

Gender Justice

Paper XVIII-XX^{D7}

Course Materials

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GENDER JUSTICE D-7

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This course aims at questioning the understanding that law is universal, protects everybody equally and is accessible to all equally. It is expected that the students will acquire analytical skills and knowledge to critically analyse functioning of legal provisions and judicial responses from the perspectives of the deprived and powerless groups in society as an outcome of this course. These skills are important not only from the perspective of municipal laws but also in the context of discrimination between the first and third world countries and international law. It uses gender, particularly women as an example to show discrimination perpetuated by law and legal processes. It has long been recognised that present day lawyers and judges are insensitive and unaware of the problems and perspectives of women resulting in grave injustice to them in various ways Orientation and in-service refresher training programmes for lawyers and judges have been suggested by all concerned with the problem and indeed such training programmes are being organised too. Law Faculties in this scenario have the important obligation to generate awareness of the gender bias operating in society and legal system in India. This course familiarises the students with the real facts relating to the status of women in India and nature, extent and kind of gender bias in the extant law and judicial decisions. It also explores the jurisprudential explanations for the existing state of affairs. It focuses on the patriarchal nature of state and family and contemporary feminist debates. Readings prescribed are subject to change with further reading and new publications and developments.

CONTENTS

TOPIC ONE: STATUS AND STRUGGLES OF WOMEN IN INDIA (4 classes)

- Men-women ratio in population, education, health, nutrition, mortality, labour, income, diversity of family structures in India.
- Kinds and extent of social practices adversely affecting women – malnutrition, illiteracy, domestic violence, sexual violence, female foeticide, female infanticide, child marriages, dowry, sati, workplace.

TOPIC TWO: THE PRIVATE – PUBLIC DICHOTOMY AND SAMENESS – DIFFERENCE DEBATE (5 classes)

- Role of law in private sphere
- Understanding patriarchy,
- Notions of sex and gender.

TOPIC THREE: APPROACHES OF LAW TO THE QUESTION OF GENDER IN INDIA. (10 classes)

- Law as an instrument of equality, protection and patriarchal oppression.
- Constitutional provisions.
- Laws affecting women in India with special focus on domestic violence, prostitution and female foeticide and infanticide.

TOPIC FOUR: GENDER JUSTICE AND JUDICIARY**(12 classes)**

- Judicial response to neutral and gendered laws
- Judicial construction of reasonable man and woman

TOPIC FIVE: INTERNATIONAL DEVELOPMENTS RELATING TO WOMEN**(4 classes)**

- UN Convention for the Elimination of Discrimination Against Women.
- Other related international instruments.

Prescribed Readings: (Supplied to Students)**Cases:**

1. *Centre for Enquiry into Health and Allied Themes (CEHAT) and Others v. Union of India and Others*, (2001) 5 SCC 577.
2. *Municipal Corporation of Delhi v. Female Workers (Muster Roll) and Another*, (2000) 3 SCC 224.
3. *Bobby Art International and Others v. Om Pal Singh Hoon and Others*, (1996) 4 SCC 1.
4. *C. Masilamani Mudaliar and Others v. Idol of Sri Swaminathaswami Thirukoil and Others*, (1996) 8 SCC 525.
5. *Gita Hariharan v. Reserve Bank of India*, (1999) 2 SCC 228.
6. *Madhu Kishwar and Others v. State of Bihar and Others*, (1996) 5 SCC 125.
7. *Gaurav Jain v. Union of India and Others*, (1997) 8 SCC 114.
8. *Vishal Jeet v. Union of India and Others*, (1990) 3 SCC 318.
9. *Chairman, Railway Board and Others v. Chandrima Das and Others*, (2000) 2 SCC 465.
10. *All India Democratic Women's Association and Janwadi Samiti v. Union of India* (1989) 2 SCC 411.
11. *Chetna, Legal Advisory W.C.D. Society v. Union of India and Others*, (1998) 2 SCC 158.
12. *Upendra Baxi v. State of U.P.*, (1986) 4 SCC 106.
13. *Ahmedabad Women's Action Group v. Union of India*, (1997) 3 SCC 573.

Articles:

1. P. Ishwara Bhat, "Constitutional Feminism : An Overview" in (2001) 2 SCC p.xxv.
2. Justice S. Rajendra Babu, "Third Shri Akellasatyanarayana Memorial Endowment Lecture on Gender Justice – Indian Perspective" (2002) 5 SCC 1.
3. Madhu Mehra, "And Miles to Go...Challenged Facing Women's Human Rights" Vol. 40 Nos. 1-4 *Journal of Indian Law Institute*, 121 (1998).
4. R.K.Bag, "Domestic Violence and Crime Against Women: Criminal Justice Response in India" Vol. 39 Nos. 3-4 *Journal of Indian Law Institute*, 359 (1997).

Suggested Books and Articles

(Photocopies of the same have been kept in the Library for consultation in bound form in **two volumes** entitled *Gender Justice: Reading Materials* compiled by Ved Kumari 2003)

Reading 1

Towards Equality Report of the Committee of Status in India, pp. 37-101 Government of India (1974).

Reading 2

Sarla Gopalan, *Towards Equality – The Unfinished Agenda – Status of Women in India 2001*, pp.27-66, 247-280

Reading 3

Neeru Sehgal, *Economic Independence for Women : The Foundation for Eradicating Sex Based Discrimination*, Unpublished Ph.D. Thesis, University of Delhi, pp. 1-62, (1991).

Reading 4

Ratna Kapur and Brendia Cossman, *Subversive Sites : Feminist Engagements with Law in India*, pp. 43-75, 99-144 (1996).

Reading 5

Archana Parashar, *Women and Family Law Reform*, pp. 112-144 (1992).

Reading 6

“Letter Written at Death’s Door” in Madhu Kishwar and Ruth Vanita, *ed., In Search of Answers* (1984) Madhu Kishwar and Ruth Vanita, *ed., In Search of Answers* (1984)

Reading 7

B. Sivaramayya, “Women and the Law”, 30 *Annual Survey of Indian Law*, pp. 513-528 (1994).

Reading 8

Amita Dhanda, Archana Parashar (ed) *Engendering Law* , pp. 33-70, 117-172 (1999).

Reading 9

Alison Jaggar, *Living with Contradictions: Controversies in Feminist Social Ethics*, pp. 1-12 (1994).

Reading 10

Susan Okin, “John Stuart Mill: Liberal Feminist” in *Women in Western Political Thought*, pp. 197-232 (1979).

Reading 11

Joan Scott, “Deconstructing Equality Versus Difference: Or the Uses of Post-Structurist Theory for Feminism” in *Feminist Studies*, pp. 33-50 (1988).

Reading 12

Carol Pateman, “Feminist Critique of the Public and Private” in A Phillips *ed. Feminism and Equality*, pp. 103-123

Reading 13

Morris Gatens, “A Critique of the Sex/Gender Distinction” in *Feminism and Subjectivity*, pp. 139-154

Reading 14

Diana Fuss, *Essential Speaking*, pp. 1-21 (1989)