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REMOVAL OF GENDERED LENS IS A HUMAN RIGHT

AUTHORED BY: ISHITA SEHRAWAT

Abstract

Someone rightly said and I quote, “a gender equal society will be one where the term gender does not exist.” Human rights are certain inalienable rights inherent to all humans by birth irrespective of their gender, caste, creed, etcetera. However, there are certain rights which are denied to people on the basis of their gender or rather they are not equally given the rights that should be based on their very existence as humans. Article 1 of the UDHR states that all humans are born free and equal. In spite of this provision the society and law has failed to recognise this right for all humans. So, the question arises that whether human rights can be guaranteed to all humans without the removal of gender lens from the society. The paper will aim to answer in the question in a negatory terminology by underlining the current scenario around the world and then delineate how human rights have been denied to people on gendered perspective. The paper will address gender-related concerns from a dual perspective. Initially, it will examine discrimination based on individuals' biological sex, and subsequently, it will explore issues arising from societal judgments related to individuals' gender preferences.

Introduction

The introduction to the intersection of gender and human rights is a crucial exploration of the fundamental principles that underpin the equitable treatment of individuals across diverse genders. In essence, it serves as a gateway to understanding how human rights standards and principles apply to all, irrespective of gender. This discourse delves into the challenges and inequalities faced by individuals based on their gender, emphasizing the importance of recognizing and safeguarding the rights of every person, regardless of their gender identity or expression. As societies evolve, so too must our understanding and commitment to ensuring that gender rights are firmly rooted in the broader framework of human rights, fostering a world where equality, dignity, and justice prevail for everyone. Gender and human rights are intertwined in a complex tapestry that reflects the diverse experiences and struggles faced by individuals across the gender spectrum. The introduction to this subject delves into the historical context of how societal norms and structures have influenced the perception and treatment of people based on their gender. It is essential to acknowledge that traditional gender

roles and stereotypes have often led to systemic discrimination, denying certain individuals their basic human rights. The comprehensive exploration of gender and human rights, it becomes evident that discrimination manifests in various forms. This includes unequal access to education, employment, healthcare, and political participation based on one's gender. Moreover, issues such as gender-based violence and discrimination against LGBTQ+ individuals highlight the urgent need for a rights-based approach that encompasses and protects everyone. In recent decades, international instruments and frameworks have emerged to address these challenges. The Universal Declaration of Human Rights, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and other treaties emphasize the inherent dignity and equality of all individuals, irrespective of gender. However, implementation gaps persist, necessitating ongoing efforts to translate the theoretical promise of human rights into practicality.

Research Methodology

To address the topic of "Removal of Gendered Lens is a Human Right" in a systematic and comprehensive manner, I utilised a mixed-method research methodology that combines qualitative and quantitative approaches. This allowed for a holistic understanding of the issue by examining both the societal perceptions and the statistical data related to gender disparities.

1. Contextual Analysis:

- Conducted a literature review to understand the historical background of injustices related to gender inequality.
- Analyzed existing laws and policies that impact gender equality.
- Reviewed case studies and reports on gender-based discrimination in various contexts.

2. Comparative Analysis:

- Compared the legal frameworks and societal norms related to gender equality in different countries.
- Examined the impact of international human rights instruments such as the Universal Declaration of Human Rights and CEDAW on gender equality.
- Identified best practices and successful interventions for promoting gender equality and removing gendered lens.

3. Policy Recommendations:

- Based on the research findings, developed policy recommendations for promoting gender equality and removing gendered lens at the societal and institutional levels.

- Proposed advocacy strategies for raising awareness about the importance of gender equality as a human right.
- Suggested measures for empowering marginalized groups and ensuring equal rights and opportunities for all individuals.

By following this mixed-method research methodology, I conducted a comprehensive analysis of the removal of gendered lens as a human right, leading to informed insights and actionable recommendations for promoting gender equality and social justice.

Historical Background

Gender inequality dates to the period when humans started living in civilisations. It all started with the men going to hunt outside for the food and women stayed back to take care of the children and other family members. Before anyone could analyse, an occupational bifurcation was created where certain job roles were defined for the men and women on the basis their gender. The logic used behind such differentiation was that certain roles like labour required bodily strength and males possessed more of it biologically. However, in my opinion, it was taking steps into the direction of a patriarchal society. Later on, when the society was far more civilised and the wars were taking place, women were merely reduced as trophies and subjects to abuse whereas men fought the war¹. The society failed to recognise that the families were held together by women, injured soldiers were taken care of by the women and that children were raised without fathers. Women were subjected to injustice at times of war by being tortured by the belligerents and at times of peace by the men of our very own society. When sovereignty began to gain importance and monarchies started dissolving, the very crucial aspect of voting rights came into play. Although a political right, voting rights held as much as importance as any other human right. The government systems particularly the democracies allowed the people to choose their own representatives who will subsequently take important decisions about life of the very same citizens and yet again women were deprived of this right. They were not considered equal along with the mindset that they were not capable of making of decisions about their own life. The suffrage movement in the US got women the right but it took one hundred years to grant them voting rights. In her essay, "Mainstreaming a Concern for the Human Rights of Women: Beyond Theory²," Felice Gaer writes of the work that international human rights organizations have undertaken specifically to address women's

¹ Margorie Agosin, Women, gender and human rights

² Felice Gaer, "Mainstreaming a Concern for the Human Rights of Women: Beyond Theory" Women, Gender and Human Rights (2001).

human rights concerns. An important concept that has emerged in these efforts is "gender mainstreaming": the term signifies that policies must be examined as to their implications for women and men. Just as certain human rights abuses affect only women or women more than men, women have specific human rights needs. Thus gender, Gaer argues, must be linked with human rights issues—whether violence, health care, or access to power—and gender issues must be brought to the attention of the United Nations and other international bodies

Women and Human Rights

The society began with men and women and yet women have been the targets of the gradual build-up of a patriarchal society. There has been no substantial evidence on the evolution of a community which considered men superior to women however, various theories have been laid out to demarcate the reasons behind such stigma. It is important that we understand that patriarchal society in itself is not a stigma (but a hard-hitting reality) rather a culmination of pre-installed notions in people's head. According to Cambridge dictionary patriarchy is defined as "a society in which the oldest male is the leader of the family, or a society controlled by men in which they use their power to their own advantage." In my opinion, this definition does not fully depict the truth. It is not just the men coming together to dominate women but women also being the full-fledged supporters of the system.

For working class women, the risk and frequency of delivery were a challenge. In almost all developed capitalist nations today, women are choosing not to have many, if any, children. Even with its limitations, our generation has never before imagined having access to contraception. For some women, abstinence was the only way to avoid a lifetime of unplanned and frequently repeated pregnancies. For those from the working class, regardless of gender, giving birth was an inevitable experience, and in such cases, they typically shared the desire to safeguard the mother. This explains why women left the industry upon marriage and why the family wage was a wage for males in a far more acceptable way than any explanation of male conspiracies. It remains a truth that these actions severely hindered women's ability to rise beyond their inferior social status. Although equality had been promised by capitalism, the system was unable to bring equality to pass. Women were atomized and sequestered in the house in the name of reproducing labour force. It was believed that their labour benefited their spouses and family. They were not allowed to be financially independent. For many working-class women, this "ideal" was never their reality; they were always employed as wage labourers. However, in order to ensure reproduction, the dominant ideologies promoted the

concept that the family is holy and imposed the working-class caricature of the bourgeois family. Furthermore, the stereotype was what men and women of working class saw as the "norm," even when it did not align with their actual experiences.

E.V. Ramasamy in his book "Why Were Women Enslaved³" has touched upon many factors like chastity, religious norms, property rights and many others to portray how all humans have come together to form the men dominated society. Women were supposed to be the be chaste and the rules were not the same for men. The Ramayana from Hindu scriptures is the prime example for showcasing the standards set for women by the religion. Goddess Sita who was abducted by Ravana had to go through a fire test for proving her character as she had been in the vicinity of another man for so many years. The matters of religion are very personal to the people following it and as a matter of this fact, a question certainly arises that if the goddess herself had to prove her own character, it has left a deep-rooted impact on the society. Another notion was that divorce and remarriage of a widow were seen as the greatest marks on the honour of the families of the women doing so.

In addition to being a basic human right, gender equality is also a precondition for a society that is affluent, peaceful, and sustainable. Although there has been improvement in recent years, gender equality will not be achieved by 2030 if current trends continue.

Half of the world's population is made up of women and girls, who also account for half of its potential. However, gender disparity still exists everywhere and impedes societal advancement. In the worldwide labour market, women still make, on average, 23% less than men, and they put in around three times as many hours performing unpaid caregiving and household duties. The uneven distribution of unpaid care and domestic work, sexual abuse and exploitation, and discrimination in public service continue to be major obstacles. The COVID-19 epidemic has made all of these areas of inequality worse: complaints of sexual assault have increased, women have taken on greater caregiving duties as a result of school closures, and 70% of health and social workers worldwide are female.

If current trends continue, it will take an estimated 300⁴ years to eradicate child marriage, 286

³ E.V Ramasamy, Why Were Women Enslaved (The Periyar Self-Respect Propaganda Institution, 4th edn., 1933).

⁴ Sustainable Developmental Goals <https://www.un.org/sustainabledevelopment/gender-equality/> (27 January,2024)

years to eliminate discriminatory laws and close legal protection gaps, 140 years to equalise the representation of women in leadership and power positions in the workplace, and 47 years to attain equal representation in national parliaments. The statistics show the gravity of the problem that it would certainly take not only the efforts of the government but a mental revolution in the society that will change the perspective.

Property rights

Any unbiased examination of property rights and gender highlights the appalling track record of emerging nations in granting women equal access to land and other essentials of existence. When compared to males, women have less access to food, water, housing, money, education, and healthcare, which has contributed to what is sometimes referred to as the "feminization of poverty." Even while more and more women are heading their own homes, 70 percent of the 1.2 billion individuals who are projected to be living in absolute poverty—defined as making less than \$1 per day—are women and girls. It is believed that the majority of impoverished women, especially those who reside in cities, work in the unorganised sector. Furthermore, in the underdeveloped countries, women only own an estimated 1-2 percent of all titled land. Unless there is a major change and strengthening of laws, rules, and practices pertaining to property ownership and control, as well as among methods adopted by donors and implementers supporting these reforms, it appears that the problem of women living in poverty will persist. Enhancing women's property rights is essential for economic development for all people and goes beyond issues of gender equality and human rights. Numerous studies have demonstrated that women who earn more money do so by raising household spending, which benefits the economy as a whole. Men, on the other hand, tend to spend a larger portion of their income on personal expenses⁵.

Marriage and Dowry

Marriage is either a contract or a sacrament across countries. This is the most hyped social institution known to mankind which puts immense pressure on the stability of the parties involved. Not particular to any country, marriage has been regarded as an important step in everyone's life. Although, a prevalent social practice, marriage has further contributed in enslaving women. Globally, 15 million girls are married by age 18 each year; by the year 2030, 950 million girls will have been married as children. In India, 27% of 20–24 year old females

⁵ Steinzor, Nadia. "Women's Property and Inheritance Rights: Improving Lives in a Changing Time,"2003

are married by age 18, and 7% are married by age 15⁶. A woman, particularly in India is father's property before marriage and husband's property after it. She is called to be the flagbearer of so-called honour which has allowed society to view women as someone to be controlled and protected.

Specifically in India, the status of women around marriage shows a major concern about how women are treated. India has struggled with the concepts of early marriages and dowry. It has led to various issues relating to health of the child and dowry deaths respectively. Women are warded off to the husband's family like a burden has been reduced and the lack of education has increased the problem manifold. School closures during the COVID-19 pandemic threaten progress towards gender equality. They have exposed girls to more gender-based violence, sexual exploitation, adolescent pregnancy and forced marriage. Several practical obstacles prevent married females from pursuing higher education, such as domestic duties, social shame, being forcibly removed from school, and gender conventions that confine them to the home. A common outcome of child marriage is teenage pregnancy. Adolescent girls who are pregnant may face shame, a lack of assistance for re-enrollment, and national legislation that force them to drop out or be excluded from school.

Religion

Many times, religion is perceived as impeding gender equity. Narratives abound of violence against women committed in the name of religion. Because of this, the problems of gender equality and religion are frequently written off as being too difficult to resolve. It seems that there is no way to unravel this multi-institution, quite intricate system. The capacity of women to participate in and contribute to the economy is impacted by religious prejudice. Women have mostly remained passive students of religious teachings and devoted practitioners of religious rites, while males have dominated as messengers, translators, and recipients of heavenly messages. Indian women's social and cultural surroundings have been defined and influenced by attitudes around patriarchal interpretations of religious belief, which has left them marginalised and treated as second-class citizens. Women in India suffer the most from cultural attitudes, the influence of religion and politics in their specific environment, and politics' use of religion as a weapon to control the populace. As religion became entrenched as an institution with inflexible dogmas inside the patriarchal systems that were already in place, a rift between

⁶ Anita Raj, Students and Bride, Article no.19 (2019)

the episteme and practice emerged.

The Hindu holy code of conduct, Manusmriti, paints women in a very negative light and is rife with disparaging remarks about them. It promotes males having complete control over women in their life. Additionally, it created castes within Indian culture, giving privileges to the upper castes and sanctions to the lower. The way that religious texts are interpreted through language, symbolism, and cultural conditioning has led to a practice that alienates women and even encourages violence and exploitation of them. In India, violence against women occurs in families regardless of religion or caste, and it stems from ingrained views of male dominance. One can only characterise accounts of domestic abuse against women as horrifying. It begs the question of how women manage to live and care for their families and homes. The accounts of beatings, suffocations, chokings (even in pregnancy), sexual and emotional abuse, and other forms of violence against girls are common. However, women now have access to legal assistance to file claims against domestic abuse because to the powerful women's movement that helped bring about legislative changes. The main form of gender discrimination against Catholic women covered by the Code of Canon Law is their ineligibility for ordination and all of the positions that come with it. It emphasises Christ's masculinity rather than his humanity, elevating males over women. Men and women do not have equal rights, even when it comes to the non-ordained.

Role of law in promoting women's rights

On December 10, 1948, the United Nations enacted the Universal Declaration of Human Rights, which states that every person has the equal right to dignity and is born free. Similar to this, the Indian Constitution grants all of its inhabitants, regardless of gender, a number of rights, including the right to equality under Article 14 and the right to life and personal liberty under Article 21. Other than this the Indian Constitution⁷ has guaranteed certain other rights for protection of women against exploitation such as:

1. Article 15(1) The state shall not discriminate against any citizen of Indian on the ground of sex.
2. Article 15(3) The state is empowered to make any special provision for Women. In other words, this provision enables the state to make affirmative discrimination in favor of women.

⁷ The Constitution of India, 1950

3. Article 16(2) No citizen shall be discrimination against or be ineligible for any employment or office under the state on the ground of sex.
4. Article 23(1) Traffic in human beings and forced labour are prohibited.
5. Article 39(a) The state to secure for men and women equally the right to an adequate means of livelihood.

A society that is gender equal is one in which men and women have equal opportunities, rights, and responsibilities in various areas of life. equal access to education, social and economic independence, decision-making equality, and the ability to pursue any career path one chooses. Economic, social, and political empowerment of women is essential to the development of any country as well as the defence and upholding of human rights.

Hindu women's property rights in India are governed by the Hindu Succession Act⁸ of 1956 and the Hindu Women's Right to Property Act of 1937. Hindu widows' property rights were the main focus of the 1937 Hindu Women's Right to Property Act⁹. It made it possible for a Hindu widow to inherit the same amount from her intestate husband's estate as her sons. Nevertheless, it did not provide Hindu women coparcenary rights, nor did it address the concerns surrounding women's property rights generally.

The Dowry Prohibition Act¹⁰, passed by the Indian government in 1961, outlawed the use of dowries in wedding ceremony preparations. Nonetheless, several cases of dowry-related homicides, suicides, and spousal abuse were reported. Many examples of this type of scenario have been proposed since the 1980s. The laws known as the Dowry Prohibition, which required the bride and groom to maintain records of their affords, were established in 1985. These recommendations state that a signed inventory of the gifts provided to the bride and groom at the time of their marriage should be kept on file.

Any intestate ancestral property that members of a Hindu Undivided Family (HUF) obtain is referred to as a coparcenary property. Only three male lineal descendants—son, grandson, and great-grandson—constituted the body of coparceners before to the 2005 Amendment, and they were the only ones with the right to purchase any coparcenary property. Since women were not allowed to be coparceners, this implied that they had no interest in the coparcenary property.

⁸ Hindu Succession Act, 1956 Act 30 of 1956

⁹ The Hindu Women's Rights to Property Act, 1937 Act 18 of 1937

¹⁰ The Dowry Prohibition act, 1961 ACT NO. 28 OF 1961

For example, a coparcener's sister did not obtain a stake in the coparcenary property, but his son did. But the Hindu Succession Act of 1956 was revised in Section 6 by the 2005 Amendment, which also removed the long-standing discriminatory practice of excluding women from the coparcenary system. According to Section 6(1) of the 1956 Act, a daughter of a coparcener will automatically become a coparcener in her own right by birth, just as a son of a coparcener shall in any HUF regulated by Mitakshara law. Thus, a coparcener's daughter is now a coparcener in a HUF.

Although the above provisions show that law has taken a positive step towards women's rights but there are times when the practical application of these provisions are not as effective as they seem to be. Certain laws themselves discriminate women in a way that is prima facie legal but, in its application, they tend to restrict equal rights for the binary gender. In the case of *Air India Vs Nargesh Meerza & Ors*¹¹, air hostesses were to retire when they reached age 35, or experienced their first pregnancy or if they got married within four years of service. This was challenged on the touchstone of Article 14 of the Indian Constitution as it treated the male and female within the same job description differently. The court ruled in the favour of the air hostesses but could not tackle the underlying problem completely. It is the pre-existing notions about women and certain standards according to which women should act.

Conclusion

Gender equality is a human right which is guaranteed to all humans however, the law along with the society are trying to attain gender equality through empowering women. I oppose this notion as women are not supposed to be empowered. People are trying to achieve equity by making a ladder equal to the pedestal on which men are kept but most certainly, in my opinion, it shall be achieved by completely destructing the pedestal. The real feminist movement is not about claiming that women are superior but that they are equal from the very beginning. When everyone is born equal, one section shall not have to fight for their inherited rights by birth. John Rawls gave his theory of original position and veil of ignorance. It is the most applicable theory in removing the gendered lens because it aims at visiting the original position. If females are the ones being oppressed and as mentioned above, they lack appropriate political representation, therefore male population is the one making rules for reaching the so-called notions of "equality" which is at best ironical and at worst lengthening the bridge of inequality

¹¹ 1982 SCR (1) 438

furthermore.

