

GENDER PARADIGM OF SOCIAL CHANGE: ISSUES AND CHALLENGES

Rishabha Meena

Student, National Law University, Jodhpur

Delegation to the 1st International Congress on Human Rights & Duties
(Regd: 27ICHRD2015)

Abstracts:

Women confront segregation and constant gender disparities. This paper will cast light on how women strengthening will prompt improvement in the economy and further what are the present boundaries which are preventing the same to happen. Marriage, multiculturalism, destitution and stratum assume a critical part in giving restricted access to women around the world. The paper will be centered towards the present day status of women and solutions to the same.

Keywords: Economy, Gender disparities, Multiculturalism, Women, Marriage.

Gender is the fascinating subject of social conflict. Across the division on the basis of language, caste, religion and creed, gender is a common horizontal basis of division among all of them. Women played a vital role in the development of the country, but still they had suffered throughout the history. The contributions of women have been evidenced by sacrifices and pains.

The State is an important concept which led to emergence of all the institutions. A person, either in the capacity of an individual or a citizen, led to the emergence of the State. It is the State through which the notion of gender has been evolved. A person constitutes a family which turns into the clan and later, the clan turns into tribe and hence the conflict between tribes led to the emergence of the State. The abstraction of matriarchal theories and patriarchal theories led to the emergence of the issues of gender.

The concept of "gender issues" focuses on the problems which arise due to the allocation of roles to the respective sexes

due to which one sex becomes inferior to another. The concept of gender issues is not confined only to the roles allocated to men and women but it also covers the problem of homosexuality. Gender issues emphasizes on the idea of development of the women in every aspect. It requires providing opportunity to women over economic and social resources.

2. SEX AND GENDER

Sex and Gender are the two words that are often confused with. The biological idiosyncratic which makes the distinction between male and female is called as sex. The term biological in the definition directly shows that the term "sex" emphasizes on reproductive system, hormones, *et cetera*. Gender underlines on social, mental and social characteristics that are connected with sex as per the social standards. It can be concluded that sex makes us male or female; gender makes us masculine or feminine.¹ According to the social norms, the role of

¹ Chapter 1-Sociology of Gender, Gender Roles: A Sociological Perspective, ISBN -13: 9780132448307.



male and female are determined according to their sex.

Gender relations are generally experienced as “natural” rather than as something created by cultural and social processes. Throughout most of history for most people the roles performed by men and women seem to be derived from inherent biological properties. Gender relations are the result of the way social processes act on a specific biological categories and form social relations between them. From an egalitarian point of view, gender relations are fair if, within those relations, males and females have equal power and equal autonomy. This is what could be termed “egalitarian gender relations”.² The distinctions based on biological difference can be controlled but it is not easy to remove the differences based on the socially constructed ideas. We cannot consider a thing to be desirable or untransformable just because that thing is natural. These social norms are the tools used by males to protect their interest by making females to suffer so that males can protect their interest.

Justice demands something to be just and reasonable. Justice is related with the concept of liberty, equality and fraternity. Social justice demands for the equal treatment without any discrimination on the basis of race, sex, caste, religion, *et cetera*. Women cannot get their status until and unless they are not provided with economic justice. Economic justice is the sole factor due to which there is inequality between the two genders. Civil liberty deals with the liberty at individual level and it is the urge for power. It also refers that all people must have equal right to develop their personal abilities and free to make personal choices. Women are not provided with economic justice and hence they cannot attain civil liberty. If women would attain civil liberty, then they will become independent and hence superior to men. Economic justice gives rise to issues such as women cannot get

their share in property, inadequate medical facilities, unequal pay for work, *et cetera*. Many religious practices such as devdasi, dowry, *et cetera* also affect the rights of women. The laws are also inadequate to provide protection to the women.

2. FEMINISM

Feminism is an important term associated with gender issues. Feminism is a term aimed at ending the oppression of women.³ Feminism is a range of movements and ideologies that share a goal to define, to establish, and achieve equal political, economic, cultural, personal and social rights for women.⁴ This includes seeking to establish equal opportunities for women in education and employment.⁵

Multicultural feminism focuses on the specific cultural elements and historical conditions that serve to maintain women's oppression. In Latin America, for instance, military regimes have devised specific patterns of punishment and sexual enslavement for women who oppose their regimes.⁶ Multicultural feminism emphasizes difference among women (race, ethnicity, class, *et cetera*); focus on coalition-building among different groups of women; emphasize international and global programs of reform.⁷ “Feminism and multiculturalism might find themselves as allies in academic politics; but as political vision in the larger world they are very apart.” Multiculturalism urges towards respect for all cultural traditions but feminism questions the same. Global feminism is a feminist theory closely aligned with post colonial theory and post colonial feminism. It concerns itself primarily with the forward movement of women's rights on a global scale.⁸

3. WOMEN AND CUSTOMS

³ Supra note 1.

⁴ Globalization and Feminist Activism, Hawkesworth, M.E. (2006), ISBN 9780742537835.

⁵ Feminism is for everybody: Passionate Politics, Hooks, Bell (2000), ISBN 9780745317335.

⁶ Supra note 1.

⁷ <https://www2.cnr.edu/home/bmcmanus/classnotes.html>.

⁸ <http://www.mainstreamweekly.net/article3236.html>.



Part III of the Constitution assures development of all the individuals irrespective of their race, sex, caste and religion. The very words of the Constitution form the backbone of all other laws in the country. The framers of the Constitution were well aware of the conditions of women and discriminatory practices against them due to which specific provisions have been inserted in the Constitution in order to provide protection to the women. Article 14 provides protection for all the people irrespective of their condition. The Constitution provides Article 15 as specific instance of Article 14 to enable the protection of women. Article 15 empowers the State to make special provision for the women.⁹ Women's control and participation in economic processes is important for their advancement and through this, they would be able to exert their control and influence in the society.

Due to limited access to women over the resources, they are dependent on men throughout their lives. The major reasons behind the inequality in the status of the women are poor knowledge, illiteracy, lack of confidence, custom and usages, *et cetera*. The patriarchal setup is the major reasons behind the status of the women. The birth of boys is celebrated, whereas birth of a girl is considered to be a movement of sorrow. The practice of Azan in Muslim community illustrates such practice. According to this practice, a prayer is called at mosque after the birth of a male child. The birth of a female child is not recognized as such. This negligence leads to gender based health disparities among the young age population. This negligence results into insufficient nutrition, less preventive care, and irregularity in seeking health care during illness for female children.¹⁰ The practice of *Purdah* system hinders the participation of women in society and they cannot become economically independent. The problem of

gender issue is also observed when the funeral rites are carried by male child.

Hindu social practice allows the parents to absolve themselves from honoring the daughter's inheritance right at par with their sons with the alibi of paying dowry at the time of the daughter's marriage. Dowry as a substitute of land and other properties in inheritance is one key way the patriarchal beliefs are deeply anchored in social practice, denying the women social and economic equality within the family. The practice of dowry is so entrenched that women themselves do not feel that it is their moral or legal right to claim inheritance rights in their parents' property.¹¹

Women are the direct victim of the curse of poverty. It is seen that among the poor, women seldom can have basic needs like the health care services, education, *et cetera*. One of a consequence of poverty is child marriage which is embedded so deeply in the social and cultural setting that it could be a leading cause of women discrimination and deprivation of access to all opportunities and benefits in family and societal life.¹²

4. WOMEN, LAW AND PROPERTY

Women's access over economic resources is an important factor in the field of gender issues. Women's rights over economic resources include jobs, education, control over property, *et cetera*.

Property is the essence of the concept of rights. Rule of law and gender plays the vital role towards the development of the country. Women are not able to receive legal support especially in terms of property rights. Due to lack of education, they are unaware of the laws meant for their protection and current judicial mechanism.

⁹ Article 15, The Constitution of India, 1950.

¹⁰ Khandaker, Mu. Mizanur Rahman, The University of Tokyo, "Gender discrimination in healthcare spending in the household and women's access to resources: perspective of Bangladesh".

¹¹ Report on The Formal and Informal Barriers in the Implementation of the Hindu Succession (Amendment) Act 2005, Landesa Rural Development Institute, <http://www.landesa.org/wp-content/uploads/hsaa-study-report.pdf>.

¹² *Ibid.*



When property is concerned, the position of women determines her share in the property. Women get different share in the same property in the capacity of mother, widow, daughter, *et cetera*.

Since ancient times, there has been inconsistency in property rights pertaining to the gender. Earlier, women were considered to be of low status and they were always considered to be inferior to men. According to Mitakshara Law, only son were given rights over the properties. According to it, the coparceners included only male members, females were excluded from this group. The Hindu Law of Inheritances, 1929 was the earliest legislation which improved the status of women and gave them rights over the property. Hindu women's Right to Property Act XVIII, 1937 gave widows right to share in property same as that of the son.

As far as women under the Hindu Law is concerned, prior to the enactment of Hindu Succession Act,¹³ women were not given equal rights as that of men but now Section 14¹⁴ of the Act improved the conditions of the women. Under the Muslim Law, women inherit their property as widow, daughter, *et cetera* on the basis of their positions in the family.

Property rights had been denied to Hindu women just to exercise control over them and to make them subjugated and

dependent on men.¹⁵ Prior to Hindu Succession Act, 1956 'Shastric' and 'Customary' law that varied from region to region used to govern the Hindus. According to this Act the hitherto limited estate given to women was converted to absolute one, the principle of simultaneous succession of heirs of a certain class was introduced, the principle of testamentary succession was applied so as not to exclude women, remarriage, conversion and unchastity were no longer held grounds for disability to inherit and even the unborn child, son or daughter, has right if s/he was in the womb at the time of death of the intestate.¹⁶

Some of the special laws for the protection of women are as The Equal Remuneration Act, 1976, The Dowry Prohibition Act, 1961, The Immoral Traffic (Prevention) Act, 1956, The Maternity Benefit Act, 1961, The Medical termination of Pregnancy Act, 1971, The Commission of Sati (Prevention) Act, 1987, The Prohibition of Child Marriage Act, 2006, The Pre-Conception & Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 and The Sexual Harassment of Women at Work Place (Prevention, Protection and) Act, 2013.

The definition of rape under Section 375 of IPC defines an act to be concluded as rape if and only if the victim is less than 18 years of age.¹⁷ The exception to the Section 375 of IPC explicitly says that the act would not amount to rape if the victim is wife of the person committing rape.¹⁸ Even though the Section protects female from wrongs committed by men but it does not offer any protection to the wives. The Section offers protection to the wife less than 15 years of age. It is violation of human rights as it does not offer protection to the wife more than 15 years of age. The definition of rape under the Section is not adequate as it uses narrow approach to define an act as rape. It defines

¹³ Hindu Succession Act, 2005.

¹⁴ 14. Property of a female Hindu to be her absolute property—(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner. Explanation.—In this sub-section, "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.
(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.

¹⁵ Law Commission of India, 174th Report on "Property Rights of women: Proposed Reform under the Hindu Law".

¹⁶ <http://socialregenerationandequity.blogspot.in/2013/10/women-property-rights-in-india.html>.

¹⁷ Section 375, Indian Penal Code, 1860.

¹⁸ Exception to Section 375, Indian Penal Code, 1860.



an act to be rape if an only if there is penetration of penis into vagina, mouth, urethra or anus. It does not include others kinds of acts which may have the same consequence as that of rape. The priority given to penetration by the penis over all other forms of penetration or sexual assault is historically based on the need to defend the rights of the legitimate father rather than the woman's integrity.¹⁹

Men found in situations of illicit intercourse do not suffer either a social stigma or a psychological scar, as it is acceptable behavior given the assumptions about the nature of male sexuality. But women lured into such situations will perhaps end up being prostitutes due to the social and psychological repercussions of illicit intercourse with them. That also explains the inclusion of prostitution, and illicit intercourse in the same sections.²⁰

5. WOMEN AND SOCIETY

It is accepted by the society when we see a man peeing on the road, but at the same time, we do not accept a woman peeing on the road. It again shows that these social norms are again restricting the freedom of the women. Men having sexual relations outside the marriage are considered to be more masculine, whereas a woman having sexual relations outside her marriage is considered to be a sin. It is considered to be the duty of women to protect her virginity and protecting her virginity means protecting the status of her tribe whereas men having sexual relations with other women and rape the women of other tribe characterizes his masculinity.

A woman makes all the efforts to maintain her married life. There are two purposes behind the marriage, the primary and the secondary. The primary purpose behind marriage is to fulfill sexual desires. The secondary purpose behind marriage is to get psychological support and economic dependency. The purpose of economic

dependency makes women inferior to men. The decline in the stability of marriage concludes that women cannot receive the financial support from her husband. Due to this, females even after violence, do not seek divorce. If they do so, their life will become more miserable. Women are not respected and given equal rights even if they married in an educated family.

Earlier, women were not allowed to get share in the property. The social practices such as sati, dowry, child marriage *et cetera* made the life of women more miserable. The attempts made by reformists such as Raja Ram Mohan Roy, Swami Dayanand Saraswati and other social reformers improved the conditions of women. In India, women are considered to be goddess (e.g. we call Bharat Mata) and in the Vedas, women are considered to be goddess. We pray many goddesses such as Durga, Sarawati, *et cetera* but still in today's society women are ill treated by men in the patriarchal setup. A bride is ill treated by her family if she does not bring adequate dowry.

The problem of gender issues was highlighted in 1950s. During the period of 1980s and 1990s, it became an important issue in management and organizational studies.²¹ In the field of employment, gender discrimination may exist in various forms such as discrimination in employee hiring, difference in salary and wages, discrimination in promotion *et cetera*. Employee is a back bone of the organization that performs critical tasks for the survival of the organization and employee productivity is also affected by gender discrimination. Organizational productivity and performance affected by employee performance and employee performance affected by gender discrimination. Equal pay for equivalent work would go much further in eliminating gender inequality in labor market earnings because it would directly undermine the strong tendency for jobs that are associated

¹⁹ Gender Analysis of the Indian Penal Code, Ved Kumari.
²⁰ Ibid.

²¹ International Journal of Humanities and Social Science Vol. 1 No. 15 [Special Issue – October 2011], Gender Discrimination & Its Effect on Employee Performance/Productivity, Dr. Qaisar Abbas, Abdul Hameed, Aamer Waheed.



with "women's work" to be less valued than traditionally male jobs.²²

6.CONCLUSION

The advantage of providing opportunities for the women is that an educated girl would postpone marriage. Furthermore, they would raise a smaller family and hence send her children to school without discrimination. An educated female has more chances of earning and she would help in the development of the countries due to her participation in the political processes. Women face problems while searching for jobs and the consequence of this is that they face more harassment while searching for work. Uneducated women are more prone to divorce due to which they die because of unbearable problems.

The guaranteeing of rights to girls and women will provide them with the opportunities to reach their full potential. But apart from this, it offers wide range of international development goals. If females are empowered, it would ensure productivity of their health and hence will assure the fulfillment of international development goals. Furthermore, it would provide for the productivity of the country. Gender equality aims at ensuring equal power to both the sex to attain economic independence, education and hence personal development. Attitude of males towards females plays a vital role in the development of females and hence in removing gender disparities.

Women are also facing lack of nutritious food, negligence to medicine and proper checkup, lack of educational opportunities, sexual abuse of girl child, rapes, forced and unwanted marriages, sexual harassment at public, home or work place, unwanted pregnancies at small intervals, bride-burning, wife-battering,

negligence of old women in family, *et cetera.*²³

Law and order enforcing agencies along with both marriage registrars and birth registrars should be more efficient and sincere in order to end violence against women and girls at home and in the communities. Early marriage and dowry, which are two root causes of gender discrimination, are deeply embedded in the improvised and traditional cultural settings in the world. No single solution is available to prevent and protect such kind of social diseases. Gender issues, especially social and cultural education regarding early marriage, sex biasness, dowry system etc should be incorporated in school curriculum in order to build gender awareness among the young generation.²⁴

To conclude it can be said that "*It is not easy to eradicate deep seated cultural values or to alter traditions that perpetuate discrimination. It is fashionable to denigrate the role of law reform in bringing about social change. Obviously law, by itself, may not be enough. Law is only an instrument. It must be effectively used. And this effective use depends as much on a supportive judiciary as on the social will to change. An active social reform movement, if accompanied by legal reform, properly enforced, can transform society.*"²⁵

We should make all possible efforts to improve the conditions of the women otherwise we will be destroyed by the monster of our own creation.

²²Supra note 2.

²³<http://www.indiacelebrating.com/essay/social-issues/women-empowerment/violence-against-women-in-india/>.

²⁴Supra note 10.

²⁵ Justice Sujata V. Manohar of Supreme Court of India.