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Human rights and gender perspective

Derechos humanos y perspectiva de género

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ABSTRACT: Talking about the idea of gender equity throughout history is very complex because this concept only began to emerge in the mid-1970s as a response to the asymmetry and inequality existing between men and women according to their sex. However, to investigate the origin of this idea, we can note the predominance of the male gaze, since, until very recent times, women were never the object of study in history as such.

KEYWORDS: Human rights, gender perspective, equality between men and women.

RESUMEN: Hablar de la idea de equidad de género a lo largo de la historia es muy complejo debido a que dicho concepto recién comenzó a surgir a mediados de los años setenta como respuesta a la asimetría y desigualdad existentes entre hombres y mujeres en función de su sexo. Sin embargo, en un intento por indagar el origen de tal idea, podemos advertir el predominio de la mirada masculina, pues, hasta épocas muy recientes, las mujeres no fueron nunca objeto de estudio de la historia en tanto tales.

PALABRAS CLAVES: justicia, reforma legal, norma legal, constitución, sistema político.

JEL CODE: J16, J7

INTRODUCTION

The conception of human rights in the course of history has undergone constant changes, reconfiguring itself according to social, cultural, and political circumstances and, in general, according to the time and space in which a community is located. This, in addition to demonstrating the possibility of their transformation, indicates that we cannot consider them as finished processes, fixed once and for all; on the contrary, they are in constant evolution, which is why it is necessary to adapt them to the moment that the family, communities and the State are going through almost as daily challenges. In this context, since 2011, Mexico has included in its Magna Carta a fundamental modification to move from individual guarantees to human rights. Likewise, each of the fundamental human rights has had its dynamics, has been perfected and, of course, has generated a great change in the social and family base and even in the State's vision of citizenship (Urgilés, 2019).

This transformation has made problems visible both for the state and for individuals, among them gender equity as a process to achieve equality between women and men. All of this is the result of arduous struggles for the emancipation of women, their recognition, their autonomy, their access to popularly elected positions and decision-making positions in various fields of community development. This of course means a great opportunity for women, but at the same time, it represents an enormous challenge, which women face with capacity, preparation, and full conviction about the objectives to be achieved.

As an institution, human rights and the constitutional rule of law have been the fundamental basis for supporting women's struggles in our country (Song and Soliman, 2019). However, it should not be forgotten that through these elements it has been possible to adopt and understand as correct and institutional, the relations of domination and patriarchy within society, whatever its geographical location, since this lacerating

and discriminatory attitude continues today, in the 21st century, to generate violence and sexist and derogatory language against the so-called “weaker sex”.

Faced with this problem, this paper presents the need to include a gender perspective in the context of human rights. With this perspective, some paradigm changes are brought about, and equitable culture, in the understanding that the public policies that the States implement for this purpose must include the education of men and women so that from the home and even in the womb, future citizens are forged who live together without violence or discrimination based on gender. In the family, social, school, political, democratic and community spheres, since, in my opinion, both sexes, inequality and harmony, must contribute to the good life.

1. HUMAN RIGHTS VS. RIGHTS OF MANKIND

Reflecting on the historical development of human rights, it is easy to realise that they are not the rights of mankind but solely and exclusively the rights of man (Michell, 1986). Sometimes, and this is probably the most grammatically correct way of expressing it, the term man refers to the whole of humanity, although of course this way of using language is reduced to a statement related to the androcentric principle, which places the male at the centre of all issues arising in the family, in communities or in the state itself. Traditionally, only men have been considered capable of accessing public or private positions; or leading the institutions where a country, a state, a municipality, or any other community is run. This places the male sex as the paradigm of humanity by considering its characteristics as the essence of what is human and thus giving it a higher value than the rest of the citizens.

If the declaration of human rights implies the human, it is important to remember that this term derives from the Latin “humanus”, formed by “humus” which means earth and the suffix “anos” which indicates the origin of something.

This expression alludes to the animal species belonging to the “*homo sapiens*”, characterized by its capacity for reasoning, ability to develop at different levels of intellect, which allows it to acquire knowledge. Throughout history, humans have developed, sustained, and trained those who make up their community (Ramos Escandón, 2008).

When we analyse this concept, we realise that women were not considered in the declaration of human rights, since the female, reduced to the level of a thing by our ancestors, was not included because she lacked the aptitudes and abilities to develop levels of intellect and create knowledge. These activities, faculties, aptitudes, could not be developed by women, because they were impeded, not because of their sex, but because of social conditioning; thus, the concepts in their etymological or grammatical meaning give us the guideline on what has been the role of each one in the community.

It can be affirmed that man, considered the prototype and paradigm of humanity, belongs to a later, fictitious category, even if he has a biological basis:

Taking a relatively short chronology and a restricted geographical cut-off - European culture from the 16th century onwards - it can be said that Man is a recent invention. Knowledge has not hovered long and obscurely around him and his secrets. (Foucault, 1968, n. p.)

While the French thinker, Foucault, refers to the category of man, as an individual and it is easily followed also in terms of a man belonging to the male sex (Bernal, Orozco and Molinares, 2016). There are social factors in this construction since not all men enjoyed equality; suffice it to visualise slavery in the great Germanic Roman Empire, where there were subjects whose qualities and rights were diminished, those who were called incapable or unfit, to reach the extreme point of being able to be traded. We could say the same about women, who throughout history have had limited access to universities,

to knowledge, to public activities, because they have been practically reduced to the domestic sphere, to organising the house, training children and “administering” the home.

During the time of the struggle for the soul of the Indians of America, certain characteristics emerge that must be fulfilled to be considered a man, as understood in the Declaration of Human Rights. Race, ethnicity, class, caste is considered. These issues intersect the category of man, and the one that has the preponderant differentiation is sex, which is biologically given; masculine or feminine gender is a cultural apprehension.

In 1791, Olympe de Gouges, in the epilogue to her famous “Declaration of the Rights of Women and Citizens”, emphasised the following:

The male slave has redoubled his strength, and has needed to appeal to yours, to break his chains, but once at liberty he has been unjust to his companion. O women! women! When will you cease to be blind? What disadvantages have you gained from the revolution? A more marked contempt, a more visible disdain. (De Gouges, 2009, n. p.)

The concepts of Olympe De Gouges, which awakens the female sex, are very interesting, as women are not included in the Declaration of the Rights of Man and the Citizen, as they were not within the parameters of the French Revolution, which advocates ideals such as liberty, equality, and fraternity. These aspirations apply to those who fall within the assumptions of the declaration, not to humans in general, with biological differences, e.g., the case of women. To be a woman in this context was considered a condemnation, leaving her out of the field of action, since she is after all not a man.

It could be thought that the Declaration of the Rights of Man is universal, in that it covers the whole universe, considered within relevant contexts; this as an ideal, but reality and social conditioning and stereotypes lead us to the conviction that

even when it seems a grammatical error, it is prudent to use inclusive language. Our civilisation has reached this condition or circumstance through painful, strong movements, such as the struggles of the suffragettes, among other groups of women warriors, who have been opening the way for women belonging to other generations, closer to the 21st century.

2. WOMEN'S EQUALITY

As in the case of the category of man, referring to equality forces us to situate ourselves in the current discursive horizon, starting from the modern era. Equality is a recent topic (Sartori, 2005), among other things:

Because to make sense, it needs a society divided into individuals. The estates could be considered homogeneous, but to speak of equality it is necessary to appreciate the possibility of differentiation, and this is only possible through individualisation, within the estate. (Bobbio, 1993, p. 43)

To understand inequality, it is valuable to first determine what equality is. It derives from the Latin *aequalitas*, a locution that is formed from the adjective *aequus* (equal, justly balanced) and the suffix *alis* meaning (relating to). The term equality brings us twinned with the meaning of equity. (Diccionario Etimológico Castellano, 2021).

Grammatically, it is conceived as the condition or circumstance of having the same nature, quantity, quality, value, or form, or of sharing some quality or characteristic; in another of its grammatical meanings, it is said to be a proportion or correspondence between the parts that uniformly make up a whole (Diccionario de la Real Academia Española, 2014).

The concept of the term equality invites us to understand what is equitable in its full dimension. In my concept, equity is a process, the goal of which lies inequality.

If we apply these concepts to the ancestral treatment of women within the primary family community, social communities, as well as the state itself, we inevitably fall into the categorical statement that there is no true equality between women and men in any country in the world; despite the great struggles of women, to have equal treatment, opportunities like those enjoyed by men, the situation of one and the other are unequal. Women have ancestrally lacked opportunities; suffice it to recall that in the course of history, many women have had to pretend to be men to gain access to university education, to have the possibility of holding elected posts or positions, to be at the head of universities and centres of higher, secondary, and basic education; in a word, they have been denied the opportunity, the option of being at the right time, in decision-making. Men have monopolised the political, administrative, labour, and professional education arenas, even within the home. Men everywhere in the world need to feel that they are the head of that group, of that fundamental organisation of the State, which is the family.

The aspiration is to enjoy equality, because of travelling the path of equity in opportunities.

For its part, inequality can occur within homogeneous groups, this kind of division, the situation, the status since antiquity, has been reflected in stereotypes, disqualification, violence, lack of opportunities for a large population, which is normally the majority and is relegated almost to the extreme of a being without capacity, in a decline in the interests of society, in some countries sexist or misogynist.

In the dialogue entitled *Republic*, Plato (1996) differentiates human groups, which through their different essences, have been presented as unequal. Something similar can be seen in the thought of Aristotle (2012), whose positions are perhaps the most widespread on the subject, he assumes:

An unbridgeable difference between different human groups, according to their nature. Not all are born to work in the fields, and not all have what it takes to devote themselves to philosophy. Some beings, from the moment they are born, are destined, some to obey, others to command, even if to very different degrees in both cases. (n. p.)

Aristotle (2012) goes on to say, this is also the general law, which must necessarily govern among men. When one is inferior to his fellows, as much as the body is inferior to the soul, and the brute is inferior to man, and such is the condition of all those in whom the use of bodily powers is the best and only advantage that can be derived from their being, one is by nature a slave.

Of course, the naturalisation of cultural differences intersects the relationship between men and women. According to the philosopher of Stagira, a woman is “not man”, an incomplete being (Aristotle, 2012). In the words of Simone de Beauvoir (2012), a woman is a woman under a certain lack of qualities, according to Aristotle, and we must consider the character of women as an adolescent (SIC) of natural imperfection.

For Thomas Aquinas (n. d.), it does him good, the woman is a failed man, an occasional being (quoted by Pérez Estévez, 2008).

In this context, the way of understanding the female nature In this context, the way of understanding the female nature was not exclusive to Greco-Latin antiquity, but with the emergence of Christian ideology, which is presented in modernity as a precursor of human rights, Simone de Beauvoir did not escape in any way from this hierarchical and differentiated vision of women. In the face of this phantom, women had to face many struggles to gain access to vindication; however, the wheel has been “set in motion” and of course the groups that work tirelessly in the struggle for women’s equality

continue their march. The gender gap could be closed in 50 or 60 years, but the struggle must continue. Furthermore, the declaration of women's and citizens' rights, written in 1791 by Olympe de Gauges, is a very valuable document in the history of women's demands for equal rights, legal and legal equality concerning men, issues that have been achieved in the last century, until the twentieth century, in the passage of those fateful years, women have been recovering spaces that were previously denied to them. According to the OECD report, the fight for gender equality, according to reports from 2017, gender inequalities in social and economic life persist in the world. Young women in OECD countries have higher levels of education than young men, on average, yet they are less likely to be in paid work, and gender gaps widen with age, as childbearing often hurts women's pay and career advancement. They have fewer opportunities to be entrepreneurs and are over-represented in private and public leadership positions. In the face of these challenges, the OECD report assesses whether countries are closing gender gaps in education, employment, entrepreneurship, and public life, which calls for a review of public policies to address gender inequality and policy recommendations to reduce these inequalities. This is worldwide, but Mexico, like all Latin American countries, is not exempt from this type of discrimination (OECD, 2017).

3. RATIONALITY OF DIFFERENTIATION

When speaking of differentiation between human beings, the case of women becomes a significant issue; the old naturalising prejudices of cultural issues have gradually taken on a rationalist tinge. Indeed, there is an essential, substantial difference between men and women, from an eminently biological point of view; due to cultural circumstances, this issue translates into a difference between the scope and characteristics of their reasons, which prevent them from living in harmony, with abysmal differences that are difficult for members of each gender to assimilate. This ideology, converted and recognised by the human beings of modernity,

in a logical leap, was based and sustained by the difference between the achievements obtained by men and women in the field of science, especially in mathematics. Based on this logic, if women and men were not rationally equal, they could not be considered and treated as equals. The difference is in the set of abilities, which are assumed to be natural, because if they exist, they are so, based on social motives. It is here that discriminatory and differentiating contexts between men and women become natural and every day.

Moreover, Adeline Virginia Stephen, better known as Virginia Woolf (2006), British writer, considered one of the most outstanding figures of Anglo-Saxon modernism and international feminism, in one of her best-known speeches modernism and international feminism, in one of her best-known speeches, examines the supposed naturalness of men's greater academic performance, showing how school conditions that privilege men and systematically exclude women are an important part of this presumed superiority.

In this order of things, if equality, in this approach, is conceived as the need for individuals, regardless of their sex, to be treated in the same way, this is not the only possible or the most desirable way of understanding. This is clear if we realise that on one level, what Virginia Woolf (2004) states could be translated into a critique against the fundamental idea of classical liberalism, which puts freedom and equality understood as anything other than a straightforward "equalisation".

To develop properly, equality requires that those who are placed in its sphere enjoy freedom, but at the same time, it implies an individualised differentiation that makes possible an egalitarian exercise. Moreover, Simon de Beauvoir (2012) indicates the following:

And indeed, it is enough to walk around with open eyes to see that humanity is divided into two categories of individuals, whose faces, clothes, bodies, smiles, interests, and occupations are manifestly different, perhaps superficially, perhaps destined to disappear, but what is certain is that, for the moment, they exist with dazzling evidence. (n. p.)

On the contrary, in the context of human rights, the gender gap must be closed, women and men, equal before the law, must be reflected in fact in the community, in the family, in society, in the state and in the institutions, positions and positions where decisions are made. Both men and women have the same capacity and are prone to professional training and to develop within society, to benefit the family as the basic and central group of the State, which will be strengthened to the extent that the integration of women in all spheres and levels of decision-making is encouraged (Newman et al., 2017). Public policies must be conducted for the best results by human beings, regardless of the sex attributed to them by birth. Equality, therefore, is based on human rights and is the product of a process of equity.

CONCLUSIONS

Humanity is faced with a dilemma, posed at various levels and various moments of women's struggles; if on the one hand, it is vitally important to achieving equality as equalisation, the latter is not enough to achieve true equality, the substantive one, the one that allows men and women to evolve equally.

This is valuable when introduced in the context of law:

Beyond covering and clothing, the bodily characteristics of individuals have a powerful impact on the way they construct identities, conceive of their rights, regulate their conduct and, above all, regulate their relationships as individuals. Of all the discourses that regulate corporeality, there is a powerful one: the legal discourse. (Ramos Escandón, 2008, n. p.)

It is the legal discourse, the essential support of the law, which has been used in women's struggles in the search for greater equality within society; an example of this is the suffragette movement, the attempts at personal autonomy from a paterfamilias, work opportunities, access to popularly elected positions and the possibility of developing in the community, to gain space in the social, business, and governmental fabric, have been based on law.

Indeed, there is a substantial problem that constantly arises in the struggle for equality. One of the characteristics of the rational discourse embodied in modern law implies a total equalisation of individuals before the law (Alexy, 1998).

Equality is not appreciated, the gender gap has not been overcome; much remains to be done, it is a problem of education.

A brief review of domestic and international legislation, translated into conventions, treaties and agreements signed by Mexico and ratified by the Senate, shows that the differentiation between men and women continues, with sexist language, discrimination and in some cases sexual harassment, extreme violence and even femicide, the effects of which are tragic in the family and social sphere when we realise that a man leaves a woman dead simply because she is a woman. Attempts at public policies to end inequality and affirmative action in various parts of the world, discrimination continues to be present, machismo and misogyny are culturally present in our midst (Prendes et al., 2020). The answer, in our opinion, lies in respect for human rights and a broader vision with a gender perspective.

In Mexico, the efforts made during the last epoch in law have been significant, a foundation for equality, by recognising the differences that exist in society.

Ten years after Mexico's constitutional reform on human rights, we can categorically state that there is still work to be done, in the first case, to increase women's access to education and professional training; gender quotas and total parity in political matters have been a great step forward, but greater respect for human rights is required.

Amendments to laws, the context of human rights, among other beneficial circumstances to project equality, must be complemented with public policies, to re-educate and a social and political deconstruction, where the gender perspective is made substantive. Education, I reiterate, and suitable training, tending to eliminate the hierarchies that permeate the community; to avoid issues that violate even subliminally, the status quo of society, banishing the idea that "they are women's things" and therefore are inferior to others, traditionally considered superior, such as those that are "men's things".

REFERENCES

- Alexy, R. (1998). *Teoría del Discurso y Derechos Humanos*. Bogotá: Universidad del Externado de Colombia.
- Anonymous. (2021). *Spanish Etymological Dictionary*. Retrieved from: <http://etimologias.dechile.net/>
- Aristotle. (2012). *Política: Libro I. "De la esclavitud"*. Mexico: Porrúa.
- Bernal, J., Orozco, C. and Molinares, V. (2016). Foucault and Homosexuality: From Power Relation to Practice of Freedom. *Revista de Derecho*, (46), pp. 111-130.
- Bobbio, N. (1993). *Equality and Freedom*. Barcelona: Paidós.
- De Beauvoir, S. (2012). *The Second Sex*. Siglo XX.
- De Gouges, O. (2009). *Declaration of the Rights of Women and the Citizen*. Universidad Tecnológica de Colombia, pp. 12-14.
- Foucault, M. (1968). *Words and Things*. Buenos Aires: Siglo XXI.
- Michell, T. (1986). *Law and the Rise of Capitalism*. Mexico: Siglo XXI.
- Newman, P., Chama, K., Mugisha, M., Matsiko, C.W. and Oketch, V. (2017). Reasons behind current gender imbalances in senior global health roles and the practice and policy changes that can catalyze organizational change. *Glob Health Epidemiol Genom*, 2 (e19).

- OECD. (2017). *OECD Economic Surveys*. Organisation for Economic Co-operation and Development. Retrieved from: <https://www.oecd.org/economy/surveys/mexico-2017-OECD-Estudios-economicos-de-la-ocde-vision-general.pdf>
- Pérez Estévez, A. (2008). Thomas Aquinas and feminine reason. *Journal of Philosophy*, 26 (59). Retrieved from: http://ve.scielo.org/scielo.php?script=sci_arttext&pid=S0798-11712008000200002
- Plato. (1996). *Dialogues: The Republic*. Mexico: Editores Mexicanos Unidos.
- Prendes-Espinosa, M., García-Tudela, P. and Solano-Fernández, I. Gender equality and ICT in the context of formal education: A systematic review. *Comunicar*, (63), pp. 9-19.
- Ramos Escandón, C. (2008). *Cuerpos contruidos, cuerpos legislados. Ley y cuerpo en el México de fin de Siglo*. Mexico: Colegio de México.
- Royal Spanish Academy. (2014). *Dictionary of the Royal Spanish Academy*. Retrieved from: <https://dle.rae.es/igualdad>
- Sartori, G. (2005). *Elementos de Teoría Política*. Madrid: Alianza.
- Song, A. and Soliman, A. (2019). Situating human rights in the context of fishing rights – Contributions and contradictions. *Marine Policy*, 103, pp. 19-26.
- Urgilés, R. (2019). La tensión entre la regla de reconocimiento hartiana y los principios ético- morales. *Revista Facultad de Jurisprudencia* (6), pp. 321-336.
- Woolf, V. (2004). *A New Examination of Inequality*. Madrid: Alianza

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