[Babar Sattar](https://www.thenews.com.pk/writer/babar-sattar)

**Legal Eye**

March 12, 2020

**Cycle of dependence**

Outrage over the Aurat March each year flags the need to revisit John Rawls’ Theory of Justice.

If you honestly engage with arguments rooted in culture, religion, morality, economics and law etc, explaining why women are being unreasonable in demanding change, it is clear that this conversation is about power.

Women are not afforded an equal status in society. So when men employ the different-but-equal argument, we are essentially saying that we won’t give up our power, and the control and sense of superiority that it brings along.

Rawls had proposed an experiment where you would determine the nature of society you wish to live in from behind a ‘veil of ignorance’ ie you’d define the roles to be attributed to different identities (gender, racial, religious etc) without knowing what identity you’d be allotted. So you would endow women with the role you deem right without knowing whether you’d be a man or women. In his theory about ‘justice as fairness’ Rawls’ key principles were liberty and equality (both also declared fundamental rights by our constitution).

Liberty included the freedoms of conscience, association, expression, and personal property rights (associated with agency/self-respect). Equality focused on equal opportunity and redistribution to benefit those born with lesser ability. In the context of justice as fairness, is ‘mera jism, meri marzi’ offensive? A man would be laughed at for being banal if he wanted to talk about control over his body since society recognizes the ‘agency’ afforded to men. No one would ask if male ‘marzi’ equals freedom to be a suicide bomber just as female ‘marzi’ equals prostitution.

It isn’t hard to understand women’s demand for change and their anger at the status quo if as a man you simply ask yourself whether you’d like to swap your identity for that of a woman. But this debate isn’t about fairness or justice. It is about power and identity. Francis Fukuyama’s latest book ‘Identity’ is a good read if you’re curious about identity conflicts and group struggles for identity recognition shaping contemporary politics. It helps understand women’s demand for change and men’s resistance to it.

Fukuyama argues that, “desire and reason are component parts of the human psyche (soul), but a third part, thymos, acts completely independently of the first two. Thymos is the seat of judgments of worth… human beings crave positive judgments about their worth or dignity. Those judgments can come from within… but they are often made by other people in the society around them who recognize their worth…. So an equally powerful human drive is to be seen as ‘just as good’ as everyone else, something we may label ‘isothymia’.”

Fukuyama contrasts ‘isothymia’ with ‘megalothymia’: “the desire to be recognized as superior”. He claims that, “contemporary identity politics is driven by quest for equal recognition by groups that have been marginalized by their societies”. He also highlights “inherent tension between isothymia and megalothymia.” So there are groups that believe they are superior to others based on their identity. And when you don’t believe someone to be your equal, you don’t have much concern for their dignity or recognition of how they might be treated unfairly.

Men irked by the Aurat March identify themselves as superior based on their gender identity. The assertion that men-and-women-are-different-but-equal is much like the separate-but-equal subterfuge in the time of racial segregation in the United States when black kids weren’t allowed to study in the same schools as white kids. If you don’t recognize the female gender as a group that is your equal, there can be no recognition that society and its formal and informal institutions are set up in a manner that robs women of their dignity and equality on a daily basis.

Gender debates remain congenial till they stay in the realm of theories, ideas and books. They become thorny when they begin to touch our lives or shake up the existing power paradigm. Sulema Jahangir wrote an excellent article last week about our unjust legal regime that doesn’t recognize women’s share in marital property ie property acquired during the course of the marriage. Neither law nor society recognizes work that women do as partners in a marriage that makes the creation of marital property possible.

Non-recognition of a wife’s right to marital property isn’t a matter of inequality between spouses alone. It creates a cycle of dependence for the woman – whether she is mother, wife or daughter. First of all, there is no recognition in our society that a woman sacrifices her right to engage in meaningful work of her choice when she becomes a homemaker, raises children and frees up her husband’s time to pursue his professional ambition. Second, her work as a homemaker and the career she sacrifices in electing to stay at home is assigned no economic value.

The title of marital property vests in the husband. If he dies and the children are adults, other than a miniscule portion that goes to the mother, the title vests in the children. My father died when he was fifty. The family home was in his name. If my brother and I had asserted our legal right to distribute the family property at the time, my mother who had raised us, sacrificed her own career in the process and was the co-head of the family at the time of our father’s death would be left to depend on her sons to provide a home for her. How can this be right?

As a homemaker, a woman puts her career on the backburner to raise children. If the marriage breaks up, she has no title to marital property. And if the husband dies, the title largely devolves upon her children. So in one scenario she is dependent upon the husband and in the other upon her children. The longer a woman is a homemaker, the harder it becomes to start her own career (and acquire financial autonomy) and the greater her vulnerability in the event that the marriage breaks down. Becoming a widow is equally bad.

From a co-partner in the home enterprise she is reduced to being a dependent. Now she must depend on cultural values inculcated in her children and the goodness of their hearts for her financial security. The situation of the daughter is no better. If she has brothers, she is legally entitled to half of what they have. So you grow up with siblings who are entitled to a larger share of family assets not due to their contribution to it or because they lack skills or ability to provide for themselves, but only due to their birth with a certain gender identity.

The justification for this often is that the daughter will be compensated by virtue of getting a share from her husband. If she is to depend on her husband for financial security, she must be socialized such that she caters to his needs. As the role of a homemaker is assigned to her, efficiency demands that investment in her education should be commensurate with her future role. This disables her from acquiring skills through education and training that match her ability and would enable her to acquire financial autonomy on her own.

The cycle of dependence as a mother, wife and daughter thus continues to repeat and perpetuate itself. This is why we must circle back to Rawls’ theory of justice as fairness, an essential plank of which is dignity with personal property rights as a critical subset for purposes of agency and self-esteem. This is also where Fukuyama’s conflict between isothymia and megalothymia kicks in: to recognize this cycle of dependence and give up power that men presently enjoy over women, we must first see women as equals.

Why should my daughter’s entitlement to anything be any less than that of her brothers? If I wish not to discriminate between my daughter and sons, I must invest in her skill development to raise her to be breadwinner too. And to raise my sons and daughter as equals with a sense of fairness and belief in gender equality, I must ensure that they don’t find my sermons and conduct in conflict – I must practice the concepts of dignity and equality in relation to my wife, that I wish my kids to imbibe. Giving up hypocrisy is the challenge and it isn’t easy.

The writer is a lawyer based in Islamabad.

Email: sattar@post.harvard.edu