



Gender Inequality in Global Access and Benefit Sharing Regime: Women's Human Rights Perspective

*Ms. Jiya Matharani

Ph. D Research Scholar, Saurashtra University

**Prof. Dr. Vimal Parmar

Principal, K.P. Shah Law College , Jamnagar

Abstract:

Women Plays an important role in conservation and preservation of biological diversity and also holds the traditional knowledge associated to the biological resources. The contribution of the women in preserving and conserving the biological resources is often neglected. Due to gender inequality it has never recognised also. Since the adoption of Convention on Biological Diversity the participation of women in the Access and Benefit sharing regime is overlooked. The third objective of the Convention on Biological Diversity pursues the fair and equitable sharing of benefits aroused out of the utilization of genetic resources. The implementation of this objective should be in such way that women being a one of the stakeholder should also be truly benefited. This paper will explore the rights of women enshrined under various international instruments on Access and Benefit sharing regime and Human Rights .

Keywords: Gender equality, Access and Benefit Sharing, Convention on Biological resources , Human Rights, Biological resources and Traditional Knowledge.

Introduction:

“Gender inequality is more pervasive than other forms of inequality. It cuts across other forms of inequality so that it is a feature of rich as well as poor groups, racially dominant as well as racially subordinate groups, privileged as well as ‘untouchable’ castes... gender inequality intersects with economic deprivation to produce more intensified forms of poverty for women than men. Gender inequality is part and parcel of the processes of causing and deepening poverty in a society and must therefore constitute part and parcel of measures to eradicate poverty.”

Kabber, N. 2003

Many international instruments aims to achieves the gender equality in all the areas . The gender consideration in ABS regime , which is based on the doctrine of ‘Social Equity’ emphasizes on the evenly distribution of benefits aroused out of the utilization of the Genetic Resources. The objectives of the ABS regime are also aims the social and economical equality with reference with the biological diversity , genetic resources. If the social and economic equity concept related to the utilization of biological diversity resources is developed without consideration of existing gender gaps, its achievement will be precluded by relegating to a second place the gender relations present in the access, control and distribution of benefits of genetic resources.¹

Concept of Gender Equality

Gender equality is achieved when women and men enjoy the same rights and opportunities across all sectors of society, including economic participation and decision-making, and when the different behaviours, aspirations and needs of women and men are equally valued and favored.²

Gender Equality for Biodiversity Conservation

Gender is a vital contemplation for equitable and effectual biodiversity conservation practice. Morally, ensuring the gender equality is the way of protecting the gender based human rights any removal of the gender based discrimination³ . However the gender equality has been misconceptualised as the issue concerning the women, or it is only relatable to the violation of the women’s right. Gender-responsive sustainable management and conservation of biodiversity therefore requires that laws, policies, programmes and public services take into account existing structures of gender inequality and proactively

¹ Diversity Makes the Difference! Gender Considerations for Promoting an Equitable Access to and Fair Sharing of Benefits Arising from the Utilization of Biodiversity, Authors: Portada Archivos Descargar686.pdf Autor(es) Lorena Aguilar and Monserrat Blanco <https://www.portalces.org/biblioteca/equidad-social/diversity-makes-difference-gender-considerations-promoting-equitable>, last visited on 14 April, 2021 at 2: 00 pm

² Comhionannas inscne in éirinn GENDER EQUALITY IN IRELAND <http://www.genderequality.ie/en/GE/Pages/WhatisGE>, last visited on 14 April 2021

³ <https://www.women4biodiversity.org/>

aim to overcome and remove those inequalities in order to contribute to gender equality, the empowerment of women and women's enjoyment of their human rights.⁴

Women's and men's roles, duties, rights, resources, and access to decision-making must all be considered, as well as any barriers to full participation in, contribution to, and benefits from biodiversity initiatives that must be addressed explicitly. Never assume that topics are gender neutral; always do analysis to determine the significance of gender equality.

As a result, gender concerns must be appropriately included in regular studies, such as stakeholder analyses, poverty analyses, institutional analyses, and environmental effect analyses.

Indeed, gender mainstreaming entails devising strategies to ensure that all research is conducted in a systematic way that considers gender equality issues; that data collection consistently considers the need for sex-disaggregated data and the collection of gender statistics; and that all work on indicator development results in gender-sensitive indicators.

The Recognition of the gender equality in Biodiversity conservation in different International Instrument.

Convention on Biological Diversity (CBD) , 1992

CBD Preamble , recognize the gender equality specify the role of the women in the conservation and sustainable uses of the biological diversity. "Recognizing also the vital role that women play in the conservation and sustainable use of biological diversity and affirming the need for the full participation of women at all levels of policy-making and implementation for biological diversity conservation,"⁵

Parties adopted a decision at the fifth Conference of Parties in 2000 (COP 5) that contains a programme of work on the implementation of the CBD and its related provisions to support the implementation of Article 8(j) of the Convention and to enhance the role and involvement of indigenous and local communities in the achievement of the Convention's objectives.

The "...full and effective engagement of women in indigenous and local communities in all activities of the plan of work" is one of the program's main principles⁶. This emphasis on women's involvement is bolstered by Task four of the first phase of the work programme, which calls for Parties to "Develop, as appropriate, mechanisms for promoting the full and effective participation of indigenous and local

⁴ Gender Dimension on Biodiversity, available at <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2018/towards-a-gender-responsive-implementation-of-the-convention-on-biological-diversity-en.pdf?la=en&vs=4802>

⁵ Convention text, available at <https://www.cbd.int/convention/articles/?a=cbd-00>, last visited on 14th June, 2021.

⁶ <https://www.unwomen.org/en/digital-library/publications/2018/11/towards-a-gender-responsive-implementation-of-the-convention-on-biological-diversity>

communities, with specific provisions for the full, active, and effective participation of women in all elements of the work programme, taking into account the need to:

- a) Build on their knowledge;
- b) Strengthen their access to biological diversity;
- (c) Strengthen their capacity on matters pertaining to the conservation, maintenance and protection of biological diversity;
- (d) Promote the exchange of experiences and knowledge;
- (e) Promote culturally appropriate and gender specific ways in which to document and preserve women's knowledge of biological diversity.”

Nagoya Protocol and Gender Equality

Nagoya Protocol in preamble has recognised the importance of women has included that the women participation at all the level like policy making to the participation of women into the ABS agreement. *“Recognizing also the vital role that women play in access and benefit-sharing and affirming the need for the full participation of women at all levels of policy-making and implementation for biodiversity conservation”*

The CBD Preamble emphasizes the critical role of women in biodiversity conservation and sustainable use, and calls for their full participation in policy-making and implementation at all levels. The importance of women in ABS is highlighted in this paragraph, which builds on the CBD reference.

This paragraph asserts that women should be able to fully participate in all levels of policy-making and implementation for biodiversity conservation, including participation in decision-making processes involving genetic resources and traditional knowledge associated with genetic resources, such as prior informed consent (PIC) and MAT negotiations, based on their role as custodians.

Pursuant to Article 12(3) of the Nagoya Protocol, Parties shall endeavor to support ILCs in developing various instruments rendering them better equipped to deal with access procedures with regard to traditional knowledge associated with genetic resources held by them, and to ensure that they receive a fair share in benefits when such knowledge is being used. Particular attention shall be given to ⁷women within the communities in this regard. The instruments referred to are of different nature, but with similar functions.

⁷ Gender and Biodiversity available at , <https://portals.iucn.org/library/efiles/documents/EPLP-083.pdf>

As a basis for appropriate measures in relation to the implementation of this Protocol, developing country Parties, in particular the least developed countries and small island developing States among them, and Parties with economies in transition should identify their national capacity needs and priorities through national capacity self-assessments. In doing so, such Parties should support the capacity needs and priorities of indigenous and local communities and relevant stakeholders, as identified by them, emphasizing the capacity needs and priorities of women.⁸

Article 22(3), second sentence, states that any national evaluation shall take into account and support the capacity requirements and objectives of ILCs and other relevant stakeholders, including women.

Undetermined actions that important parties, such as the business sector, research institutes, the government, and others, may adopt are mentioned in articles 5(i) and (j). The need of enhancing the skills of ILCs and women in connection to ABS, particularly traditional knowledge linked with genetic resources, is highlighted. It's worth noting that Article 12 of the Protocol contains additional pertinent provisions dealing with the capacity building of key stakeholders, including ILCs.

Furthermore, Article 25(3) states that, in providing guidance to the financial mechanism in relation to the Nagoya Protocol, the CBD COP – on the recommendation of the COP/MOP – shall take into account the capacity-building and development needs and priorities set forth in Article 22 of the Nagoya Protocol.

In this context, attention shall be given by the COP/MOP to the specific capacity building and development needs of:

- Developing country Parties,
- In particular the least developed countries and small island developing States; parties with economies in transition; and
- Indigenous and local communities, including women within these communities.

Article 12(3) also recognizes that Parties shall endeavor to support, as appropriate, the development by indigenous and local communities, including women within these communities, of: Supplementary Materials

(a) Community protocols in relation to access to traditional knowledge associated with genetic resources and the fair and equitable sharing of benefits arising out of the utilization of such knowledge;

(b) Minimum requirements for mutually agreed terms to secure the fair and equitable sharing of benefits arising from the utilization of traditional knowledge associated with genetic resources; and

⁸ ibid

(c) Model contractual clauses for benefit-sharing arising from the utilization of traditional knowledge associated with genetic resources.

Fair and Equitable Benefit Sharing :

Article 5 of the Process commands the sensible and nondiscriminatory sharing of benefits emerging out of the utilization of innate assets with the supplier country, upon commonly concurred conditions (MAT), and furthermore to take ideal strategies that might actually include authoritative, the board or even of strategy. The Action cannot be really pondered as a lawful activity to altogether execute the Method since it was really sanctioned a ton before the Protocol happened directly into pressure, a few arrangements of the Action are in concordance with the Procedure. Segments 3 and 21 of the Act manage issues of reasonable and sensible advantage sharing and furthermore consider both financial just as non-monetary benefits as per the Method.

Sources, or even in expressions of the Procedure, the origin. All things considered, India's obligations as a client nation are skipping making the adjustment to the Procedure an issue. Section 21 of the Act is an eminent specification in such manner which enables the NBA to decide reasonable just as impartial sharing of benefits with all in all yielded conditions. This specification gone through alongside Guideline 21 of the Rules under the Act suggests the prerequisites for sensible benefit sharing. Government of India made the Suggestions for Get Access Aware of and Benefit Discussing in 2014⁹

The Protocol considerably further prescribes steps to get taken because of the Gatherings for advantage offering to neighborhood just as native regions, regardless of whether they are really the holders of such data and additionally of customary information identified with every one of them. Existing guidelines of Act and the Rules notwithstanding execution techniques so far show that there is really confined or no focus on issues identified with commonplace information associated alongside the sources alongside regard to ABS other than passing affirmation of customary information in the Action and furthermore Terms.

Women's Participation in Decision making and benefit sharing regime

Women's full, equitable, and effective involvement and leadership in biodiversity decision-making processes is critical for improving conservation intervention implementation and sustainability. According to research, women's active participation in biodiversity management and conservation improves local resource management and conservation outcomes by leveraging crucial ecological factors.

Women's engagement in conservation and natural resource management programmes, on the other hand, is still minimal. For example, data from over 8000 families in Africa, Asia, and Latin America shows that

⁹ <http://nbaindia.org/content/25/19/1/act.html>

women's engagement in forest user groups is considerably lower than men's, and their proportionate usage of forests is far lower.¹⁰ Women's lack of decision-making authority in the home and in the community.

Gender norms and prejudices that limit women's responsibilities in the public sphere, limited property ownership, limited access to education, and women's and girls' disproportionate share of unpaid care and domestic work all have an influence on women's involvement.²⁵ As a result, women's biodiversity knowledge, attitudes, and experiences, as well as their demands and goals, may be overlooked.

The CBD Secretariat²⁶ and IUCN²⁷ conducted reviews of National Biodiversity Strategies and Action Plans (NBSAPs), which revealed that such plans mostly define women as a vulnerable category. Simultaneously, some nations see women's lack of engagement as stakeholders as a barrier to biodiversity protection. This implies that women's lack of a voice and agency will have an influence on their access to, decision-making regarding, and benefits from conservation programmes and activities.

Women's equal and meaningful involvement, agency, and voice are also vital in ensuring that the benefits of biodiversity and natural resources are shared fairly. A gender-responsive approach to benefit-sharing necessitates the creation of significant opportunities for women to participate in the design, negotiation, receipt, distribution, and use of benefits.

As previously said, women frequently prioritise family interests and advantages that would ensure family welfare, whereas males may prioritise individual goals and monetary gains. In Rwanda, members of female-headed households consumed 377 more calories per adult equivalent per day than male-headed households. In the Gambia, the control of cereal production by women brought about 322 additional calories per adult per day.¹¹

As a result, the method in which benefits are defined, transmitted, and consumed will have a direct bearing on distribution equality and justice. When benefits are dispersed in a way that prevents them from being used effectively for overall family welfare, women may effectively be denied their entitlement to a fair share of such benefits.

Where women are in charge of gathering biological resources such as fodder and fruits, but males control the sale of these resources as well as the revenue earned and make decisions about how to spend this income, interventions must help to improve women's decision-making capabilities.

¹⁰ Sunderland, T., Achdiawan, R., Angelsen, A., Babigumira, R., Ickowitz, A., Paumgarten, F., ... and Shively, G. 2014. "Challenging perceptions about men, women, and forest product use: A global comparative study." *World Development* 64(1), 56-66., available at https://ac.els-cdn.com/S0305750X14000692/1-s2.0-S0305750X14000692-main.pdf?tid=af2ee813-0fce-429c-aa2b-3b8da86545ab&acdnat=1529612589_6a53592f02b45c8692911c7e2ce1f202, last visited on 15 June, 2021

¹¹ *ibid*

Conclusion :

Women play key roles as main land managers and resource users, and they experience disproportionate consequences from both biodiversity loss and gender-blind conservation policies, women must be equally and actively included in procedures to conserve and sustainably use biodiversity. Most of the nations have ratified the Convention on Biological Diversity (CBD), which was established at the 1992 Earth Summit. The Convention acknowledges women's essential role in the conservation and sustainable use of biological diversity and underlines the necessity for full participation of women at all levels in the design and implementation of biodiversity conservation policies.

