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GENDER PREJUDICE, POLICY AND LAW – AN ETIOLOGY

G. Lakshmi

Prejudices of male supremacists are ingrained in the man-made world. Deep gender prejudice has coloured most public policy – social, economic, political including foreign policy making. There has been denial of and discrimination in their rightful entitlements of life, land property, education and training for a scientific technical world, health and social security in gross violation of human rights to women. Studies reveal the increasing gap between men and women in control of productive assets, employment, incomes, hours of work and social welfare infrastructure leading to denial of development as such. Interconnected with this is the question of law, equality and political participation. Laws relating to women in India require drastic alterations. Limitation of law will have to be met primarily by law itself. The administrative and applicatory machinery of law should be amplified and consciously made favourable to women. Law should be made unequal to secure justice for women. The State should enact gender-just laws rather than mechanical equality of gender. It is the endeavour of this paper to consider some of these issues relating to women. The objective is to dovetail gender issues with other programmes, increasing outreach of government policies and economic autonomy to empower women. Mechanisms for change such as women's forums and other supportive groups should mobilize and develop a plan of action. It is time to rethink and move forward.

Introduction

Gender prejudice is ubiquitous. Prejudices of male supremacists are ingrained in the man-made world. It is very hard for men to shed their prejudices against women. Deep gender prejudice has coloured most public policy – social, economic, political including foreign policy making. Men's thoughts, prejudices and experiences permeate the ends towards which politics strive and the means are invoked to serve the ends. All institutions – social, economic, political, religious and ideological have been dominated by men. To men has fallen the monopoly of explaining what the world is like. This article presents an overview of women's status with regard to gender prejudice and policy (with special reference to India).

Research studies suggest that despite legislative steps prejudices, traditional attitudes and practices continue to perpetrate discrimination against women. Researchers and policy planners reflected gender bias whose analysis of the developing world omitted addressing women's lives in any significant way.

All policy forums are male-dominated targets are subconsciously male populations. The impacts of development so far have been more favourable to men than women. The male-earner -breadwinner-protector mindset has been behind all policy-making. Social concerns are based on male perspectives of oppression including Dalit perspectives. Female disadvantage is substantial in terms of scale compared to every other social and economic class. Women remain neglected, or to be fair, a matter of secondary concern in all world forums and world organizations like UNO. Women's plight and problems came to genuine attention of United Nations only in the Third Development Decade and International Women's Year, 1975.

Most foreign policy too has never addressed sessions on women's concerns – like conditions of women in Arab states, violations of human rights ; foreign aid targets being infrastructure and even population control but not female health and education. The role of women in overall development has not been fully understood nor has it been given full weight in the struggle to eliminate poverty, hunger, inequality and injustice at the national as well as the international level.

Denial As Justice

Gender prejudice leads to denial and discrimination of women in almost all fields of human activity. Social equality and social justice is one of the most prized ideals of contemporary society but social inequality and injustice has been a feature of every known society- past and present. Among the unequal in the society, it is the women and not the men, who are the most, victimized and discriminated everywhere.

Men whether dominant or they dominated have always tried to keep women in their perpetual subordination and unleashed innumerable oppressive measures. Denial also leads to deprivation such as (in India) - denial of facilities to women such as health care, lack of immunization, not sending girls to schools, denying women the right to property etc., Deprivation, discrimination and different forms of atrocities are all linked to one another and are manifestations of gender ideology. "The world which has always belonged to the men is still in their hands, the institutions and the values of the patriarchal civilization still survive in larger part."¹

Women's lives in India and the world over are circumscribed by what can be termed as the five 'Ps' – Patriarchy; productive resources access inadequacy, poverty, promotion advancement insufficiency and powerlessness² There has been denial of equality of access of resources-- material, human and intellectual. Denial of and discrimination in their rightful entitlements of life, land property, education and training for a scientific technical world, health and social security lies the gross violation of human rights of women embodied in the invisible structural and outward forms of violence perpetrated by the triple concentric circles of family, community and society at large. Now in the globalization era, it is being compounded by State under pressure of policy prescription of Structural Adjustment Policy.

World forums, regional enclaves or NGO forums and experts on women's affairs, all attest to one fact i.e., increasing gap between men and women in control of productive assets, employment, incomes, education, training, hours of work, habitation, health and social welfare infrastructure leading to DENIAL of development as such.

Prejudice as Perpetrator of Injustice

"One is not born, one rather becomes a woman", claims Simon de Beauvoir.³ This much quoted statement suggests that society rather than biology determines the meaning attached to the

category – woman. Despite growing international concern and support for women's rights, domestic laws, local customs, stereotypes, and religious practices reinforce and maintain the inferior status assigned to women around the world.

Women are subject to incapacities, from a presumed inferiority of discretion and judgment because of her 'frailty'. Women are regarded weak, inferior, biologically incapacitated natural invalids. Gender prejudice can be identified the way in which the many facets of women's inequality are justified, explained and thereby perpetuated by presenting the picture of women as something different and debilitated. Women 's special status and women's debilitated status stem from a common ideology, from a belief in an essentialist, biological and physiological incapacity which spans not only assessment of physical capability but also mental capacity.⁴ Hence, in policy, women have been excluded and exempted. Policy-makers proclaim protection of women. This protective philosophy under its wing denied women the most basic rights.

Thus far, maneuvering of men to keep women in a perpetual state of subordination has been so successful that it overpowered the wisdom of those who matter in the society. Be they philosophers, religious preachers, political leaders, social reformers or scientists, they all justified inferior status of women in society, floating albeit differing justification. In Hamlet, Shakespeare declared "Frailty, thy name is woman" Humanity is male and man defines woman not in herself but as relative to him. She is defined and differentiated with reference to men and not him with reference to her.

A process of perpetrating social differentiation and elevating masculinity and degrading femininity has been going through cultural, ideological, mythological, literatueal, social, psychological, educational, political, economical and legal oppression of women. Man is the perpetrator and the precipitating factor on which the onus of the oppression of women lies.

During the nineteenth century, women were also excluded from education and gross inequalities perpetuated so long as women were viewed from a standpoint of biological essentialism. Where women were to receive education the curriculum was limited to traditional teaching of domestic skills, embroidery, painting and such like and aspirations to anything other was met with the argument that mental activity would have a positively harmful effect.

Despite certain progress women's exclusion, exemption, differential or special treatment remains predicated on anatomical differences and the assumption that certain gender roles are incumbent on this essentialist criterion. So, the gendered society thrives on a patriarchal ideology – which can be done away with not merely politico-structural change through revolution but through politico-legal change.

Issues of Law, Equality and Gender

Interconnected with this question of injustice is the issue of law, equality and gender justice.

Simon de Beauvoir says, ".....Almost nowhere is her legal status the same as man's and frequently it is much to her disadvantage".⁵

In 1945, the signers of the United Nations Charter reaffirmed their faith in "fundamental human rights" and included "the equal rights of men and women" in this category. The U.N. Commission on the Status of Women, created just two years after the Charter was signed, promised international commitment to women's rights. It convened world conferences to promote strategies for raising women's status and to develop international treaties on women's rights. It drafted three such treaties between 1952 and 1962: the Convention on the Political Rights of Women; the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages; and the Convention on the Nationality of Married Women.

In 1975, the U.N. General Assembly united the principles of these Conventions in one comprehensive, nonbinding Declaration on the Elimination of Discrimination against Women. The Declaration was then expanded and redrafted as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). A comprehensive bill of rights for women, the Convention has the potential to provide an important international legal mechanism for enforcing women's rights in countries that have ratified it.

The lives of many women, however, represent a sharp contrast from the equal status with men that the Convention has granted them. While the Convention is the most comprehensive treaty ever developed on the rights of women, it has several shortcomings.⁶ It fails to specifically delineate women's rights in important areas; its enforcement mechanisms are among the weakest in international human rights treaties; and reservations entered by many states make it even less effective. Moreover, the human rights community traditionally has relied on a narrow definition of human rights, which has blinded its members to the particular ways in which women's rights are violated.

Law is inconsistent in its approach to women. Law, being a reflection of the normative structure, generally (which is patriarchal) is manipulated and maneuvered to the detriment of women. Discrimination meted out to women in legal realm, happens to be a manifestation of patriarchal ambience. This reveals the fact that the Indian legal system (like many other systems) is being maneuvered to perpetuate patriarchy. Despite constitutional guarantee of justice, the issue of gender justice gets sidetracked, as was evident in the Shah Bano case in India. Thus, the legal mechanism instead of obliterating women's oppression is perpetuating it by either conniving with it or overlooking it. Law, frequently, is much to women's disadvantage. Even today law is reflected in male rather than female eyes.

Law is one amongst many mechanisms which has to date, half-heartedly tried to extricate women from the patriarchal morass. The challenge lies in front of law, as well as us. Modern societies rely heavily on law to bring about social change. But can legislation itself change society. It is necessary

to see that legislations are also implemented. Sometimes the judiciary has interpreted new legislation strictly but failed to give affect to the principles underlying the legislation such as in dealing with cases of bigamy.

Though there has been considerable legislation in regard to Indian women during the post-Constitution era, in reality, the position of Indian women today is not very different from the pre-Constitutional days. The Equality clause in the Constitution has made little or no impact on socio-economic life of women in India. Legal equality is one thing and equality in practice is another and opportunities are still limited as tradition continues to play the depressing role of reaction. Women are discriminated against socially, politically and legally and this state of affairs is unjustified and must be changed

Related to this is the question of political participation. The political participation of women has always been indicative of their position in general. Data on global basis indicate an enormous disparity between women's formal political equality and their actual participation in decision-making processes. Political enfranchisement has conferred on them equal rights as citizens.

CURATIVE EFFORTS

To have an egalitarian system where there is no discrimination law plays an important role. Law helps in building a new normative and substantive structure, itself being sensitized to women's cause. Equality can only be achieved if the law takes into consideration special circumstances of women's lives in which they are denied access to resources-material, human and intellectual

There are built-in prejudices, biases which first need to be made visible and then countered. It should be on gender justice rather than mechanical equality of gender. Providing blanket equality is not enough. Therefore, governments can discriminate in favour of women. Special provisions of law favouring women can be passed by the government. (Paradoxically) law should be made unequal, to secure justice for women. In other words, in the present day, women can attain justice only through unequal law, i.e. laws favouring women. An extension of this idea can be seen in the one-third reservation of women in legislative bodies. In short, state should enact gender-just laws (with special provisions favouring women) instead of guarantee of equality of the sexes. If the administrative and applicatory machinery of law is amplified and consciously made favourable for women, it would encourage and enable them to take advantage of the substantive law relief made available to them. In other words, limitation of law will have to be met with primarily by law itself.

One important step towards achieving equity is to dovetailing gender issue with other programmes, increasing outreach of government policies and economic autonomy to empower women. An essential step forward has been made in general discussion of the role of women in society. Mechanisms for change such as women's forums, citizens' forums and issue-specific organizations

and other supportive groups should mobilize establish goals and develop a plan of action. In short, it is time to rethink, regroup and move forward.

It is the political will on which, in the ultimate analysis, will depend the realization of the goals of reaching out to the vast number of disinherited, disintitiled, discriminated and deprived womanhood the world over This paper looks forward to new developments and initiative within research and theorizing on women and justice focusing on gender justice and equality.

References :

1. Quoted in Antrobuo Peggy & Bizot Judith, "Women's Perspectives: Towards an Ethical, Equitable, Just and Sustainable Development" Women and Development ISIS, International Issue 4/92 & 1/93, p.30
2. Uma Shankar Jha & Premlata Pujari (eds.), Indian Women – Today, Tradition, Modernity and Challenge Vol.3 [Women Professionalism- Challenge and Prospects], Kanishka Publishers, Distributors, New Delhi, 1996. p.3
3. See Simone de Beauvoir, *Le Deuxième Sexe* (1949, *The Second Sex*, translated by H. M. Parshley, 1953, reprint, 1989),
4. Susan Edwards (ed) *Gender, Sex and the Law*, Croom Helm, New Hampshire, USA, 1985, p.1
5. See Simons, Margaret A., ed. *Feminist Interpretations of Simone de Beauvoir*. University Park: Pennsylvania State University Press.
6. Holt,-Renee, "Women's Rights and International Law: The Struggle For Recognition and Enforcement:" [Part 1 of 6], *Columbia Journal of Gender & Law*. 1991; 1 (1): 117+