Journal of The Gujarat Research Society
ISSN: 0374-8588
Volume 21 Issue 10, October 2019

Problemsand Personal Laws Related To Sex Equality

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Abstract: ***It is undertaken to give women of oppressed religious minorities equal rights under the Indian constitution and international law by family law. The sameness and difference predominating the legal model of equality criticized around the world. An alternative model that addresses dominance and subordination ordinary hierarchy is developed and illustrated through discussion of India's jurisprudence at the Supreme Court. An inability to adapt this pattern to family law is established, and the difficult question of ensuring a new approach to gender equality rights for Muslim women is suggested under the "special laws' of India. The conventional legal approach to equality that comes from the West is used mainly across the world. A promising alternative that is gaining popularity can already be found implicit in the Indian constitutional equality tradition at its highest, as well as in some Western equality legislation. This alternative has great potential for advancing social equality for women by law, including addressing the complicated political and legal questions raised by Indian family law, called "personal rules."***

Keywords: Sex equality, Muslim personal law, fundamental right, right to equality, discrimination.

INTRODUCTION

The definition of equality in law descends almost everywhere in a straight line from the dictum of Aristotle that equality means treatment like, unlike. This development revolves around sameness and distinction, as established through the Enlightenment. Their treatment is considered irrational and arbitrary when individuals are seen as important and is prohibited by law as unequal under similarly imperative likes, but is not treated the same. They can be viewed differently uniformly when seen as distinct; that, too, is known as equality.This norm, known as formal equality, is generally considered fair, objective, impartial, and socially progressive. It's empirical, in a sense: the law is about representing truth.

The problem that he is trying to solve is classification. People must be the same as each other within a classification; people of different classifications must be different from each other. Equality is about treating the same people who are correctly classified as identical, differently who are specifically classified as different[1].In most jurisdictions that have assurances of legal equality, this model has been adopted either expressly or tacitly as the apparent substance of equality without having given much serious thought on the level of the first principles. It prevails under international law and the laws of the European Union direct the interpretation of the Equal Protection Clause of the Constitution of the United States and has primarily specified the application by the Supreme Court of India of Article 14 of the Constitution of that country, as seen in the fundamental cases of Royappa and Dalmia.

Of course, the conventional theory can be useful in solving many inequality issues, including those afflicted by the elite as well as by certain members of subordinate groups; it can be usefully applied with imagination in the hands of those who are already committed to achieving social equality through legal equality. Affirmative action, which is viewed differently on the basis of its unlikeness, is entirely Aristotelian, rendering the doctrine challenging, even agonising, for this principle of equality. Among the concerns of discrimination that the Aristotelian paradigm has overcome, women's inferior status compared to men is not prominent. The questions in this respect are why and what to do[2].

When created, this framework was not predicated on an understanding that women are the equals of men kept pervasively unequal by social orderings. Confining women to their homes, excluding them from voting and public office, preventing them from working, violating, and prostituting them were not seen as inequalities[3]. Bluntly put, discrimination between women and men was not an issue that was generated to solve by Western equality thinking, since women were not treated as the full human equivalent of men. To telescope a long storey, this theory imagined women as distinct, which, when calculated by the tacitly male standard of the human, translated into "inferior." Despite nature, women were not considered to be entirely human by the habit of thinking.

This view has produced one contradiction between, on the one hand, the image of women put on a special pedestal or specially protected for their differences and, on the other, the reality of being abused, manipulated and murdered with widespread impunity same configurations and attributes supposed to support pedestals and protections[4].The result was the rationalization of systemic social inferiority by identifying the distinction, making not discrimination problems at all to most sex- and gender-based subordination. The reality that feminism, as originally formulated in the West, was never meant to modify the pervasively inferior social status of women, and male legal status goes a long way to understanding why it did not.

Most cultures view such practices as unavoidable (if unfortunate) or illegal (if applied spottily) but not so unjust in the legal context. Practices seen as attaching to differences do not give rise to claims for unequal treatment because, in those respects, the genders are seen as being different rather than treated unequally. In Aristotle’s terms, unlike, they are simply treated unalike. So little to nothing is being done about such practices, certainly not through the law of equality. Being defined as different-sex is generally seen socially as "the gender difference"—thus, under the traditional model of equality, it can result in being treated worse, or less, without considering that treatment as unfair. For example, when women do work differently than men, as do most women. They can be paid less for in the world, and this is not seen as a problem of inequality because the work is different, often even if it is of comparable value[5].

Never mind that social subordination itself can not only create differences, such as reduced access to work qualifications among excluded groups, and the view that pregnancy is a disqualification of employment when it is not but can also create the impression of differences, including stereotyping and oppression internalized. Because unalike can be treated unalike, including worse than you like, dominance and subordination which form a hierarchy that can and

do coexist with the rules of sex equality. Male dominance and female subordination are thus maintained seamlessly under legal regimes of equality across the globe[6].

The opposite of equality, in her opinion, is not a discrepancy but a hierarchy. Equality, therefore, requires the promotion of status equality for historically subordinated groups, and the dismantling of group hierarchy. Given that the Aristotelian paradigm as applied would not effectively produce social equality in a diverse society, the Supreme Court of Canada embraced this alternative contextual notion as its standard for measuring the constitutional equality of law. This alternative influences South African constitutional jurisprudence court and the international rulings are increasingly animated.This alternative model is illustrated by the sexual harassment law, which first argued that being in a subordinate sexual position was not a sexual difference justifying sexual abuse but rather a violation of sexual equality rights. That sexual harassment is a common and cultural one, by another name ingrained practice between men and women, arguably part of what is known as the gender difference, was not permitted to obscure the fact that it is a practice of subordinate social status, hence an act of disregard[7].

If its women and the sexual distinctions between men mean that in the conventional terms of the model, men will sexually assault women, handle them differently than men because women and men are sexually different either because sexual harassment is not sexual discrimination or because it needs a new vision of equality.One is may agree with earlier courts that sexual harassment is not sex discrimination, or may see that sexual harassment is exactly what sexual discrimination looks like and envision a new model of equality: one that is neither seamless nor negated by variation, neither punishes variation nor protects seamlessness, but challenges social inequality by making civilly actionable as sex. Discrimination a practice through which members of one social group have been permitted to treat others as inferiors.

GLITCHES ASSOCIATED WITH GENDER INEQUALITY

The decision in the case of MadhuKishwar in 1996 expressed concern that invalidating existing law 'will confuse the current state of law. "If existing law is unequal, forcing it to be equitable would undoubtedly be unsettling, but it also offers evidence of the pervasiveness of the injustice that needs to be resolved rather than a justification why there is no injustice to be remedied. A more fundamental reason behind the reluctance to apply the principles of sexual equality to personal laws is the (tired but far from toothless) charge that sexual equality is a western and hegemonic idea that shows insufficient respect for thecultural disparity. As the initial research showed, the traditional theory of equality is Western, and the sketched alternative conception is not particularly so..

Gender equality is not quite Western, even though the standard of gender equality is hardly Western unique in non-Occidental cultures. Giving the West a level playing field obscures its influence, pluralityand dynamism as an ideal and partial truth across the world. This further distorts and undermines women's indigenous liberation movements everywhere as if their desire for liberation were not their own, as if they were not independent agents capable of understanding and acting in their interests[8].

Finally, even the wrong people have the right idea, even though they convey it in egregious ways. The historical example comes to mind of eleven-year-old PhulmaniBai, who died of her husband's sexual intercourse in 1891. The parliamentary measure to increase the age of marriage from ten to twelve was resisted, even by those who supported it, because the British who were said to interfere with religious affairs and couched their opposition in religious terms were in favor of the proposal.The education of young women has certainly become an excuse for patriarchal colonialist interference. Yet does this mean that it does not affect girls who are raped to death in marriage (behavior hardly limited to India)? Would that mean that we will not do anything? Defending something that harms your people because it seems to be a sign of a colonized mind to be against those who harm you.

States are far from involving themselves in the so-called personal domain. In other aspects, they join it by legislating and implementing family law that effectively promotes such activities. If the state never enters an arena at all, one kind of equality problem emerges. But once they enter, they have to enter on a sex-equal basis, under well-established constitutional and international principles. Perhaps when states legislate on sex discrimination, imposing the subordinated social status of women to men along the lines just mentioned, constitutional and international responsibilities are breached no less than when states behave officially in every other area of society to the detriment of one sex[9].

Nonetheless, we find a pervasive and categorical reluctance in the family to accept the rights of sex equality. This reluctance is not peculiar to any one society but is expressed throughout the world by patriarchal societies (and most societies are male-dominated while forms vary). For example, the U.S. Supreme Court has so far looked at family law under equality rubrics only for facial differences, when in fact family law in the U.S. acts as a complex mechanism for impoverishing women and for creating and increasing their unequal status as a wide-ranging sex society[10].

CONCLUSION

Such a solution would be consistent with India's reservation to the CEDAW that, except on their initiative and not without their permission, family laws should not be imposed on minority groups. Under the proposal presented here, all religious groups should, on the initiative and with the consent of the women of the communities concerned, have access to sex-equal family law. The initiative will be taken by women in non-adopting communities, and every woman will consent. It should not have been forced on any woman who did not want the standard sex-equal code to govern her marriage.Certainly preferable to amend sex laws that are discriminatory to those affected.Other unreserved parts of CEDAW can compel the same outcome. But the implied agreement is compatible, reserved or not, with India's international obligations.

REFERENCES

[1] Government Of India, “Children in india 2012- A Statistical Appraisal,” *Soc. Stat. Div.*

Minist. Stat. Program. Implementation, Govt. India, 2012.

[2] G. of India, "Constitutional and Legal Provisions for Women in India," *BEST Int. J. Humanit. Arts, Med. Sci. (BEST IJHAMS)*, 2015.

[3] E. N. Kumar and E. S. Kumar, "A Simple and Robust EVH Algorithm for Modern Mobile Heterogeneous Networks- A MATLAB Approach," 2013.

[4] A. B. Siddiqui, "Problems Encountered by Women Entrepreneurs in India," *Int. J. Appl. Res. Stud. iJARSI / Issue II*, 2012.

[5] K. McBroom, "Litigation as TB rights advocacy: A New Delhi case study," *Health Hum. Rights*, 2016.

[6] N. S. Siegel and R. B. Siegel, "Struck by stereotype : Ruth bader ginsburg on pregnancy discrimination as sex discrimination," in *The Legacy of Ruth Bader Ginsburg*, 2015.

[7] F. Kornbluh, "Queer Legal History: A Field Grows Up and Comes Out," *Law Soc. Inq.*, 2011.

[8] C. Jefferson-Jenkins and M. H. Hill, "Role of federal government in public education: Historical perspectives," *Leag. Women Voters*, 2011.

[9] B. Singh and K. Singh, "The Hermeneutics of Participation of Transgender Athletes in Sports - Intensifying Third Force," *Phys. Cult. Sport. Stud. Res.*, 2011.

[10] K. Alam and U. K. Halder, "Human Rights and Right to Education in India," *Int. J. Res. Anal. Rev.*, 2018.