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Substantive Equality as a Universal Remedy to Eliminate Gender Stereotypes: Snakes and Ladders

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Abstract— Gender Stereotypes are deeply-rooted societal norms or social taboos on gender. Though it is merely an unconscious categorization, it directly affects on the concept of equality between men and women, particularly leading on violations of women's human rights. The close nexus between society and gender stereotypes is one of the principle reasons that it has become a herculean task to eliminate.

The U.N. Convention on the Elimination of all forms of Discrimination against Women (CEDAW) could be recognized as the most significant legal document on the protection of human rights of women globally. It covers many facets of women's lives. Equality and non-discrimination between men and women is the main ideology in CEDAW. However, provided the complex philosophical nature of gender stereotypes; the concept of "equality" could be utilized to dismantle gender stereotypes jurisprudentially. Firstly, it should be examined whether the paradigms of equality and gender stereotypes are inter-related. Secondly, it is to be examined the possible means of utilizing the above connotation to eliminate gender stereotypes.

The main objective of the research paper is to analyse the concept of equality as it appears in the jurisprudence of the Committee on the Elimination of all forms of Discrimination against Women.

The secondary objective of the research is to apply the theory of substantive equality to eliminate gender stereotypes.

The research methodology is based on the exploratory research design. Further, it is a library based secondary data review; directing to legal research methodology.

The outcome of the research is a jurisprudential analysis on the concept of equality within the

purview of gender stereotypes. This policy research will provide clear insights for legal policy framers to draft legal policies on the elimination of gender stereotypes using the theory of substantive equality as a tool.

Key words: Substantive Equality, Gender Stereotypes, CEDAW

I. INTRODUCTION

Gender Stereotypes could be identified as unconscious categorizations on gender (Borgida and Kim, 2005). It could also be simplified as "societal norms based on gender."

Women's Human Rights Law based on the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) focuses on substantive equality between men and women. However, the perpetuation of gender stereotypes directly affects CEDAW's ideology; namely equality and non-discrimination. Though the terminology is equality, currently legal scholars as well as the Committee recognized it as substantive equality. Therefore, through effective application of the concept of substantive equality, gender stereotypes could be eliminated. It is to be analysed based on CEDAW's jurisprudence, applicable legal theories and scholarly thoughts in the respective domain.

II. CONCEPT OF GENDER STEREOTYPES IN JURISPRUDENTIAL PARADIGMS

CEDAW could be recognized as the key development during the U.N. Decade of Women; it incorporates evolving areas where possible discrimination based on the gender, varies from

right to employment to reproductive rights of women.

Moreover, the Committee on the Elimination of all forms of Discrimination against Women (The Committee) is established under the Article 17 of CEDAW. Article 17 of CEDAW expresses on the composition and the functions of the Committee as the guardian of CEDAW. The Committee's main objective is to supervise the effective implementation of CEDAW by reviewing periodical reports submitted by the State parties.

Further, among the other functions of the Committee, it has the authority of interpreting the treaty provisions through general recommendations for State Parties. Before adopting the Optional Protocol to CEDAW, it did not have quasi-judicial powers. Currently, with the adoption of the above, it has quasi-judicial powers.

The Committee precisely made its concerns on gender stereotypes as an obstacle in achieving substantive equality between men and women. Following is an analysis of the CEDAW jurisprudence on the matter. It is to be researched in CEDAW's jurisprudence. Precisely, in CEDAW's general recommendations and in individual communications under the Optional Protocol to CEDAW.

Article 5 of CEDAW:

(a) States Parties shall take all appropriate measures: 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 5 of CEDAW as well as the general recommendations issued by the Committee reflects its focus on gender stereotypes in all the areas which affect women in their professional lives, political participations and personal lives.

Article 2 of CEDAW indicates:

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

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

Although "equality" is not directly expressed in CEDAW in relation to elimination of wrongful gender stereotyping, the Committee has interpreted it in relation to important rights and freedoms and their fulfilment as necessitating the elimination of gender stereotyping.

Moreover, the Committee expresses its concerns on the impact of stereotypical attitudes towards perpetuation of notions such as gender based violence against women and domestic violence.

However, it is uncertain whether the Women's Committee had paid adequate attention on eliminating gender stereotypes in its respective domains. The reasons could be varied from the complex and psychological nature of gender stereotypes to keeping a less prioritized place in the agenda considering it has a minor influence in shaping the concept of substantive equality between men and women.

A) Practical Realities in implementation of treaty obligations by State Parties

The legal framework of CEDAW provides a picturesque view on achieving de-jure equality for a state party by carrying out its treaty obligations. Unfortunately, it is not the realistic manner on state parties' adherence to treaty obligations. Especially, gender stereotypes are of an intangible nature. At the same time, gender stereotypes could be prevailing in different dimensions in depending on the circumstances as well as in deferent modes in different regions of the world. Due to political reasons as well as cultural inhibitions, most of the times, gender stereotypes perpetuate for ages silently.

Most probably, the perpetuation of such norms is under the guise of traditional practices or as customs in such regions. The aforesaid fact undermines its negative influence on women's human rights as well as on achieving substantive equality between men and women.

Therefore, there should be a jurisprudential consensus among the Committee and the state parties in adopting an effective mechanism to eliminate gender stereotypes.

III. THE CONCEPT OF EQUALITY TO SUBSTANTIVE EQUALITY IN COMMITTEES' JURISPRUDENCE

As indicated in the introductory remarks, equality and non-discrimination are the main terminology of CEDAW and it could be utilized to eliminate gender stereotypes.

Equality in gender could be simply defined as "treating the same manner to both genders in all occurrences." In other words, equals should be treated equally without discriminating between sexes." If a state party undertakes the treaty obligation under CEDAW, it has to ensure the equality between men and women regardless of the cultural patterns or customs. It means that legislators, judges, and other officials charged with promulgating laws or administering justice must not base their work on a different conception, though admittedly they sometimes do. (Facio and Morgan, 2009).

However, the concept of substantive equality is not of the similar meaning. Substantive equality bears basically two underpinnings; it is a composition of de-jure equality and de-facto 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 (Facio and Morgan, 2009) and the authors elaborate the concept: "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. The concept of substantive equality determined by reference to outcome and result has special relevance, in addressing disadvantage based on sex (Gunsekera, 2007). 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 (Gunsekera, 2007). In light of the aforementioned scholarly thoughts, it is clear that substantive equality is the "result or the outcome." One could argue that it is de-facto equality. On the other hand, it could be argued that it is a combination of both de-jure equality and de-facto equality.

Moreover, it is to focus on the dimensions of the concept of substantive equality that plays a key role on eliminating gender stereotypes.

A) State Obligations under CEDAW

As indicated above, through progressive interpretation of the concept of equality, currently the Committee considers the concept of substantive equality. Therefore as the sole supervisory body of the CEDAW, the Committee could oversee the perpetuation of gender stereotypes in country reports under the guise of customary norms or as cultural practices.

It could be linked to certain customs or traditions in countries that contradict with the concept of substantive equality between men and women. If the aforesaid customs or cultural patterns bring a prima facie violation of substantive equality, the Committee should consider it as a violation of the related articles of CEDAW during its constructive dialogue with the particular state party.

Finally, the Committee as the guardian for CEDAW has to oversee the progressive realization of the treaty obligations in subsequent reports to make sure whether the substantive equality has been guaranteed in the particular country by non-perpetuation of previously recognized gender stereotypes or customary norms.

B) Optional Protocol to CEDAW (Herein after OP-CEDAW) as a mechanism to eliminate stereotypes

As indicated, through OP-CEDAW, the Committee has been vested with Quasi-Judicial powers. It is the obligation of both governmental and non-governmental organizations to raise awareness of the general public on OP-CEDAW's importance in achieving women's human rights. Through petitioning to the Committee under the powers vested through Op-CEDAW, individuals of the state parties could also communicate on the perpetuation of gender stereotypes. The Committee could utilize the criteria of "substantive equality as a measurement or a standard to analyse whether

such practices and substantive equality have been linked.

The recent communication, *Vertido V. The Philippine*, decided in 2010 by the Committee is one of the examples that the Committee interpreted stereotypical attitudes of the judiciary. Moreover, if the substantive equality has been considered as the criteria, the progressive communications could be delivered.

C) Appointing a Special Rapporteur under U.N. Thematic Procedures

It could be considered by the United Nations in appointing a Special Rapporteur under U.N. thematic procedures to report prevailing stereotypical attitudes on women and harmful traditional practices that hinder the very purpose of substantive equality between men and women. There are many prominent legal scholars those who have conducted in-depth research on gender stereotypes and substantive equality such as Professor Rebecca J. Cook, Simone Cusack and Professor Savithri Goonesekera. Nonetheless, it has not been focused on the utilization of the theory on the link between substantive equality and gender stereotypes as a tool to dismantling gender stereotypes.

In light of the aforesaid facts, it could be argued that one way of elimination of gender stereotypes is through linking it to CEDAW's principle of substantive equality. Jurisprudentially, it is a step ahead of treaty provisions and it will require in-puts of activism as well as scholarly legal research.

IV. CONCLUSION AND RECOMMENDATIONS

Due to its intangible and complex psychological nature; gender stereotypes has long been considered as non-eliminated notion. Women's Committee in its respective domains indicated it as a negative factor in achieving substantive equality between men and women; however, has not been specified an effective mechanism to eliminate up to date. Jurisprudentially, there is a possible link between not achieving substantive equality and gender stereotypes. Therefore, the aforesaid link, itself could be utilized as a measurement in eliminating gender stereotypes.

In light of the aforesaid theory, the criteria that measures gender stereotypes should be the violation of substantive equality between men and women in CEDAW's respective domains in given situations in country reports or communications received by individuals or organizations via OP-CEDAW.

Moreover, in simplest sense, if there is a traditional or customary practice or an attitude perpetuate discrimination against women specifically, the result must be a violation and it should negatively effect on achieving substantive equality, which is considered as the result or outcome of such occurrence.

By developing the aforesaid theory, the Committee could successfully combat gender stereotypes in its respective domains. Particularly, the Committee has a tremendous task to apply the aforesaid theory in its respective domains; mainly through three aspects: firstly, through adopting a general recommendation on eliminating gender stereotypes and secondly through communications receive through OP-CEDAW, ensuring whether the aforesaid theory being applied adequately to achieve substantive equality between men and women in various situations, from the participation in public life to protecting of reproductive rights. Finally, through application of the above theory in universal periodic review, the Committee could also supervise the progressive realization of treaty obligations by state parties under CEDAW.

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