such as sexual and reproductive rights and sexual orientation and gender identity. The power of the state should be used to legitimize and support, not to punish, creating safe conditions for women's decision-making. Women's rights should be interpreted expansively, and states should exercise good faith in enforcing them. States should also be mindful at all times of women's diversity of experiences and how factors such as age, race, ethnicity, sexual orientation and gender identity, and disabilities can impact the barriers to fully exercise a woman's personal autonomy.

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and Human Rights Centre and Centre for Reproductive Rights v. Tanzania] (underscoring the need for sex education for girls to make educated decisions concerning the exercise of their rights).

[37] C P Iloka, "Women Perspectives in the Administration of Justice" (2021) (3) (1) *Chukwuemeka Odumegwu Ojukwu University Journal of Private and Public Law*, available at *Google Scholar* <https://scholar.google.com/scholar?oi=bibs&cluster=17422481678294854 4&btnI=1&hl=en> accessed 10 December 2024.

Creating spaces for women's and girls' participation in all social areas is also paramount for them to exercise their personal autonomy. Their voices, views, and preferences should be meaningfully reflected in legislation, policies, programs, and services, particularly those pertaining to priority social problems. Immediate concerns such as armed conflicts, climate change, pandemics, violence in the digital realm, and racism can all benefit from women's decision-making.

It is time for women and girls to be leaders, shapers, and decision-makers in our societies, molding discourse, culture, religion, politics, and other areas. This is critical to transform our societies into ones that truly respect the enjoyment of women's rights and the autonomy, dignity, and diversity of women and girls. This call can be echoed in international case law, bringing to life rights and obligations to advance the rights of women and girls. An emphasis on the right to intersectional autonomy can be a catalyst for needed legal developments in this area.