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E-NEWSLETTER

LAW REFORM COMMISSION OF MAURITIUS

LRC

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Du paternalisme à l'émancipation : repenser la place des femmes dans la société

Le 8 mars, la communauté internationale célèbre une journée dédiée non pas à « la femme », mais bien aux droits des femmes. Cette distinction est capitale, car elle nous invite à dépasser les perceptions essentialistes qui réduisent les femmes à une catégorie homogène ou à un idéal figé. Il s'agit de se concentrer sur leurs droits universels, leur émancipation et leur autonomie, plutôt que sur une reconnaissance paternaliste ou symbolique de leur existence.

Trop souvent, ceux qui prétendent « protéger » les femmes par des attentions superficielles — des fleurs ou des compliments un jour par an — sont les mêmes qui perpétuent une vision dévalorisante de la femme comme être fragile, à protéger, plutôt qu'à respecter comme égale. Cette attitude, qui peut sembler bienveillante, reflète en réalité une forme sournoise de domination : elle infantilise les femmes, dévalorise leur consentement et se substitue à leur libre arbitre. Combien de fois, dans l'histoire comme dans la vie quotidienne, les hommes ont-ils cru mieux savoir ce qui était bon pour les femmes qu'elles-mêmes ? Ce micro-paternalisme, accepté ou toléré, constitue une pente dangereuse, car il porte en germe la discrimination et, dans ses formes les plus extrêmes, la violence de genre.

En effet, les droits des femmes ne se limitent pas à l'obtention de garanties légales ou à la modification de textes juridiques ; ils impliquent aussi une lutte acharnée contre des images d'Épinal profondément enracinées, qui, insidieusement, façonnent notre perception de la femme et de son rôle dans la société. Telles des vérités distillées lentement, ces représentations finissent par draper la réalité du voile de l'évidence, jusqu'à faire passer l'illusion pour la norme.

N'est-ce pas ainsi que procède Iago, l'infâme traître shakespearien, lorsqu'il souffle son venin dans l'oreille d'Othello, le conduisant à voir non pas ce qui est, mais ce qu'il croit être ? De la même manière, les stéréotypes qui entourent les femmes, portés par des siècles de littérature et de discours socioculturels, ont façonné une vision tronquée de leur identité, réduisant leur essence à une douce fragilité, à une créature qu'il conviendrait de protéger, d'entourer de soins et d'attentions… comme un enfant.

La **courtoisie**, la **galanterie**, et toutes ces marques de déférence, si longtemps perçues comme des gestes nobles à l'égard des femmes, s'apparentent en réalité à une condescendance déguisée, un paternalisme d'autant plus pernicieux qu'il est enveloppé de bienveillance. Depuis **l'amour courtois des troubadours**, où la femme n'existait que sublimée et inaccessible, jusqu'aux récits chevaleresques et aux romans du XIXe siècle, la littérature a largement contribué à façonner cette image de la femme délicate, qu'il convient de choyer comme une créature précieuse mais fragile, comme une porcelaine qu'un souffle trop fort briserait. Ce mythe, si séduisant soit-il, n'en est pas moins un carcan, une assignation implicite à une posture d'attente et de dépendance.

La publicité, elle aussi, s'est emparée de ces codes et les a figés dans un imaginaire collectif où la femme se retrouve invariablement cantonnée à certaines fonctions. Combien d'affiches, de spots télévisés, de campagnes commerciales montrent encore la femme dans des tâches ménagères, le sourire aux lèvres, réduite à une **fonctionnalité domestique**, à une extension du foyer plus qu'à une individualité propre ?

Édito par Sabir KADEL
Chief Executive Officer, Law Reform Commission [Cont'd]

Du paternalisme à l'émancipation : repenser la place des femmes dans la société

L'homme, lui, est souvent présenté comme celui qui **agit, décide, entreprend**, tandis que la femme **soutient, prend soin, et embellit**. Ces images ne sont pas anodines : elles formatent l'inconscient collectif, inculquant dès l'enfance une vision biaisée des rôles de genre, qui se perpétue dans la répartition des tâches, l'éducation, et, plus perfidement encore, dans la perception que les femmes elles-mêmes ont de leur propre valeur et de leurs aspirations.

Combattre ces représentations, c'est refuser d'accepter des évidences héritées du passé, c'est refuser que la politesse devienne un masque pour la domination, que l'admiration serve de justification à l'infériorisation. Il ne s'agit pas de rejeter toute forme de respect ou d'attention, mais bien de s'interroger sur leur fondement : **cette galanterie, est-elle un acte d'égalité ou une mise en scène de la différence** ? Le combat pour les droits des femmes doit s'attaquer à ces racines invisibles, à ces poisons distillés depuis des siècles, pour qu'enfin, la femme ne soit plus perçue comme une muse, une mère ou une ménagère, mais comme une personne, souveraine d'elle-même et pleinement actrice de son destin.

La Law Reform Commission est consciente de ces dynamiques et a œuvré, avec détermination, à l'amélioration des droits des femmes. Parmi ses récentes recommandations, la Commission a plaidé pour la **criminalisation autonome du féminicide**, reconnaissant ainsi la gravité et la spécificité des violences extrêmes basées sur le genre. De même, elle a appelé à **l'abrogation de la Section 242 du Code pénal**, une disposition archaïque permettant à un mari qui surprend sa femme en flagrant délit d'adultère et la tue (ainsi que son amant) de bénéficier d'une excuse atténuante. Une telle loi reflète une vision profondément patriarcale, où les femmes sont traitées comme des possessions, et non comme des individus dotés de droits égaux, participant ainsi à leur réification.

Au-delà des actes de violence flagrants, la Commission s'attaque également **aux formes plus subtiles de discrimination** qui, bien que moins visibles, concourent à la perpétuation des inégalités. Par exemple, la distinction entre « Madame » et « Mademoiselle » dans les documents administratifs, absente pour les hommes, illustre comment une femme peut encore être définie par son statut marital. Ce type de discrimination, bien qu'apparemment anodin, renforce des stéréotypes et limite l'émancipation des femmes. Dans ce contexte, il convient de rappeler les paroles d'Olympe de Gouges, auteure de la *Déclaration des droits de la femme et de la citoyenne* (1791), qui écrivait : « La femme a le droit de monter sur l'échafaud, elle doit avoir également celui de monter à la tribune ».

Enfin, ce combat pour l'égalité se heurte souvent à des pratiques socioculturelles enracinées, comme en témoigne Virginia Woolf dans *Une chambre à soi*, lorsqu'elle souligne que les femmes, pendant des siècles, ont été maintenues dans des espaces symboliques ou physiques restreints, dépendantes de l'autorité masculine, et privées de l'espace nécessaire pour s'épanouir pleinement.

Il est crucial de rappeler que les droits des femmes ne sont pas des privilèges ou des concessions ; ce sont des droits humains fondamentaux. Accepter des formes mineures de paternalisme, c'est tolérer un système qui perpétue les inégalités et normalise les violences de genre.

Édito par Sabir KADEL
Chief Executive Officer, Law Reform Commission [Cont'd]

Du paternalisme à l'émancipation : repenser la place des femmes dans la société

Il serait illusoire de croire que le droit, à lui seul, peut abolir des siècles de conditionnements sociaux et d'inégalités enracinées. Le combat pour les droits des femmes dépasse les réformes juridiques : il nécessite un profond changement de mentalité, une remise en question collective des normes, des préjugés et des pratiques socioculturelles qui perpétuent les discriminations. Le droit peut poser un cadre, sanctionner les abus, protéger les victimes, mais il ne peut transformer les esprits ou abolir des attitudes paternalistes par décret. Simone Weil, dans *L'Enracinement*, soulignait justement que les transformations sociales les plus durables sont celles qui prennent racine dans les mentalités et les cœurs.

Cela étant, le droit n'est pas qu'un simple miroir des mentalités sociétales ; il peut également jouer un rôle de **catalyseur de changement**. Dans de nombreux cas, il a précédé les évolutions sociales, en ouvrant la voie à de nouveaux paradigmes. Il convient de rappeler qu'à une époque pas si lointaine, les femmes n'avaient pas le droit de siéger comme jurées dans un procès d'assises, étant jugées émotionnellement inaptes à la rigueur d'un tel exercice. De même, une femme ne pouvait pas ouvrir un compte bancaire sans l'autorisation de son mari. Ces limitations, aujourd'hui inconcevables, montrent à quel point le droit peut marquer un tournant, imposer un nouvel ordre des choses et contribuer à faire reculer les discriminations structurelles.

Le droit agit souvent comme un **révélateur des changements paradigmatiques** qui se produisent dans une société. Lorsque celle-ci évolue vers davantage d'égalité, le droit reflète cette transformation en adoptant de nouvelles normes et protections.

Toutefois, il est des moments où le droit dépasse ces paradigmes, en devançant les résistances sociales pour proposer un cadre plus progressiste. C'est cette capacité du droit à précéder les mentalités qui en fait un outil puissant d'émancipation.

Cependant, pour que ces réformes juridiques aient un impact durable, elles doivent s'accompagner d'un travail éducatif et culturel. Sans une sensibilisation continue, les avancées juridiques risquent de rester lettre morte ; les progrès pour les droits des femmes nécessitent autant une réforme des institutions qu'un éveil des consciences individuelles. C'est donc dans cette double dynamique – droit et mentalités – que repose l'avenir des droits des femmes.

La Law Reform Commission reconnaît ce double enjeu. Si elle s'attelle à recommander des réformes juridiques parfois audacieuses, elle appelle également à un dialogue sociétal approfondi. L'histoire nous enseigne que le droit, lorsqu'il est visionnaire, peut non seulement protéger, mais également inspirer, éduquer et transformer. À nous de veiller à ce que cette transformation soit globale, afin que les progrès dans la législation se traduisent par un véritable changement dans la vie quotidienne des femmes.

En cette journée internationale des droits des femmes, **la Law Reform Commission réitère son engagement sans faille à combattre toutes les formes de discrimination,** visibles ou invisibles, contre les femmes. Elle continuera à promouvoir des réformes qui placent la dignité, l'autonomie et les droits des femmes au centre de notre système juridique. Ensemble, nous devons œuvrer pour un avenir où les droits des femmes ne seront plus un combat, mais une réalité indiscutable.

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International Women's Day

March 8

IN THIS ISSUE

Key Publications of the Law Reform Commission on Women's Rights

The Law Reform Commission has been actively engaged in promoting gender equality and addressing systemic discrimination against women in Mauritius. Through its research and proposals, the Commission has aimed to shape a more inclusive and equitable legal framework. These documents cover diverse issues, such as employment reforms to eliminate biases in hiring practices, legal challenges surrounding family names, and the criminalisation of feminicide as a distinct offence. By tackling discriminatory laws, proposing gender-neutral policies, and advocating for fair representation of women in governance, the Commission has worked to dismantle patriarchal norms embedded in the legal framework of Mauritius.

Additionally, the Commission has delved into sensitive topics such as surrogacy, ensuring that legal and ethical concerns are addressed while safeguarding the rights of women. The emphasis on fair gender representation in electoral reforms and the critique of outdated naming conventions further highlight the Commission's holistic approach to fostering equality. These publications reflect the Commission's dual strategy of addressing existing inequalities while also paving the way for societal change, ensuring that women's rights are both recognised and protected within an evolving legal framework.

Below is an overview of significant documents published by the Commission on women's rights, highlighting the breadth and impact of its contributions:

Issue Paper on "Reform for Inclusive Employment Practices: Proposals for Gender-Neutral Policies, Eliminating CV Photos, and Eradicating Sex and Marital Status Discrimination" [LRC_R&P 184, December 2024]

Following the publication of the Review Paper on "*Discriminatory Laws Against Women in Mauritius*" [LRC_R&P 159, January 2022], the Law Reform Commission has intensified its focus on the persistent discrimination women face in modern society, particularly in the workplace. Despite advances, discriminatory practices remain deeply embedded in employment systems across industries. Gender biases, the unnecessary inclusion of photos on CVs, assumptions tied to marital status or family responsibilities, and the use of honorifics that distinguish women based on their marital status all continue to create barriers for women. These practices not only violate the principles of equality and fairness but also undermine the potential for workplaces to be diverse, inclusive, and therefore more innovative and productive.

The Commission emphasises that implementing gender-neutral employment policies is essential for dismantling these systemic inequities. Such policies involve using inclusive language, ensuring fair hiring and promotion processes for all genders, and establishing benefits that avoid privileging one group over another. A key recommendation is to standardise the use of "Mrs" as the sole honorific for women, mirroring the uniform use of "Mr" for men, so

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that women are not reduced or identified by their marital status. Additionally, removing the requirement for photographs on CVs is a crucial step to combat appearance-based discrimination, ensuring that hiring decisions are based solely on merit—qualifications, skills, and experience—rather than superficial biases. Discrimination based on sex or marital status, whether through unequal pay, limited opportunities for advancement, or a hostile work environment, perpetuates inequality and stifles individual potential.

This Issue Paper calls for bold reforms: the adoption of gender-neutral practices, the elimination of photos on CVs, the eradication of biases linked to gender and marital status, and the removal of marital distinctions in honorifics. These measures aim to create workplaces that truly embrace equality, enabling individuals to thrive based on their abilities rather than their gender, appearance, or personal circumstances.

Discussion Paper on "Change of Family Name" [LRC_R&P 170, May 2023]

The family name, or surname, is a fundamental aspect of personal identity and legal status in any society. It plays a vital role in official identification and forms an integral part of a person's legal and social identity. However, despite significant reforms to the Mauritian Civil Code in the 1980s, the provisions on family names—outlined in Articles 27 and following—have remained largely untouched. These provisions, rooted in patriarchal traditions, continue to perpetuate gender inequalities by favouring paternal lineage in the transmission of surnames.

Recognising this imbalance, the Law Reform Commission took a bold step in July 2013 by producing an Issue Paper on "*Nom de Famille*". This paper, developed as part of a broader review of the *Code civil Mauricien*, proposed transformative reforms to Articles 23 to 48 of the Civil Code to foster gender equality. In particular, the Commission recommended introducing a clear and equitable procedure that allows future parents to decide—prior to marriage—whether their legitimate children would bear the mother's name, the father's name, or a combination of both, in the order of their choosing. This proposal also empowers parents to transmit only the mother's surname if they so desire, thereby dismantling the long-standing presumption that the father's name must dominate. These reforms not only acknowledge the equal status of women in the family unit but also challenge entrenched norms that have historically marginalised maternal identity.

The Commission has drawn inspiration from progressive reforms in French law, such as the *Loi du 2 mars 2022 relative au choix du nom issu de la filiation*, which introduced greater flexibility in the choice and transmission of surnames. Under this French legislation, individuals at the age of 18 can choose to keep the surname of their mother, their father, or both. Additionally, parents now have the ability to modify the surname of their minor children, reflecting a more inclusive and gender-sensitive approach to family names. Building on this precedent, the Commission proposes amendments to the Civil Status Act and the *Code civil Mauricien* to align with these progressive principles.

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Under the proposed reforms, every individual in Mauritius would, upon reaching the age of 18, have the right to substitute the surname of the parent that was not transmitted at birth. Furthermore, everyone would have a once-in-a-lifetime opportunity to redefine their surname, choosing to retain the name of their mother, father, or both, in the order they prefer. These changes are not merely administrative, they represent a significant step forward in advancing the rights of women, promoting gender equality, and ensuring that women's identities are valued and respected within the family and society at large. Through these reforms, the Commission seeks to affirm that the mother's contribution to the family lineage is equally deserving of recognition, thereby fostering a more equitable legal framework for all.

Review Paper on "Discriminatory laws against women in Mauritius" [LRC_R&P 159, January 2022]

The elimination of all forms of discrimination against women is a cornerstone of any modern legal system committed to the principles of equality, justice, and human rights. Despite significant progress in Mauritius toward the advancement of gender equality, remnants of legal discrimination persist, undermining women's full participation in society and perpetuating structural inequities. In this context, the Office of the Attorney-General, pursuant to Section 6(1) of the Law Reform Commission Act, has requested the Law Reform Commission (LRC) to undertake a comprehensive review of discriminatory laws in Mauritius and report its findings and recommendations.

The Government has adopted a National Strategy and Action Plan on the Elimination of Gender Based Violence in the Republic of Mauritius (2020-2024). The document makes certain recommendations for the amendment of legislation (Output 1.1 and Output 5.4 in Sub-Strategy No.3).

In this Review Paper the Commission has identified discriminatory laws in Mauritius (including in the private Sector, and direct and indirect discrimination), and has examined provisions of the Constitution (Sections 3, 16 and 75) and of the Equal Opportunities Act (Sections 2, 5-7) for the inclusion of a comprehensive definition of "discrimination against women". The Law Reform Commission has also analysed whether pardon should be granted to convicted persons of Gender Based violence against women.

Discriminatory laws often reflect and reinforce traditional gender roles and stereotypes that view women as subordinate to men. For example, laws or practices that assume women's primary role as caregivers perpetuate the idea that their value lies primarily in domestic responsibilities. This not only limits women's opportunities in education, employment, and leadership but also discourages men from participating equally in caregiving and domestic tasks, perpetuating an unequal division of labour.

Such laws also have a ripple effect on society, affecting not just individual women but also their families, communities, and the nation at large. By restricting women's potential and contributions, these laws hinder economic growth, social cohesion, and sustainable development.

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Gender equality is a critical driver of progress, and legal frameworks that discriminate against women deprive society of the full benefits of their participation in all aspects of life.

Addressing these laws is not only a matter of justice but also a necessity for building a more inclusive, equitable, and prosperous society. Eliminating legal discrimination is a critical step toward empowering women and ensuring that they can fully contribute to Mauritius' development.

Issue Paper on "Incorporation of New Forms of Homicides in the Criminal Code (Feminicide, Felony Homicide, Drug-Induced Homicide)" [LRC_R&P 157, November 2021]

In the Mauritian Criminal Code, homicides are divided in two limbs: voluntary and involuntary, the distinction of which is based on the French Criminal Code of 1810 and French doctrine mainly.

With new trends in criminality, some jurisdictions have come up with novel forms of homicides, whose goal is as much as to be symbolic as it is to be dissuasive. Thus, some countries have decided to incriminate autonomously the crime of "femicide/feminicide", which is the deliberate killing of women for the mere reason they are women. In the United States, some States have a "Felony murder" rule, according to which when an offender kills (regardless of intent to kill) in the commission of a dangerous or enumerated crime (called a felony in some jurisdictions), the offender, and also the offender's accomplices or co-conspirators, may be found guilty of murder.

Moreover, some States have on their Statutes' books "Drug-induced homicide", which refers to the crime of delivering drugs that result in a death.

In this Issue Paper, the Law Reform Commission examines the opportunity of incorporating these forms of homicide into our laws in an attempt to curb the scourge of criminal violence, mainly against women and related to drug abuse, wrecking the country.
In particular, the autonomous criminalisation of feminicide in Mauritian law represents a monumental step forward in advancing women's rights and combating gender-based violence. By defining feminicide as a distinct offence, the law acknowledges the deeply rooted gender inequality that underpins such crimes, moving beyond the generic classification of homicide. Feminicide specifically addresses the killing of women as a result of their gender, often linked to systemic misogyny, domestic violence, and harmful patriarchal norms. This legal recognition not only highlights the gravity and unique nature of these offences but also ensures that they are not obscured within broader criminal categories, which may fail to capture their gendered context. Such an approach aligns with international standards, including the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará),

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which emphasises the importance of addressing gender-based violence through targeted measures.

Moreover, this legal development acts as a powerful deterrent against gender-based violence by signalling a zero-tolerance stance and reinforcing societal condemnation of such acts.

The autonomous criminalisation of feminicide carries symbolic and practical importance. Symbolically, it validates the experiences of victims and survivors, ensuring that the justice system recognises the specific vulnerabilities and systemic inequalities faced by women. Practically, it mandates tailored investigative and prosecutorial measures, ensuring that cases of feminicide are prioritised and rigorously pursued. By identifying and addressing the root causes of feminicide—such as domestic violence, coercive control, and societal misogyny—the law strengthens the broader fight against gender violence, empowering women and promoting a culture of equality and respect. This targeted legal framework not only brings justice for victims but also contributes to long-term social change by addressing the structural factors perpetuating violence against women.

Opinion Paper on "Electoral Reform" [LRC_R&P 75, May 2014]

On 24 March 2014, the Prime Minister released the Government's Consultation Paper on Electoral Reform, which contains firm proposals on issues on which there is broad agreement, and calls for discussion with options on those aspects on which there is no broad consensus yet. Government invited the views of all interested parties on the Consultation Paper.

This Opinion Paper contains the views of the Law Reform Commission on Electoral Reform. The Commission considers the objectives of the reform should be:

1) The elimination of Communal Representation (as per system of allocation of additional seats under First Schedule to the Constitution, commonly known as "Best Loser System") whilst ensuring representation of diversity of electorate;
2) Fair Gender Representation through greater participation of women in National Assembly elections and their enhanced presence in Parliament; and
3) Fairness to Political Parties and to the Electors through increased correspondence between share of votes and share of seats in National Assembly whilst ensuring stable, effective and responsive Government and discouraging emergence of communal parties.

These objectives could be attained *inter alia* through introduction of some form of proportional representation [PR] in the electoral system as the first-past-the-post-system [FPTP] may not ensure a fair representation of all interests, and by providing that a Political Party shall be under the obligation to ensure gender representation on its list of candidates.

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Issue Paper on "*Nom de famille*" [LRC_R&P 61, July 2013]

The Commission has examined, in the context of the review of the *Code civil Mauricien*, the provisions on the "*Nom*" [Articles 23 to 48] and is of the opinion that, to foster gender equality, changes can be brought to rules of devolution of family name.

This Issue Paper highlights changes which can be effected to the *Titre Deuxième of the Livre Premier* of our Code. It is thus suggested that the future spouses may, before the celebration of the marriage, agree by notarial deed that the children born of their union will bear the mother's name together with that of the father, within the limit of one surname for each of them. The adoption of the authentic form is a matter of public policy.

Under the current provisions of many civil law systems, the automatic transmission of the father's name to children symbolises a patriarchal tradition that reinforces male dominance in family structures. This practice implicitly marginalises the identity of mothers and their equal contribution to the lineage and upbringing of children. By granting spouses the opportunity to include the mother's name alongside the father's, the proposed reform dismantles the implicit notion of paternal primacy, thus promoting equality within the family unit.

The reform sends a strong message that both parents are equally fundamental in defining the child's identity. This is particularly crucial in a society where legal provisions often reflect entrenched gendered norms. The automatic prioritisation of a father's surname constitutes gender discrimination, thereby violating principles of equality enshrined in human rights law.

The ability for women to pass on their surname signifies an affirmation of their identity as independent and equal members of the family. Traditionally, a woman's identity has been subsumed under that of her husband upon marriage, often through the practice of surname change, and further perpetuated by the automatic transmission of the father's surname to the children.

This reform symbolises the recognition of a woman's surname not merely as a derivative of her father or husband's lineage but as a symbol of her independent existence. It acknowledges her equal agency and role in shaping the family identity, effectively countering the structural erasure of her contributions.

Review Paper on "Law on Surrogacy [*Maternité pour autrui*]" [LRC_R&P 60, July 2013]

The Commission has examined, at the request of the Hon. Attorney-General, the law relating to surrogacy ("*maternité pour autrui*"). In this Review Paper, the Commission analyses legal issues arising out of Mauritian couples opting for surrogacy. This is followed by a review of national approaches to surrogacy, and the arguments for and against a law authorising its practice in Mauritius. Policy options, and their implications, are then considered.

At its heart, surrogacy involves the use of a woman's body to bring a child into the world, which raises profound questions about the balance between individual autonomy and societal interests. The right to bodily autonomy is a foundational principle of human rights.

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The Commission's Review Paper on surrogacy represents an essential step in evaluating the legal, ethical, and societal dimensions of this practice in Mauritius. By linking this analysis to the broader principles outlined in the Issue Paper on "*La personnalité juridique et la protection de la personne humaine*", the Commission underscores the need for a legal framework that respects and protects the rights of all parties involved.

A complete prohibition of surrogacy, while addressing concerns about exploitation and commodification, could infringe on women's reproductive autonomy and force Mauritian couples to seek surrogacy arrangements abroad, potentially exposing them to unregulated and exploitative practices.

Any surrogacy law must define the surrogate's rights during and after pregnancy. This includes her right to make decisions about her own body during the pregnancy and the legal status of the surrogacy agreement in cases where disputes arise. Moreover, the child's rights to legal recognition, parentage, and identity must be prioritised. This includes ensuring that the intended parents are legally recognised as the child's parents at birth, avoiding legal uncertainties that could arise from surrogacy arrangements.

At the core of this discussion lies the question of women's right to autonomy over their bodies. Any law on surrogacy in Mauritius must carefully balance this fundamental right with the need to prevent exploitation and protect the dignity of all individuals. By learning from international models and grounding its approach in the principles of human rights, Mauritius has the opportunity to craft a thoughtful and ethical response to the challenges and opportunities presented by surrogacy.

Manslaughter in case of adultery in the Criminal Code: A vestige of patriarchal norms at odds with justice, equality, and the rule of law

Introduction

The profound sense of betrayal, personal dishonour, and heartbreak that accompanies adultery often triggers an overwhelming desire for retribution, a loss of self-control, and a perceived justification for committing the ultimate transgression—the taking of human life. Experience within judicial settings has repeatedly demonstrated that perpetrators of such crimes frequently distil their actions into the chilling assertion: "If I cannot have them, then no one shall." This grievous criminal act, whether classified as murder (intentional and premeditated homicide) or manslaughter (intentional homicide without premeditation), is punishable with severe penalties under Mauritian law extending up to a maximum of sixty years' imprisonment. Paradoxically, the Criminal Code maintains an anomalous and outdated provision that affords undue leniency in one specific instance of sexual infidelity.

Section 242 of the Criminal Code provides a legal framework for manslaughter in case of adultery, wherein an individual who, upon discovering their spouse engaged in the act of adultery, immediately kills either the spouse or their accomplice is deemed excusable. This provision, while not exonerating the accused, mitigates the penalty for manslaughter which acknowledges the role of sudden and intense provocation. The underlying principle of this legal provision is to account for the psychological and emotional turmoil experienced at the moment of discovery, thereby affording a partial defence that reduces the severity of the charge.

Pursuant to Section 223(3) of the Criminal Code, in every other case, a person guilty of manslaughter, shall be liable to penal servitude for a term not exceeding 45 years.

As per Section 244 of the Criminal Code, where the fact of excuse is proved, if it relates to an offence deemed to be a crime, the punishment shall be reduced to imprisonment, and if it relates to a misdemeanour, the punishment shall be reduced to imprisonment for a term not exceeding one year. As such, since the punishment of imprisonment for crime provided under Section 244 does not specify the term, the sentence imposed can vary between 10 days and 10 years, *vide* Section 12 of the Criminal Code. Therefore, this implies that since manslaughter in case of adultery is excusable, the sentence may range from 10 days to 10 years, which is a lesser one in contrast to other cases of manslaughter.

The more so, Section 242 of the Criminal Code uses the term "accomplice" to refer to the individual with whom the spouse engages in adultery. It is reminded that *accomplice* is legally defined under Section 38 of the Criminal Code as any person who "by gift, promise, menace, abuse of authority or power, machination or culpable artifice, instigates or gives any instruction for, the commission of a crime or misdemeanour…" Since adultery is not an offence under the Criminal Code to which complicity can be attached, consequently, the use of the term "accomplice" in Section 242 constitutes a semantic and legal aberration.

Manslaughter in case of adultery in the Criminal Code: A vestige of patriarchal norms at odds with justice, equality, and the rule of law [Cont'd]

Historical context

The origin of Section 242 of the Criminal Code is deeply embedded in our legal heritage and it emanates from Article 324 of the French Penal Code of 1810 where the killing of a spouse or their accomplice was excusable in a case of adultery provided it was committed within the marital home ("*maison conjugale*"). This provision is a vestige of a socio-legal paradigm that viewed marital infidelity as a grievous affront to personal and familial honour, particularly in patriarchal societies where a husband's authority and reputation were paramount. Historically, the rationale behind such legal leniency was to accommodate "crimes of passion," recognising that sudden emotional upheaval could momentarily impair rational judgment. It also encompasses the legal and financial prejudice to the husband who may be compelled to assume the responsibility of a child who is not biologically his but is carried by his wife (under the presumption of paternity enshrined in Article 312 of the Civil Code, the husband is presumed to be the father of the child conceived during the marriage. Consequently, the husband is bound by statutory obligations relating to child support, inheritance rights, and parental authority, even if the child is not biologically his).

Despite its historical justifications, Section 242 is frequently misinterpreted. Many mistakenly believe that this provision legitimises the act of killing in cases of adultery, thereby rendering it devoid of criminal liability. However, a precise legal interpretation underscores that this provision does not justify or absolve the crime, rather, it acknowledges the diminished culpability of the offender due to the extraordinary psychological circumstances under which the act was committed. By doing so, as previously mentioned, it ensures proportionality in sentencing, factoring in both the offender's state of mind and the principle of sudden provocation.

Contemporary critique and gender implications

While the historical underpinnings of Section 242 may have resonated with past societal norms, its continued existence is increasingly incompatible with contemporary notions of justice, equality, and the rule of law. The provision inherently reflects and perpetuates gender biases, as it has historically been applied in a manner that favours male perpetrators who are often perceived as victims of provocation.

In other words, the conceptual foundation of Section 242 reinforces the antiquated notion that adultery constitutes a transgression against male honour, thereby legitimising violent retribution. This perspective effectively reduces women to the status of property, framing their actions in terms of their impact on male dignity rather than recognising them as autonomous individuals with equal rights under the law. This imbalance further underscores a broader systemic inequality wherein patriarchal norms continue to shape the legal recognition of emotional and psychological distress, disproportionately disadvantaging women.

By allowing partial defences for lethal acts committed in response to adultery, the law inadvertently sustains an archaic narrative that condones violence in the name of honour, undermining the fundamental principles of justice and human rights.

Manslaughter in case of adultery in the Criminal Code: A vestige of patriarchal norms at odds with justice, equality, and the rule of law [Cont'd]

Repeal and alignment with International Standards

In contemporary times, the hypothesis that adultery justifies any form of violence is increasingly rejected and many jurisdictions, including France (in 1975), repealed similar provisions that once provided partial defences for crimes of passion. The rationale behind such reforms is that personal relationships, regardless of emotional intensity, should not serve as legal justification for lethal actions.

As a signatory to international human rights conventions, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the International Covenant on Civil and Political Rights (ICCPR), Mauritius has an obligation of aligning its domestic laws with global standards, emphasising non-violence and gender equality. The retention of Section 242 in the Criminal Code stands in stark contradiction to these commitments, perpetuating gender disparities and legitimising acts of violence under the guise of provocation. Thus, Section 242 of the Criminal Code should be repealed as recommended by the Law Reform Commission in its Interim Report on "Reform of Criminal Code, [LRC – R&P 100, May 2016]."

Conclusion

Repealing such provision would mark a significant step towards a more progressive and equitable legal framework, reaffirming Mauritius' dedication to upholding the sanctity of human life and fostering a justice system that is truly impartial and reflective of contemporary societal values. By removing the legal remnants of a patriarchal past, Mauritius would not only demonstrate its commitment to international human rights norms but also reinforce the principle that no personal grievance should serve as a mitigating factor for taking another's life. Although spouses are bound by mutual civil obligations, including fidelity, support and assistance as prescribed under Article 212 of the Civil Code, the repeal of Section 242 of the Criminal Code will emphasise that no individual, whether male or female, possesses dominion or authority over their spouse.

Shaseeb MUNGUR
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Feminicide and the law: Addressing the systemic failure behind gender-based killings

There are wounds that do not bleed, scars that remain unseen, and violence that silences before it is ever heard. As we honour International Women's Day, we must reckon with an enduring truth – violence against women is not just a statistic, not just an aberration, but a stain upon the very fabric of our society. Feminicide is not an impulsive crime, nor an isolated tragedy, it is the final act in a long, grim narrative of control, oppression, and gendered subjugation.

To dismiss it as mere homicide is to erase the profound injustice that precedes it – the warning signs ignored, the cries unheard, the indifference woven into the very institutions meant to protect. It is to disregard the weight of histories carried in silences, the unspoken terror that lingers in the hearts of too many women. It is to pretend that misogyny is not embedded in the structures of power, that the fear of violence is not a reality women navigate daily.

Homicide takes a life, feminicide erases an existence with intent, purpose, and impunity. While homicide is a crime of circumstance – rooted in personal conflicts, criminal acts, or reckless violence – feminicide is a crime of power, an assertion of dominance that punishes a woman for existing beyond the confines of control. It is the calculated extinguishing of a life for daring to resist, to leave, to say no. It is the ultimate, most brutal consequence of a world that tells women they are less, that their autonomy is a threat, that their lives are conditional upon obedience.

The Law Reform Commission, in its 2021 Issue Paper on the Incorporation of New Forms of Homicides, acknowledged the growing recognition of feminicide worldwide and the urgent need for its legal distinction. Unlike general homicide, feminicide is deeply entrenched in systems of oppression – it is not random, nor incidental. It follows a pattern, a chilling predictability of escalating control, threats, and violence before the final act. It is a crime that is both individual and systemic, the reflection of a culture that tolerates and, at times, even enables the erasure of women.

Several countries, including Mexico, Argentina, and Colombia, have recognised feminicide as a distinct crime, embedding within their legal systems the understanding that when a woman is killed because she is a woman, justice demands more than the blanket classification of homicide. Mauritius could follow suit. A failure to do so is not just a failure of the law – it is a failure to acknowledge the lived realities of countless women who walk in fear, whose suffering is met with indifference until it is too late.

Structural Violence Theory, developed by Johan Galtung, refers to the systemic ways in which social structures harm or disadvantage individuals by preventing them from meeting their basic needs or fully participating in society. Unlike direct violence, which is immediate and visible, structural violence is embedded in laws, policies, and cultural norms that disadvantage certain groups.

Feminicide and the law: Addressing the systemic failure behind gender-based killings [Cont'd]

Feminicide is the ultimate manifestation of this form of violence, an act born not only of individual aggression but of a society that has failed to protect women at every stage. Research on structural violence against women highlights that economic dependence, social marginalisation, and gendered barriers to justice contribute to women's increased vulnerability to violence, reinforcing their entrapment in abusive environments.

The absence of a distinct legal classification for feminicide reflects this very failure. When gender-based killings are prosecuted under generic homicide laws, the systemic nature of these crimes is obscured. The Law Reform Commission further highlighted that many cases of feminicide follow patterns of escalating domestic abuse, coercive control, and repeated threats. Yet, without legal recognition, these murders are treated as isolated incidents rather than the predictable outcome of a society that permits gendered violence to thrive. Feminicide is not a spontaneous crime, it is the final act in a cycle of systemic oppression, where institutions have either ignored or dismissed warning signs until it is too late.

Statistics from Statistics Mauritius (2023) and global research on structural violence confirm that feminicide does not exist in isolation but is the consequence of multiple institutional failures. Women make up 79.8% of domestic violence victims in Mauritius. The more so, various studies have demonstrated that a significant portion of those who are murdered had previously reported abuse or sought help. However, legal and social systems often fail to act until it is too late.

The economic and social conditions that make women more vulnerable to violence – such as financial dependency, cultural stigma, and the lack of protective laws – are all elements of structural violence that enable feminicide.

The case of *State v Pierre Louis J.* (2021 SCJ 175) underscores the limitations of the existing legal framework in addressing feminicide. In its judgment, the Supreme Court explicitly acknowledged the alarming rise of gender-related killings, stating: "Crime of passion, more particularly 'femicide 'or 'feminicide,' which concerns gender-related killing (although not all female homicides are gender-related), has reached alarming proportions in our society … Violence which is directed against a woman because she is a woman is the most outrageous crime one can conceive. It is the duty of our Courts therefore to send a strong signal to those misogynous killings of women by men motivated by hatred, pleasure, contempt, or a sense of ownership over women."

Despite this recognition, the absence of a specific feminicide law meant that the case was prosecuted under general manslaughter provisions, failing to reflect the gendered nature of the crime. Without formal legal classification, feminicide continues to be absorbed into broader legal categories, preventing the development of targeted policies and interventions that could prevent such crimes.

Feminicide and the law: Addressing the systemic failure behind gender-based killings [Cont'd]

Structural Violence Theory highlights that feminicide is not just about an individual act of murder but a failure of the state, law enforcement, and the legal system to intervene at multiple stages. Feminicide differs from homicide because it is not merely an act of personal conflict but a reflection of deep-rooted inequalities that create an environment where women's lives are undervalued, their safety is secondary, and their deaths are treated as inevitable rather than preventable.

The Law Reform Commission also examined the necessity of recognising feminicide as a distinct criminal offence. Under the Criminal Code, homicides are classified under voluntary and involuntary categories. Voluntary homicide includes manslaughter (Section 215) and murder (Section 216), while involuntary homicide covers cases where the perpetrator lacked intent but acted recklessly or negligently (Section 239). However, the Commission acknowledged that feminicide, as a gender-motivated killing, does not align neatly with these classifications. As mentioned, unlike other homicides, feminicide is often preceded by coercive control, repeated violence, and a systemic pattern of gendered oppression, making its classification under existing legal provisions inadequate.

Recognising feminicide as a crime distinct from homicide is not about creating a hierarchy of victims, nor is it about singling out one form of violence over another, it is about ensuring that the particular vulnerabilities and systemic discrimination that lead to these crimes are addressed head-on. Naming feminicide correctly within Mauritius' legal framework is the first step toward ending impunity, holding perpetrators accountable, and ultimately, maybe, preventing further loss of life.

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La maternité pour autrui et vide juridique : Maurice doit-elle légiférer ?

La maternité pour autrui soulève des questions complexes à la croisée du droit, de l'éthique et des avancées médicales. Entre espoirs pour les couples infertiles et préoccupations sur la marchandisation du corps féminin, la maternité pour autrui est un sujet de débat majeur à travers le monde. Ce phénomène ne date pas d'hier, mais peut se retrouver dans les anciennes civilisations comme chez les Babyloniens. Le Code d'Hammourabi, provenant de la première dynastie babylonienne, autorisa les femmes stériles à se tourner vers une mère porteuse afin de maintenir le mariage et de fournir des enfants à la lignée de leurs maris.

D'abord, il faut faire la distinction entre les deux différentes formes de maternité pour autrui, car elle se compose d'une part de la « gestation pour autrui » et d'autre part de la « procréation pour autrui ». La gestation pour autrui est la conception d'un embryon avec les gamètes du couple demandeur (ou de tiers donneurs) pour être transféré dans l'utérus de la mère gestatrice, qui abandonnera et remettra l'enfant à sa naissance au couple demandeur. Quant à la procréation pour autrui, elle consiste en l'insémination, souvent artificielle, de la mère porteuse avec le sperme de l'homme du couple demandeur dans le but de la remise de l'enfant à sa naissance au couple demandeur. La différence cruciale réside dans le fait que dans la gestation pour autrui, l'enfant est génétiquement celui du couple demandeur, tandis que dans le cas de la procréation pour autrui, l'enfant partage les données génétiques de la mère, car elle va non seulement porter l'enfant, mais aussi le concevoir.

À Maurice, il n'y a malheureusement pas de législation à ce sujet, et en l'absence de réglementation on ne peut pas faire la supposition que puisque la maternité pour autrui n'est pas interdite, donc, elle est permise. La Commission dans son *Review Paper* intitulé « *Law on Surrogacy* [Maternité pour autrui] » en 2013, examina ce sujet sous le visa des dispositions qui existent à Maurice, notamment le Code civil. Dans ce dernier, plus précisément à l'article 6, il est disposé explicitement *qu'on ne peut déroger par des conventions particulières aux lois qui intéressent l'ordre public et les bonnes mœurs*. La question se pose donc, serait-il possible que la maternité pour autrui soit contre l'ordre public et les bonnes mœurs ? Comme tout contrat, la convention entre la mère gestatrice et le couple demandeur tiendra lieu de loi aux parties qui les ont faites, comme le dispose l'article 1134 du Code civil. L'article 1128, quant à lui, vient suppléer cela et précise que *seules les choses dans le commerce peuvent faire l'objet de conventions*. Il faudrait aussi convoquer l'article 1108 du Code civil, qui dispose que l'objet d'un contrat doit être certain. Ainsi, il est légitime de s'interroger si on peut considérer le ventre d'une femme comme un objet du commerce, plus précisément un objet licite certain. De plus, à la lumière de la jurisprudence sur les bonnes mœurs, est-ce que la maternité pour autrui ne va pas à l'encontre de l'ordre public à Maurice ?
Il reviendra au juge d'examiner un tel contrat s'il est fait, en l'absence de législation régissant la maternité pour autrui.

La maternité pour autrui et vide juridique : Maurice doit-elle légiférer ? [Cont'd]

Il devra soupeser les mœurs de notre société, ainsi que la notion d'ordre public afin d'établir la filiation d'un enfant né sous une convention de maternité pour autrui. On ne pourrait pas se prononcer sur ce sujet, tant qu'il n'y aura pas un cadre juridique solide sur la maternité pour autrui venant, soit du droit, soit de la jurisprudence.

Dans plusieurs autres pays, le législateur s'est explicitement prononcé sur la maternité pour autrui ; certaines juridictions l'autorisent, mais d'autres s'y sont strictement opposées. La France, par exemple, interdit la maternité pour autrui, tant civile que criminelle. Si on en croit l'article 227-12 du Code pénal français, et son interprétation, *s'entremettre entre une personne ou un couple désireux d'accueillir un enfant et une femme acceptant de porter en elle cet enfant en vue de le leur remettre* est passible d'un an d'emprisonnement et de 15,000 € d'amende, et si c'est fait à titre habituel ou dans un but lucratif, les peines sont portées au double. En matière civile, le Code civil français dispose clairement sous l'article 16-7, que toute convention portant sur la procréation ou la maternité pour le compte d'autrui est nulle.

Mais d'autres juridictions sont bien plus tolérantes, allant même jusqu'à promulguer une loi afin d'autoriser la maternité pour autrui. Au Royaume-Uni, une loi s'intitulant l'*Human Fertilisation and Embryology Act*, qui fut d'abord promulguée en 1990, puis amendée en 2008, traite toutes les conventions de maternité pour autrui. Il n'est pas surprenant que le Royaume-Uni autorise la maternité pour autrui, car ce dernier est bien le premier pays au monde où le premier bébé-éprouvette (conception par fécondation *in vitro*) a été conçu par des pionniers du traitement de fertilité, en 1978. Le droit indien autorise aussi lui la maternité pour autrui.

L'un des arguments contre la maternité pour autrui est que cela peut mener à la commercialisation de la femme en machine à bébés. Mais en promulguant une loi en la matière, qui garantira que les mères porteuses donnent leur consentement éclairé afin d'empêcher l'exploitation, cela permettrait éventuellement de régler ce problème. C'est en l'absence de ce filet de sécurité que la maternité pour autrui devient dangereuse, car dans l'illégalité, c'est là que l'exploitation devient plus facile. La maternité pour autrui soulève aussi une question éthique, car certains prétendent qu'elle transforme les enfants en marchandises qui peuvent être « achetés » ou « commandés » ; cet argument s'appuie aussi sur les conditions de validité d'un contrat et le fait qu'un objet doit être licite. D'autres argumentaires concernent des problèmes de droit international privé, comme la citoyenneté et la filiation ; mais la création d'une loi qui empêchera les mères porteuses de revendiquer illégalement la garde, et qui garantirait la filiation légale dès la naissance, limiterait cela.

La maternité pour autrui renvoie aussi à l'indépendance de la femme de disposer comme elle le veut de son corps. L'autonomie corporelle et la liberté reproductive sont profondément liées, et la maternité pour autrui rejoint aussi ce croisement. Plusieurs considèrent la maternité pour autrui comme un choix d'autonomisation pour les femmes qui souhaitent aider les autres tout en touchant un revenu, mais d'autres personnes

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argumentent que cela sert à réduire la femme à un objet qui enfante ; d'où l'importance d'installer ce coussin juridique solide afin de fortifier le droit de la mère porteuse.

En 2020, la Cour suprême statua sur un cas de maternité pour autrui. Dans le cas de *Bissessur J & ors v Mungroo J & anor (2020 SCJ 216)*, les plaignants sont les parents de l'enfant né de la convention de maternité pour autrui, et l'enfant mineur lui-même, et les défendeurs sont le couple demandeur. Ce qui s'était produit dans ce cas est que les deux parties avaient convenu que la femme plaignante portera l'enfant du couple défendeur, qui sera conçu à partir du sperme du mari du couple défendeur. Mais le couple plaignant continua d'avoir des relations intimes, et donc de cela est né un enfant. Le couple défendeur prit en charge le nouveau-né et le déclara comme leur enfant sur son acte de naissance. Cet enfant résida avec le couple défendeur et était reconnu comme étant leur enfant, et non l'enfant des parents biologiques. Ce n'est qu'après que le couple demandeur ait été soupçonné d'enlèvement en faisant le visa de l'enfant que soudainement les parents biologiques ont voulu désormais faire déclarer l'enfant comme le leur. La Cour suprême confirma que nul ne peut contester la qualité d'une personne qui possède une possession d'état conforme à son acte de naissance, et prima le lien sociologique et non la vérité biologique.

La notion d'ordre public freine souvent la liberté contractuelle de l'individu, mais en cas de maternité pour autrui, c'est aussi la liberté de disposer de son corps qui gêne ; cette dernière est d'ailleurs le leitmotiv qui traverse les droits des femmes. Cette invocation constante et aveugle à la moralité a souvent été ce qui entrave le progrès des droits de la femme. Mais la maternité pour autrui ne semble causer de préjudice à personne, tant que les consentements de tout un chacun ont été recueillis.

Les couples demandeurs réaliseront leur souhait de devenir parents, et les femmes infertiles désireuses d'enfants pourront enfin devenir mères. Quant à la mère porteuse, elle percevra des avantages pécuniaires afin de porter cet enfant, tout en jouant un rôle primordial dans la réalisation du rêve parental d'autrui. Néanmoins, la maternité pour autrui est aussi une pente glissante qui peut amener à la commercialisation de la vie humaine ou le trafic d'enfants ; c'est pour cela que la réglementation de la maternité pour autrui doit être faite.

La Commission, dans son *Review Paper* de 2013, fit l'exercice d'équilibrage entre l'introduction et l'interdiction de la maternité pour autrui, mais proposa aussi qu'il soit possible de maintenir le statu quo de Maurice à ce sujet et de laisser au juge mauricien la voie libre, si une telle convention était présentée devant lui. Néanmoins, l'avantage d'une réforme de la loi qui viendrait protéger les mères porteuses, le couple demandeur, et surtout les enfants nés par maternité pour autrui, semble dépasser largement les potentiels inconvénients.

Hooriyyah RUJUB
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Statistics speak for themselves

Statistics regarding women from Statistics Mauritius (2023)

Unemployment and Education: Unemployed women were generally more qualified than unemployed men, with **21.3%** holding tertiary qualifications compared to **18.1%** of men.

The **female unemployment rate stood at 8.7%**, significantly higher than the **male rate of 4.6%**. The gap was widest among younger age groups, with **nearly a 5-percentage point difference** for those under 25, narrowing to around 1 percentage point for those aged 50 and above.

Labour Force Participation: In 2023, the active population in Mauritius (aged 16 years and above) was 592,800, comprising 344,300 men and 248,500 women. **Women's labour force participation rate stood at 41.9%**, significantly lower than the 58.1% recorded for men.

Child Abuse: Reported child abuse cases at the Child Development Unit increased from 5,448 in 2022 to 5,729 in 2023. In 2023, around **55%** of the victims were female.

Poverty: Women were more likely to live in poverty, with **11% of the female population below the poverty line** compared to 9.6% of males. Of the 131,300 people in relative poverty, 70,800 were women and 60,500 were men. Poverty was also more prevalent in female-headed households (15.9%) than in male-headed households (7.6%) in 2017.

Domestic Violence: Women accounted for **79.8% of domestic violence victims**. Cases of domestic violence reported to the Ministry of Gender Equality and Family Welfare increased from 5,381 in 2022 to 7,177 in 2023. Incidents involving women rose from 4,420 to 5,729.

Sexual violence and exploitation: Around **91.7%** of sexual violence and sexual exploitation victims were women.

Worldwide statistics regarding women

Violence Against Women: According to UN Women, **1 in 3 women worldwide** experience physical or sexual violence in their lifetime.

Women in Politics: As of 2023, **only 26.5% of parliamentary seats worldwide** were held by women (IPU Data).

Gender Pay Gap: Women globally **earn 20% less than men** on average (ILO Data).

Legal Protections: The **World Bank's 'Women, Business and the Law 2024'** report shows that **only 14 countries** grant women full legal equality.

Labour Force Participation: Globally, women's labour force participation rate is about 47%, compared to 72% for men. This disparity is influenced by factors such as caregiving responsibilities, cultural norms, and limited access to childcare services.

Informal Employment: A significant proportion of women work in the informal economy, with estimates suggesting that 58% of employed women in developing countries are in informal employment. This often results in job insecurity, lack of social protections, and lower income.

Reproductive Health Access: An estimated 214 million women worldwide have an unmet need for modern contraception, leading to unintended pregnancies and affecting women's health and socioeconomic status.

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