

Feminist Jurisprudence and Gender Injustice in India

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Description of Module

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Feminist Jurisprudence and Gender Injustice in India

Objective: Feminist jurisprudence is a philosophy of law based on the political, economic, and social equality of sexes.

Learning Outcomes:

Sex determines such matters as physical appearance and reproductive capacity, but not psychological, moral, or social traits. Though feminists share common commitments to equality between men and women, feminist jurisprudence is not uniform.

Introduction:

Feminist jurisprudence is a philosophy of law based on the political, economic, and social equality of sexes. As a field of legal scholarship, feminist jurisprudence began in 1960s. It influences many debates on sexual and domestic violence, inequality in the workplace, and gender based discrimination. Through various approaches, feminists have identified implications of seemingly neutral laws and practices. Laws affecting employment, divorce, reproductive rights, rape, domestic violence, and sexual harassment have all benefited from the analysis and insight of feminist jurisprudence.

History: Feminists believe that history was written from a male point of view and does not reflect women's role in making history and structuring society. Male-written history has created a bias in the concepts of human nature, gender potential, and social arrangements. The language, logic, and structure of the law are male-created and reinforce male values.

Deviation from the "norm" By presenting male characteristics as a "norm" and female characteristics as deviation from the "norm" the prevailing conceptions of law reinforce and perpetuate patriarchal power. Feminists challenge the belief that the biological make-up of men and women is so different that certain behavior can be attributed on the basis of sex. Gender, feminists say, is created socially, not biologically. Sex determines such matters as physical appearance and reproductive capacity, but not psychological, moral, or social traits.

Three major schools: Though feminists share common commitments to equality between men and women, feminist jurisprudence is not uniform. There are three major schools of thought within feminist jurisprudence.

(i) Traditional, or liberal, feminism asserts that women are just as rational as men and therefore should have equal opportunity to make their own choices.

(ii) Another school of feminist legal thought, cultural feminists, focuses on the differences between men and women and celebrates those differences; this group of thinkers asserts that women emphasize the importance of relationships, whereas men emphasize abstract principles of rights and logic. The goal of this school is to give equal recognition to women's moral voice of caring and communal values.

(iii) Radical or dominant feminism focuses on inequality. It asserts that men, as a class, have dominated women as a class, creating gender inequality. For radical feminists gender is a question of power. Radical feminists urge us to abandon traditional approaches that take maleness as their reference point. They argue that sexual equality must be constructed on the basis of woman's difference from man.

Feminist Jurisprudence

Feminist jurisprudence represents the diversity of feminist philosophy and theory. All feminists share the belief that "women are oppressed or disadvantaged in comparison with men and that their oppression is in some way illegitimate or unjustified. The intellectual guiding force behind current women's movement is feminism which produced special knowledge in every field such as feminist sociology, feminist philosophy, feminist history, including feminist jurisprudence. Feminist jurisprudence is a natural extension namely law and justice. Law related strategies have played an important role in the campaigns of women's organizations to achieve greater equality and social justice.

Feminist belief that law in constructing, maintaining, reinforcing and perpetuating patriarchy and it looks at ways in which this patriarchy can be undermined and ultimately eliminated..

The feminist inquiry into law concentrates on the following issues.

- i) Examination of legal concepts, rules, doctrines and process with reference to women's experiences.
- ii) Examination of the underlying assumptions of law based in male female and ostensibly gender neutral distinctions.
- iii) Examination of mismatch, distortion or denial created by the deference between women's life experience and the laws assumption or imposed structures.
- iv) Patriarchal interest served by the mismatch.
- v) Reforms to be made in the law to eliminate patriarchal influences.

Feminism into four schools, namely, liberal, radical, cultural and postmodern and the early theme and pursuit of feminists about law was equality.

Liberal Feminism

The historical origin of contemporary liberal feminism goes back to the 18th century. An important principle of this philosophy was individualism by which was meant that an individual possesses the freedom to do what he wishes without interference from others. **Liberal feminism** is an individualistic form of feminist theory, which focuses on women's ability to maintain their equality through their own actions and choices. Its emphasis is on making the legal and political rights of women equal to men. Liberal feminists argue that society holds the false belief that women are, by nature, less intellectually and physically capable than men; thus it tends to discriminate against women in the academy, the forum, and the marketplace. Liberal feminists believe that "female subordination is rooted in a set of customary and legal constraints that blocks women's entrance to and success in the so-called public world". They strive for sexual equality via political and legal reform.

General view of the liberal feminists is that women's subordination is caused by social and legal barriers that block their access to public sphere of politics and economics. Liberal feminists demand that liberals follow their own principles of universal human rights and equality and demand equal treatment of women and men, insisting that women are fundamentally similar to men. These theorists argue for law to be gender blind that there should be no restrictions or special assistance on the grounds of gender.

Radical Feminism

Also known as dominant feminism, it does not see the issue of gender equality as an issue of difference and sameness but rather as issues of domination of women by men. **Radical feminism** is a perspective within feminism that calls for a radical reordering of society in which male supremacy is eliminated in all social and economic contexts. Radical feminists view society as fundamentally a patriarchy in which men dominate and

oppress women, and seek to abolish the patriarchy in order to liberate everyone from an unjust society by challenging existing social norms and institutions. This includes opposing the [sexual objectification](#) of women, raising public awareness about such issues as [rape](#) and [violence against women](#), and challenging the very notion of [gender roles](#).

Radical feminists posit that, because of patriarchy, women have come to be viewed as the "other" to the male norm, and as such have been systematically oppressed and marginalized. They further assert that men as a class benefit from the oppression of women. Patriarchal theory is not generally defined as a belief that all men always benefit from the oppression of all women. Rather, it maintains that the primary element of patriarchy is a relationship of dominance, where one party is dominant and exploits the other for the benefit of the former. Radical feminists believe that men (as a class) use social systems and other methods of control to keep women (and non-dominant men) suppressed. Radical feminists seek to abolish patriarchy by challenging existing social norms and institutions, and believe that eliminating patriarchy will liberate everyone from an unjust society. Ti-Grace Atkinson maintained that the need for power fuels the male class to continue oppressing the female class, arguing that "the *need* men have for the role of oppressor is the source and foundation of all human oppression

Cultural Feminist

Cultural feminism reverses the focus of liberal feminism. it is concerned with women's differences from men." It argues that important task for feminism is not to include women into patriarchy, and prove that women are similar to men and can function like men and meet male norms, but to change institutions to reflect and accommodate values that they see as women's nurturing virtues, such as love, empathy, patience and concern". It is an ideology of a "female nature" or "female essence" that attempts to revalidate what cultural feminists consider undervalued female attributes. It is also a theory that commends the difference of women from men. It is based on an essentialist view of the differences between women and men and advocates independence and institution building.

Research on moral development of young girls and boys" that men and women typically undergo a different moral development" She finds that male respondents typically respond to the moral problems with an ethic of justice! While her female respondents typically respond with an ethic of care"!

Post - modern feminism sees equality as a social construct and a product of patriarchy, hence in need of feminist reconstruction. The school emphasizes the process of self - definition and the method that will raise consciousness and give voice to the unknown in women's experience.

Gender

Injustice:

Introduction

We all know that men and women are different, but the fact remains that there lie certain ambiguities about how different are they? What is the extent and nature of the difference? Sometimes it is hard to understand exactly what is meant by the term 'gender' and how it differs from the closely related term 'sex'. Understanding of the social construct of gender starts with ever expanding the two concepts, i.e., gender and sex. However, they bear different meanings. Sex and Gender Sex is a "biological" term and Gender is a "psychological" and "cultural" term. Common sense suggests that they are merely two ways of looking at same division. The concept of sex and gender have been clear therefore according to feminists Sex is concerned with biological or physical characteristics of man and women whereas gender is concerned with social, cultural dissimilarities of man and woman. Using the definitions given for sex (biological differences between males and females) and gender (socially defined differences between men and women), sex differences therefore refer only to those differences that can be attributed solely to biological difference. At the beginning of human race man was differentiated from women on basis of biological and physical characteristics, both the bodies were having separate characteristics. Physical phenomenon like pregnancy, child birth, lactation, menstruation, has been happening to female body. Male body on the other hand had strong body structure against fine body of women and features like beard and moustaches and stronger muscles which in fact led the foundation for differentiation, dependence and domination on female by males. Due to this separate socio cultural roles in society were set.

Gender as Social- Cultural Phenomena

Gender is considered more as a social cultural aspect of human life. Division of role on the basis of sex and body has given rise to different social roles and status for man and women. Equality and education was never established for women as she was traditionally associated with kitchen and kids, taking care of family were her sole occupation. Hence both sex and gender are similar but contradictory terms, only having separate features with respect to biological, physical and socio-cultural orientation.

We do not treat boys and girls the same way. Men and women do not get equal opportunities to participate in all social, political, economic and educational activities. Let us first understand the word 'discrimination' with one or two examples. Let us say, in a village, the

people belonging to scheduled caste are not allowed to draw water from a well while others are free to do so. Water is a basic necessity for all. Denying water from the nearby well puts the people in to a distinct disadvantage. This is caste based discrimination. Let us take another example. Let us say there are two people, equally capable, one with a dark skin and the other with fair skin. We have to make a selection for an activity. Not selecting a person merely because of dark skin is a discriminatory practice. *'Discriminatory behaviors take many forms, but they all involve some form of exclusion or rejection'*. Now, let us come to gender discrimination. Gender discrimination is discrimination on the basis of sex. It is the unequal treatment of a person based

solely on that person's sex. Any unfair consideration, policy, practice or belief which treats men and women unequally and hence restricts or denies choices for members of a particular sex is gender discrimination. Providing separate toilets for boys and girls does not tantamount to discrimination.

A girl in a family wants to go to her friend's house for doing a project. She is either not allowed or asked to come back before it is dusk. No such restrictions are placed on boys. Simply, she is not allowed to do certain things because she is a 'girl'. We often see boys playing in the open ground with lot of sports materials. Girls on the other hand are allowed to play indoor games with hardly any play material. Sometimes they are denied opportunities to play even the indoor games. Why does this happen? Is this justified? Gender discrimination can also affect boys and men. For instance, a boy who is injured while playing is not expected to cry. Why? This is simply because he is a 'boy'. He is not supposed to accept defeat in anything. A man cannot become a 'home maker'. This is also gender discrimination. However, the discrimination as of today is largely loaded against women and girls. This is why we are paying attention on the issue of discrimination against girls and women.

Sources of Gender discrimination

You as a teacher may think that it is better to have a boy as class leader, and select a boy rather than a girl. This is direct discrimination. Dismissing worker on grounds of pregnancy is direct discrimination. Indirect discrimination occurs when there are provisions and practices which put

girls and women at a disadvantage.

1. Family and parents
2. Government Policies
3. Educational Opportunities
4. Nutrition Health and leisure
5. Laws and Rules
6. Education
7. Property and control over
8. Appointment, Promotion, placement.

Gender discrimination begins before the birth of a girl child. This is underscored by large instances of female foeticide despite laws against this practice. Preference of parents [society] for boy babies is too well known. Girls are largely neglected in the family while the boys get special treatment. The nutritional and health requirements of girls are generally neglected. This results in higher mortality of girl children. Denial of opportunity to education, discouraging girls to take up

courses of their choice, discouraging girls from pursuing higher education are quite common even now. In the employment sector, men usually get priority over women.

There are often basic inequalities in gender relations within the family. These inequalities can take many different forms. For instance, inequalities may exist in sharing the burden of household work and child care putting a huge burden on women and girls. This will have its impact on girls and women in areas of education, employment and promotion. It can also limit their understanding of the outside world. There are many instances where girls are taken out of the schools on attaining puberty. Women are harassed for not bearing a male child. More girl children die due to malnutrition. There are instances of female babies either discarded or killed by parents themselves. These are some of the well recognized instances of gender discrimination.

When it comes to the choice of courses to be studied, gender discrimination operates in a subtle way. Girls are discouraged from taking up certain courses especially if she has to move away from parents. Many people think that a course in mechanical engineering is not suitable for girls! Jobs like clerical, teaching, nursing and housekeeping are unjustifiably considered more appropriate for girls. The tradition and religious texts shape the way people think and act. Many religions place women below men, and thus create an unequal society. Discriminatory injunctions imposed by the religion are practiced by the followers often without any questioning. Almost all religions have their personal laws and all such laws confer fewer rights to women.

Gender Discrimination & Equality

(i) Gender Discrimination

Gender Discrimination refers to the practice of granting or denying rights or privileges to a person based on their gender. In some societies, this practice is longstanding and acceptable to both genders. Certain religious groups embrace gender discrimination as part of their dogma. However, in most industrialized nations, it is either illegal or generally considered inappropriate. Attitudes toward gender discrimination can normally be traced back to the roots of certain segments of society. Much of the discrimination is attributed to stories such

as a woman being made from man's and societal practices such as dowries paid to fathers by prospective husbands to purchase their daughters to be wives. The Equal Pay Act of 1963 was intended to end that discrepancy. The law stated that "no employer shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees. The Equal Pay Act officially gives women protection under the law in regards to equal pay for equal work, but inequities still exist in almost every employment sector.

What does gender equality mean?

Gender equality is the aim of Gender and Development. It does not simply or necessarily mean equal numbers of women and men (girls and boys) in development activities, nor does it necessarily mean treating women and men (girls and boys) exactly the same. The aim is not that women and men become the same, but that their opportunities and life chances become and remain equal. Gender equality includes women and men to equally contribute to designing the society they want. Gender Equality means that women and men enjoy the same status within a society. It does not mean that men and women are the same but rather these similarities and differences are recognized.

Gender Injustice:

“Bread and Roses”: Indian History and mythology have given place of pride to women. Sita, Savitri and Draupadi are the women whose name strike the mind immediately. Over the year of first half of 20th century, the struggle continued and women coined the phrase “Bread and Roses”. The reference to Bread is freedom from hunger and Roses is the satisfaction of the wants.

Subordinate positions: Gender injustice is not a recent phenomenon. Crimes against women have committed since ancient times. Any tradition and custom places women in subordinate positions within society or in the family. Pt. Jawaharlal Nehru said that “you can tell the condition of a nation by looking at the status of its women“

Women are superior not equal to men : Nature treated the women in different ways and made them biologically different. Some person calls the women as inferior but it is not so. The history says women was called Shakti. Shakti means power, woman is the power of man.

Gender injustice is global issue: The women who constitute half of the world's population and who work two third of world working hours should earn just one tenth of the worlds property and also should remain victim of inequalities and injustice.

Sex and Gender: The term sex is applied to those distinctions between man and women. In short sex difference is natural but gender difference are creative difference on the basis of sex.

Gender Injustice in India:

1. **Pre-natal sex-selective Abortion:** The most extreme expression of the preference for sons is female infanticide and sex selective abortion. A study in a Bombay hospital found that 96% of female were aborted.
2. **Sexual Harassment at work places:** is a harassment of a sexual nature, typically in the work place. Sexual harassment is considered a form of illegal discrimination. Sexual harassment at work place is not an isolated phenomenon but a mainfestaion of the larger gender discrimination in society.
3. **Female are malnourished:** India has exceptionally high rate of child malnutrition, because tradition in India requires that women eat last and least throughout their lives, even when pregnant.
4. **Women are uneducated:** Families are far less likely to educate girls than boys and far more likely to pull them out of school, either to help out at home or from fear of violence. So women and girls receive far less education than men both due to social norms and fears of violence.
5. **Women are in Poor health :** Females receive less health care than males. Many women die in childbirth. The practice of breast feeding female children for shorter periods of time reflects the strong desire for sons.
6. **Women are overworked:** Women work longer hours and their work is more than the men.(agricultural Work)
7. **Women are Unskilled:** Women have unequal access to resources.
8. **Injustice Policy of Reservation in Public office:** The women occupy 46% of the Indian population but reservation is given for only 33% where reserved.
9. **Women are mistreated:** In recent year there has been an alarming rise in atrocities against women in India in term s of rapes, assaults and dowry related murders.

10. Women are Powerless: While women are guaranteed equality under the constitution. But due to lack of power to decide who they will marry and are often married off as children.

Conclusion:

Gender injustice means injustice on the basis of sex. But in practice the story is different in the case of injustice to women; it is women only except the rape cases. In kinds of injustice as domestic violence, forced abortion, sex detection, dowry death etc. Behind this there are more role of women than men.