

Gender Stereotypes in South Asia: Legal Perspectives by U.N. Based Mechanisms

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Abstract— *Stereotypes on gender have long been deeply rooted as societal norms in the culture. However, the global phenomenon is that in any given time, or in several instances of women’s lives, either in their professional lives or in their personal lives, gender stereotypes cause them to be victimized.*

U.N. Convention on the Elimination of all forms of Discrimination against Women (CEDAW) could be recognized as the cornerstone of protection of women’s human rights. South Asian region and Sri Lanka have been commonly subjected to the Committee on the Elimination of all forms of Discrimination against Women’s (Women’s Committee) frequent comments on achieving substantive equality through taking progressive steps to eliminate gender stereotypes. In light of the aforesaid phenomenon; it is timely to recommend Women’s Committee to adopt a General Recommendation on eliminating Gender Stereotypes.

The main objective of the research is to seek whether an effective legal framework will be able to address prevailing gender stereotypes that hinder substantive equality of women. The secondary objective is to apply relevant legal measures in the aforesaid model to eliminate such Gender Stereotypes in order to achieve substantive equality.

The scope of the research is an analysis of the jurisprudence of international human rights law on gender stereotypes. To establish the aforementioned facts, the author adopts the desk research method in the paradigm of legal research methodology to examine the theoretical framework by reviewing of secondary data. The author limits herself to U.N. Human Rights mechanisms on gender and women’s human rights law.

Keywords: Gender Stereotypes, Women’s Human Rights Law, CEDAW

I. INTRODUCTION

The main objective of the research is to seek the applicability of legal measures introduced by Committee on the Elimination of all forms of Discrimination against Women (CEDAW Committee) to eliminate gender stereotypes as an effective legal framework to achieve substantive equality between men and women.

Historically, for the first time, the judicial interpretation on stereotyping was delivered in 1888 by the American Supreme Court in *Callaghan v. Myers* (128 U.S.617, 623), however, it is not on its contemporary meaning, but on printing technology. In 1922, the American journalist and philosopher Walter Lippmann gave its contemporary meaning as how we as human beings bring “the world outside” in to the “picture in our heads” (Bernstein, 2013).

II. STEREOTYPING AND WOMEN

Gender stereotypes play a key role in women’s lives. However, mostly it affects negatively on them; especially in the areas such as employment, public participation, sexuality and in family life. Mainly the stereotypical role on women as “mothers and caregivers” decided by the society and in some contexts; the State itself through certain laws and customs hinders the women’s full enjoyment of human rights based on stereotypical attitudes.

Female personality includes being ‘understanding’, warm ‘devote oneself completely to others’, gentle... [and] kind. (Knouse, 2005). However, the “caregiver” or role of mother inevitably affects negatively on women as an individual human being. In the employment, gender stereotypes play a negative role in shaping women’s professional roles. *Price Waterhouse v. Hopkins* (490 U.S. 228,240-42) is a decided case by the Supreme Court of United States. It was a

benchmark judgment on gender stereotyping in the employment that is dealt with stereotypical attitudes on how women professionals should wear, have their hair styled and the way they have to behave in the office. Female desires include domestic tasks such as cooking and cleaning, working outside the home as a nurse, secretary, or teacher and wearing skirts, "jewellery, make-up and long or elaborated hair styles. (Knouse, 2005)

According to prominent legal researchers in the area of gender and law, (Armour, 1995) and (Borgida and Kim, 2005) certain people make unconscious discrimination since humans tend to categorize in order to make sense of experience.

Moreover, some people guide their judgment than others, and different motives seem to affect the use of stereotypes differently. (Bogida and Kim, 2005) Yet as much as gender is socially constructed (De Silva De Alwis, 2011) and shaped by underlying structures of power that delineate the relationships between sexes, these gendered roles can be restructured by the law (De Silva De Alwis, 2011). For example, in some societies, women have to consent by their husbands to carry-out certain legal practices such as in the sawalamei law in Sri Lanka. Further, considering women under the stereotype as "weak and vulnerable, they subjected to gender based violence such as rape and domestic violence.

South Asian region has been subjected to frequent comments on stereotypical and patriarchal attitudes as hindrance factors of achieving substantive equality. (Concluding Observations of CEDAW Committee on South Asian Countries).

III. THE U.N. CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN AND ITS JURISPRUDENCE ON GENDER STEREOTYPES

CEDAW's articles (provisions), general recommendations and Individual communications made under the Optional Protocol of CEDAW (OP-CEDAW) will be examined in this part of the research to seek whether the protection guaranteed by CEDAW in its respective domains to dismantle gender stereotypes is sufficient. Further, the concept of "substantive Equality" will also be analysed for the confirmatory purposes of the research findings.

CEDAW could be recognized as the cornerstone of protection of women's human rights. "CEDAW is a far reaching document stipulating States' duties to promote women's equality in all areas of life, from family to workplace to Government. (Weissbrodt, 2009) Equality and Non-Discrimination" are the basic theories embedded in CEDAW.

Firstly, the articles of CEDAW will be examined to understand in its applicability in combat against gender stereotypes.

Article 5 of CEDAW:

States Parties shall take all appropriate measures:

- (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;
- (b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

Article 2 of CEDAW:

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.

Even where there is no explicit textual support in CEDAW for eliminating wrongful gender stereotyping, the CEDAW Committee has interpreted different substantive rights and freedoms as requiring the elimination of gender stereotyping.

Article 10 of CEDAW is to remedy gender stereotypes. CEDAW's approach on eradicating

gender stereotypes in based on education. It indicates:

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women

The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods.(CEDAW, 1981)

Nevertheless, it is difficult to completely be in agreement with the above measure of CEDAW to eradicate gender stereotypes since it is deeply rooted in the society. In other words, it depends on the State Parties' genuine determination of eliminating gender stereotypes through the education system of the respective countries. Moreover, it depends on how frequently the respective governments engaged in disseminating knowledge on gender stereotypes as a hindrance factor to achieve substantive equality among men and women. Another deficiency is that the language of the convention in this regard neither very strong nor explicit.

General Recommendations (GR) are the interpretative guidelines for the articles of CEDAW issued by the Committee. In this research, the most important applicable General Recommendation issued by the Women's Committee is General Recommendation No. 25, on article 4, paragraph 1 of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures.

Further, it indicates State Parties obligations on eradicating gender stereotypes as "Secondly, States parties' obligation is to improve the de facto position of women through concrete and effective policies and programmes. Thirdly, States parties' obligation is to address prevailing gender relations and the persistence of gender-based stereotypes that affect women not only through individual acts by individuals but also in law, and legal and societal structures and institutions." (CEDAW, 1981)

The aforesaid GR In addition to the aforesaid GR, General Recommendation 19 on Violence against women is also applicable in analyzing stereotypical attributes in the context of violence against women.

Under the Optional Protocol of CEDAW, the CEDAW Committee has the authority to receive individual communications. One of the recent communications is *Vertido V. Philippines* (Karen Tayag Vertido v The Philippines, 2010) and it was based on the stereotypical attitudes of judges on perpetuation of stereotypes in rape. and legal researchers on gender stereotypes (Cook & Timmer, 2011) argue that the CEDAW Committee failed to address the systemic stereotyping of rape victims in the Philippine judiciary.

In light of the examined areas in CEDAW, it is clear that the CEDAW Committee adopted legal measures to fight gender stereotypes; however, it seems that the protection should be extended further in order to achieve substantive equality.

IV. GENDER STEREOTYPES AS AN OBSTACLE TO ACHIEVING SUBSTANTIVE EQUALITY

In light of the theory of "equality," as the main terminology in CEDAW, the researcher is to examine the application of "substantive equality" in respective domains of CEDAW and in other legal principles relating to the concept of gender stereotypes.

Firstly, the definition on Gender is to be examined in order to seek how stereotypes are based on gender in order to seek the available legal framework on Gender in women's rights law.

"Gender is defined as the social meanings given to biological sex differences. It is an ideological and cultural construct, but is also reproduced within the realm of material practices; in turn it influences the outcomes of such practices. It affects the distribution of resources, wealth, work, decision-making and political power, and enjoyment of rights and entitlements within the family as well as public life. Despite variations across cultures and over time, gender relations throughout the world entail asymmetry of power between men and women as a pervasive trait. Thus, gender is a social stratifier, and in this sense it is similar to other stratifiers such as race, class,

ethnicity, sexuality, and age. It helps us understand the social construction of gender identities and the unequal structure of power that underlies the relationship between the sexes (United Nations, 1999).

In light of the aforesaid definition, it is clear that the norm of “gender” as well as the norm of “gender stereotypes” is socially constructed norms. Hence, the perpetuation of such norms in the society continuing for generations; therefore, it is difficult to dismantling such norms without a strong legal framework. The legal framework introduced by CEDAW basically seeks to remedy discrimination through achieving substantive equality between men and women.

The main terminology in CEDAW is equality and non-discrimination. The term “equality” has been subjected to numerous interpretations by experts in women’s rights law. However, the acceptable term in CEDAW’s respective domains is “achieving substantive equality among men and women.” It can be sought as the result, not the process. One could argue that substantive equality is a combination of achieving de-jure equality and de-facto equality. Further, in regions such as South Asia, de-jure equality is stronger than that of countries govern by Islamic laws; however, if the social structures and institutions based on gender stereotypes, achieving de-jure equality is merely a step to achieve substantive equality.

To achieve substantive equality in all spheres CEDAW requires two types of actions by the State: (1) actions to achieve equality of opportunity between men and women, and (2) actions to correct the inequalities of power between men and women (Morgan and Facio, 2009) and the authors elaborates the concept as: according to CEDAW, substantive equality has not been achieved, even though laws and special policies exist to advance or improve women’s opportunities, if these have not really and effectively resulted in women having the opportunities that men have all spheres of life” (Morgan and Facio, 2009).

As the prominent Sri Lankan women’s rights expert, Professor Savithri W.E. Goonesekere describes: “The concept of substantive equality determined by reference to outcome and result has special relevance, in addressing disadvantage based on sex.” She further elaborates that

“Besides, the Committee’s most recent General Recommendation No. 25 on Article 4, and special measures to eliminate discrimination and realize equality, interprets equality as including substantive equality rather than the traditional concept of sameness and difference by reference to a male standard of equality of access and opportunity in the public sphere.” (Goonesekere, 2007)

In light of the experts’ opinions on substantive equality, it can be argued that gender stereotypes are among the most influential factors on achieving substantive equality. In that aspect, if the substantive equality is the process; as long as gender stereotypes prevail in the society, it obstructs the process of achieving substantive equality in public life, employment and personal lives of women.

V. CONCLUSION

Dismantling gender stereotypes itself a herculian task for any legal mechanism since its intangible nature and it is deeply rooted in people’s subconscious. Although the CEDAW Committee expressed its concern to South Asian countries to eliminate gender stereotypes through education, it seems that it is not very feasible measure if the State Partys’ would not genuinely engaged in making awareness through education and through other means. For this purpose, not only the formal education institutions, but also the informal education institutions such as religious institutions, non-governmental organizations and even in domestic level participation should join together.

Individual Communications could use by the CEDAW Committee as a strong method to express its concerns on eradicating gender stereotypes. In that case, the non-ratification of the OP-CEDAW by all the State Parties to the CEDAW will inhibit the possibility of getting such communications to the respective governments of the State Parties.

CEDAW Committee is in the process of issuing General Recommendations to State Parties on the interpretation of articles of CEDAW. In this case; CEDAW Committee could issue a General Recommendation specifically on eliminating of gender stereotypes through broadly interpreting CEDAW’s relevant articles. If the CEDAW

Committee issues such a General Recommendation, it will benefit not only the South Asian region, but women in all the regions in order to achieve substantive equality.

ACKNOWLEDGMENT

Author thanks extensively to Professor Camena Guneratne and Professor Marsha Freeman.

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