Chapter 7: Summary and Conclusion

In this concluding chapter I summarise and reflect on the various aspects of justice for women as discussed in the previous chapters. I do so with the aim of bringing out some key elements or ideas of a gender-sensitive conception of justice. These ideas will be drawn from the western and Indian feminist theorists, whose works have been examined in the previous chapters. I also draw from the experiences of the Indian Women’s Movement (IWM) in some issues of gender justice it raised and addressed, which I have examined in this study.

My overall conclusion is that the mainstream conception of social justice is by and large gender-insensitive and/or gender-biased, and that therefore we need to pursue a gender-sensitive approach to social justice. As I have tried to show in the previous chapters, some aspects of such an approach to gender justice are visible in the feminist interventions in Indian political discourse, e.g. in the debates about rape, dowry, UCC and the Women’s Reservation Bill.

As I have brought out in chapter two, there are substantive merits to the feminist critiques of several aspects of mainstream political theory, including
the theory of social justice. Both gender-insensitivity and gender-bias in the mainstream discourse are evident in the way in which women are either marginalized or excluded from political theory and political practice. Such marginalization and exclusion are theoretically constructed in two steps. Firstly, women are relegated to the family or the household. Secondly, the family is defined as the private sphere of emotions and sentiments, which is contradistinguished from the public-political sphere of rationality. In this way, both the inequalities and injustices to which women are subjected within the family, and their resultant marginalization and exclusion in the political sphere remain unaddressed in mainstream political theory.

As I have brought out in chapter two, John Rawls' celebrated theory of social justice also suffers from a certain gender-bias against women. He maintains that his principles of justice are not applicable to the internal life of the family. In his response to some of the feminist criticisms, Rawls has reiterated his initial view that his principles of political justice are "not to apply directly to the internal life" of the family. According to him the conception of justice applicable to the internal life of the family is not a political conception of justice (chapter two, section three).
I have tried to argue in chapter two that gender justice calls for a reconsideration of a number of conventional dualisms or binaries such as reason/emotion, universal/particular, culture/nature and public/private. In these hierarchical binaries, women are assigned to the inferior or subordinate categories of the emotional, the particularistic, the private, etc. From a feminist perspective therefore, these hierarchical binaries need to be revised.

In chapter two, I have also examined the arguments of some feminist theorists for replacing the discourse of rights and justice with the discourse of care and nurture. Care theorists, led by Carol Gilligan, argue that the emphasis placed by mainstream discourse on impartiality, rationality and justice is what has rendered the discourse exclusionary for women. The corrective, according to them, is to shift the focus from justice to care; from reason and competition to the nurturing values that are closer to women.

However some feminist critics of care theory point out that its underlying division of moral labour between men and women is problematic. For instance, as Elizabeth Kiss notes, the care theorists overlook the fact that relationships of care can be oppressive too. Similarly, as pointed out by Catharine MacKinnon women speak in the voice of care because they have
been denied rights in the political sphere. The voice of care, thus, appears to be merely a result of a gendered structure of family and society, which accounts for different types of socialisation for men and women. This is what liberal feminists have called 'sex-role conditioning', which begins within the family (chapter two, section four).

Hence as I have argued in chapter two, for the sake of gender justice we need to make visible the political aspects of 'family', 'sex', 'gender', 'sexuality' and 'patriarchy'. Some scholars consider the theorisation of such concepts as the feminist reconceptualisation of political discourse. As I have argued feminist writers have theorised these concepts in order to uncover their political dimensions, and to gain an insight into the complexity of women's subordination (chapter two, section five).

In chapter three, I traced the origins of the IWM to the movements for social reform, which for the first time challenged some of the unjust practices that marked women's lives in India. The women's question dominated both the indigenous social reform and the colonialist discourses. Both these discourses identified the condition of Indian women as extremely oppressed and discriminated. While the colonialist discourse used this argument to justify imperialist rule over the country, the social reform
movements tried to bring about changes in the condition of women by opposing such customs and practices as sati, purdah, child-marriage, oppression of widows, and the lack of education to females. Struggles by the social reformers against sati, child-marriage and widows' conditions led to some legislative action by the colonialist government. Important among these are the Sati Abolition Act, the Hindu Widows' Remarriage Act and the Age of Consent Act.

In the discourse on these issues the concern for justice for women was quite visible. However as I have discussed in chapter three, the real concern in the debate was not for women per se, but about what counted as the 'authentic' indigenous tradition. During this time, tradition was being reconstructed and women came to symbolise this tradition. In order to counter the 'civilising' claims of colonial powers, defenders of the indigenous culture presented it not as barbaric or degenerate, as alleged by the colonialists, but as a once-glorious tradition that was still capable of taking care of 'its' women.

This discourse, as pointed out by Uma Chakravarti, Lata Mani, etc., had two profound implications for women. Firstly, women became the discursive terrain on which a tradition or a culture was debated. In that discourse
women became merely emblematic of a 'tradition' or 'nation'. That is to say that the concern was not about the 'real' problems women faced but about what constitutes a 'tradition', and what represents a 'nation'. As I have argued, there was no recognition of the agency, consent or subjectivity of women in the social reform discourse. The discourse merely revolved round countering the cultural claims of the colonial rulers.

Secondly, the constructions that took place during this time have an enduring impact on the discourse on women and justice in post-Independence India. The way in which 'woman' and 'womanhood' were redefined during this period still continues to guide the consciousness of contemporary India. For example, we find that the present-day discourse on rape and sexual assault used this construction of the 'Indian' woman to either interpret the assault as merely a violation of her chastity or to rule over her on the grounds of her presumed promiscuity. Rape or sexual assault is still not considered as a violation of the bodily integrity of a woman as an individual. This obviously, is not a gender-just perception.

As I have discussed in chapter three, the nationalist discourse used the dichotomy of the material and the spiritual, associated with the west and the east respectively, to construct other dichotomies like ghar/bahir, inner/outer,
and home/world. Using the spiritual superiority of the east as the founding argument, the nationalist discourse gave new definition to woman and womanhood, which culminated in the construction of the _bhadramahila_. This new construct of womanhood was defined in contrast to the western woman (who competed with men in the public sphere) as well as to the lower caste woman (who was presumably marked by unrefined attributes and promiscuity).

Such a construction and especially its contradiction with the lower caste/class woman had very peculiar implications in the future years. It was a legacy of the maintenance of caste purity through women, as Uma Chakravarti has argued. Thus after Independence, the sexual harassment of higher caste women is seen as a violation of her chastity, but the same of lower caste women, especially by men of upper castes is viewed as tacitly sanctioned by customs. Neither is however viewed as a violation of the integrity of an individual.

The image of such ‘womanhood’ and the values and virtues associated with it enabled on the one hand the entry of women into the public sphere for education and work, and on the other to be still governed by the existing patriarchal structures. Due to this the Indian woman became ‘modern’ in
that she was allowed education and selected entry into the public sphere. At the same she was made the repository of the values and virtues associated with a tradition, a legacy carried to the post-Independence India (chapter three, sections four and six).

Gandhi brought about a historically unprecedented extent of women's participation in the freedom struggle. Most importantly, he showed the political relevance of feminine virtues of self-suffering, self-sacrifice and non-violence. Significantly, he brought about a revision of the conventional dichotomy between the public and the private. However as many feminists have pointed out, Gandhi did not address the women's question with a view to bringing about a radical transformation of the patriarchal practices and institutions. Nonetheless, I have suggested that Gandhi remains helpful to us for a feminist redefinition of the self (chapter three, section five).

The Constitutional provisions pertaining to gender justice have been analysed in chapter four. I have brought out the ways in which the Constitution provides for gender justice through provisions for equality and non-discrimination on the basis of sex (e.g. Articles 14, 15 (1), 16 (1) and 16 (2)), as well as the provisions for positive discrimination in favour of women (e.g. Articles 15 (3) and 16 (4)). I have pointed out that the latter...
provisions, which provide for compensation to women for past
discriminations do not violate the principle of equality. However these and
other provisions pertaining to justice for women have not had the desired
effect to the extent needed because of the prevalence of patriarchal values in
the legal discourse. Its focus has been on 'protecting' women. There have
indeed been many progressive attempts by the courts but in the absence of
an appropriate understanding of female sexuality and sexual difference, the
courts are guided, most often, by conservative notions of the family,
sexuality, marriage and women’s role in the family and society, as defined by
the dominant familial ideology.

This is one of the arguments I have made (in Chapter four) after reviewing
the discourse about rape and dowry. The prevalence of the basic patriarchal
attitudes in this discourse can be seen in the fact that rape is still defined in
terms of penis penetration alone, whereas vaginal penetration by other
means is a considered a crime of sexual assault, which is liable for lesser
punishment. The judgements are based on the notions of chastity and
importance of virginity to female sexuality. Instead of viewing rape as a
violation of women as individuals, both laws and their interpretation by
courts, are informed by the conservative patriarchal assumptions of female
sexuality and the need for 'protecting the honour' of women. Moreover marital rape is still not recognised under law.

In chapter four I have also pointed out that the phenomenon of rape is not free from considerations of caste/community/class. Although all women are liable to be raped and to be discriminated against, the caste, class and community of women often serve as differentiating factors. Moreover women have come to be seen as representing a community or caste. This fact is exemplified by the extremities faced by women in communal riots or in caste clashes, wherein the onslaught on the women of a community is seen as an attack on that community or caste.

As pointed out by Nivedita Menon, for the sake of gender justice the legal discourse needs to be revised by detaching the conceptions of 'sexuality' and 'selfhood' from the 'body' as its sole definer\(^3\) (chapter four, section four). In chapter four I have also argued that gender justice is not served by abandoning law. Engagement with law has been an emancipatory aspect of the women's movement. And though the potential of law in securing justice for women is limited, abandoning the legal terrain altogether would mean giving up an important discursive site.\(^4\) The women's movement has won
many victories through law, such as reasserting the legal equality of women, and securing rights for women as guaranteed by the Constitution.

One of the most controversial concerns of gender justice in India can be found in the debate over the uniform civil code (UCC). This debate over the formulation of a uniform code of family law in India has revealed the limits of the legal discourse, centred on the notion of rights. I have examined this debate in chapter five. The issue of UCC was introduced in national politics as the debate between a secular state and communal politics. However feminists have uncovered the gender-justice aspects in the debate. Their concern is with justice for women within different personal laws. The discriminatory nature of Muslim personal law was brought to the forefront by the Shah Bano case, which I have discussed in section two of chapter five.

The judgement on the Shah Bano case and the ensuing controversy raised a set of inter-related questions for the women's movement and the Indian polity. In Indian politics, the Shah Bano case coincided with the Hindu fundamentalist demands of building a Ram temple at Ayodhya in place of the Babari Masjid. Both these issues came to be seen as an attack on the Muslim minority. The community, which saw itself under threat from the
majority, tried to reassert its identity and one of the means was to secure its control over its women. Thus not only was reform in the Muslim personal law denied, but with the passing of the Muslim Women's Bill, Muslim women were excluded from the purview of maintenance on divorce under section 125 of the secular Criminal Procedure Code.

Concerns for gender justice in the debate over the UCC have been impaired in two ways. Firstly, the Hindu communal forces have usurped the demand for a UCC. They argue that under the garb of secularism, the Indian state has been appeasing the minority communities — especially the Muslims. Thus they demand the implementation of a UCC as promised by the Constitution. However the Hinduatva demand for a UCC reflects, not even in a distant manner, the feminist interests in the UCC. The concern for women's discriminated and disadvantaged position within the personal laws is made invisible by communal politics. This has resulted in the feminists now suggesting secular, gender-just alternatives to the UCC. Some of these alternatives include compulsory common code, reforms within the personal laws and reverse optionality (chapter five, section four).

Secondly, women's claims to rights are constrained by a tension visible in the Constitution itself. One the one hand, the Constitution guarantees equal
rights to all citizens, including the guarantee of equality before law and equal 
protection of laws. On the other hand, however, it also guarantees collective 
rights to a community, which include freedom to pursue religious practices 
(personal laws being one of them). Though on the face these two guarantees 
do not seem to be contravening each other, the Shah Bano controversy 
showed how the rights of women can be compromised to preserve the 
identity of the community. The status of women as equal citizens, holding a 
set of inalienable rights as guaranteed by the Constitution, is made 
subordinate to their membership of a community. This points to the pre­
eminence of community identity over the gender identity. Moreover it also 
shows that community identity is created and maintained through its 
women, so that any attempt to shift the women's position is seen as a threat 
to the community. This leads me to the argument that I have brought up at 
many places in the study, that there is a close relationship between gender­
based and community-based injustices and oppressions. There is some sort 
of a vicious circle between communalist politics and gender injustice with 
one leading to the other.

In examining the debate over the reservation of seats for women in 
legislative bodies (chapter six) I tried to show how caste and class 
calculations have been used to stall women's rights. My examination of the
issue of reservation for women as a question of justice for women was premised on the consideration that women’s exclusion from the decision-making process, or the political sphere, is an important form of gender injustice. As I showed in chapter two, social justice requires that all citizens must have a fair equality of opportunity to occupy public offices and positions of power. Thus while the enabling of political participation of women is constitutive of gender justice, a fair equality of opportunity for women calls for positive discrimination in favour of women. Such a positive discrimination is required in the form of reservation of seats.

As discussed in chapter six, the debate over the reservation of seats for women revolves largely around the WRB, which proposes to reserve 33 per cent seats for women in the Parliament and state assemblies. The WRB is based on the logic of reservation for the STs and SCs, provided by the Constitution as a compensation for historical disadvantage and discrimination that these groups faced. The feminists demand that since women as a gender have also been disadvantaged and subordinated, there should be some affirmative action favouring women with regard to public positions.
Having examined some important arguments in favour of and against the WRB, I have argued that the concerns for gender justice in the debate largely revolves round the following: one, exploring how and to what extent the caste/class affiliations affect women’s rights, and two, examining the possibility of identifying ‘women’ as a category for reservation.

Caste has been identified as a highly hierarchical structure through which control over women was made easy. The pre-eminence of caste identity is seen in the debate over the WRB, where the WRB is seen by the spokesmen of lower castes and classes as a means employed by upper-caste parties to change the caste and class composition of the Lok Sabha, which is presently dominated by lower caste and backward class representatives.

It is my submission that in this debate too women are not viewed primarily as ‘women’, but as members of one or another caste or class. This idea is shared by the upper caste/class parties like the BJP and the Congress, which favour the Bill, and by the backward class leaders opposing the Bill. This takes me to the next question: should ‘women’ be considered a category by itself for reservation?
Presently, most feminists reject any idea of a homogenous category of ‘woman’. Women, we are rightly reminded, are subject different types and degrees of inequalities and oppressions in different castes, communities and classes. This cannot be denied. Yet I feel, we need to recognise that the disadvantages, oppressions and injustices, which women suffer differently in different contexts have invariably to do with their sex. Therefore from a feminist standpoint, ‘woman’ needs to be taken as a basic category in relation to all form of gender injustices and oppressions. This is not to negate the differences and particularities of inequality and injustice experienced by women under different conditions. It is rather to enable the uncovering of patriarchies and the ending of gender oppressions within each patriarchal arrangement. The gendered structure of each and every patriarchal institution needs to be addressed. In other words as justice between groups is important, so is justice within each of those groups.

Since gender, unlike sex, stands for a relation of domination/subordination, it has to be addressed as such wherever it exits. However since women’s experiences of deprivations and oppressions vary substantially from culture to culture and from class to class, a gender-sensitive approach to social justice has to be an approach that recognises such differences.
NOTES AND REFERENCES


5 Refer Uma Chakravarti, ‘Conceptualising Brahmanical Patriarchy’.

6 This argument is based on the assumption that most women entering the Parliament as a result of reservation would be from the upper caste/class.