Chapter 1: Women and Justice: An Introduction

1.1: Some Introductory Notes on Gender-justice in Political Theory and Political Practice

In this study I seek to understand and explain how gender-justice is addressed in Indian politics, especially in the Indian Women’s Movement (IWM), and in some major works in contemporary political theory. This involves mapping and understanding the reciprocal relationship between IWM and feminist theory. The development of feminist theory and practice has been parallel and reciprocal. Issues of discrimination against women have raised formidable questions for social and political theory, which in turn have guided or informed the women’s movement.

Accordingly, in my study, I attempt on the one hand, to examine some feminist interventions in mainstream political discourse and on the other to study some issues raised by the IWM concerning justice for women. My central concern or objective is to bring out some key elements of a gender-sensitive conception of justice. I would try to examine if the concept of justice as understood in mainstream political discourse can adequately address the question of justice for women or if we need to go beyond this
understanding of justice and redefine it so as to encompass women's interests and needs. In this introductory chapter I shall indicate the nature and importance of the topic of this study. I shall then indicate the scope, specific objectives and organization of the study.

Women in India, as in other countries, experience gender-based discriminations and injustices. The extent and gravity of this problem are evident from the fact that there is hardly a day when the print and electronic media do not carry some news about the atrocities against women. Such atrocities include rape, harassment for dowry, female foeticide, sexual harassment, domestic violence and the compromise of individual citizenship rights by the women. Women all over the world have experienced, as Martha Nussbaum notes, that their dignity as humans "is frequently violated on the grounds of sex or sexuality. Many women all over the world find themselves treated unequally with respect to employment, bodily safety and integrity, basic nutrition and health care, education, and political voice. In many cases these hardships are caused by their being women, and in many cases laws and institutions construct or perpetuate these inequalities".

Atrocities on women have raised important and formidable questions for some of the principles of justice. Such gender-based exploitation is in grave
violation of the rights of freedom, equality, security and justice guaranteed to all citizens by the Indian Constitution. While at one level these unjust or discriminatory practices mark a departure from or violation of the Constitutional provisions, at another level, they reflect the unsatisfactory status or condition of our systematic or theoretical knowledge about the various dimensions of a gender-sensitive conception of social justice.

A growing number of feminist critics in India and the west are bringing out the gender-biases in mainstream political theories, including the theories of justice. Hence any student of political theory interested in issues of gender-justice cannot ignore the feminist interventions in political theory. One also cannot overlook the lack of adequate gender-sensitivity or gender-fairness in the interpretations of the various provisions of justice and equality embedded in the Indian Constitution. In this way and as mentioned above, the question of gender-justice is a question to be addressed by both political theory and political practice. It is for this reason that I, in my study, deal with the question of gender-justice both at the theoretical and at the practical levels. I seek to argue that gender-justice needs to be addressed at both these levels. Therefore in this study, I devote chapters to the study of feminist interventions in mainstream political theory and to the practice of feminism in India, that is, the issues addressed by the IWM.
Feminists have attacked the mainstream political discourse for being exclusionary towards women. Gender-bias is clearly visible in much of political discourse, as women are either absent, or present in a position of subordination. There are various aspects of this exclusion and subordination. Women were excluded from political theory and practice on account of their emotional and intuitive dispositions. It was assumed that these dispositions, unlike the 'rational self' of men, make women 'inherently unsuited' for political activity. Moreover mainstream theory identifies the family as belonging to the private sphere, which is then excluded from the public-political space. As a result of this distinction between the public and the private, most issues of inequality and injustice towards women, which have their origin in the family remain outside the scope of political theory.

The inequalities of the family or the private sphere get translated into sex- or gender-based discrimination against women when they enter the public-political sphere for education and work. The recognition of this discrimination, by both feminist theory and women’s movements, has resulted in the question of justice for women acquiring increasing importance in today’s world. Women’s movements across the globe have raised and addressed issues of discrimination, exploitation and inequalities of women, both within the family as well as outside it. Similarly feminist theory
has, in the light of these developments, engaged in uncovering the bases for this of subordination on the basis of sex. With the identification and theorisation of such concepts like ‘patriarchy’, ‘sexuality’, ‘gender’, ‘reason/emotion’, ‘public/private’ and ‘universal/particular’, feminist scholars have been able to analyse and explain the complexity of women’s subordination.

Feminist theorists and activists have also argued that some important political concepts are exclusionary towards or biased against women. They point out that concepts like equality, justice, rights, citizenship, etc. have been defined exclusively with reference to male experiences and interests. Hence justice for women would require a redefinition of these concepts. In fact there are some fascinating feminist re-readings of the entire body of political theory. ³

Feminists have thus intervened in mainstream political discourse in three important ways. Firstly, they have criticised the mainstream discourse for its gender-insensitivity or gender-bias, which makes difficult the prospect of justice for women. Secondly, feminists have pointed out that mainstream political discourse is limited in addressing issues of justice for women because the most important experiences of women have been excluded
from this discourse. For instance, child-bearing, child-rearing, homemaking and caring for the aged have not attracted the attention mainstream political theorists. Hence as feminist theorists point out that mainstream political theory does not contain women-related concepts such as family, sexuality and patriarchy. Finally, feminist interventions have included suggestions of alternative versions of some important political concepts like equality, rights and citizenship. It has also been suggested that an ethic of care is a feminist alternative to justice-centred political theory.

As mentioned earlier, an effective redress of injustice towards women needs endeavours both at the level of theory and at the level of activism. In an attempt to understand the various aspects of discrimination and injustice faced by Indian women and the complexity of this injustice in the light of the developments in Indian politics, I undertake, in this study, an examination of some issues addressed by the IWM.

As I shall depict in this study, the concern for women’s issues arose as a part of the indigenous response to the colonial onslaught. The ensuing debates, which duly constructed new images of ‘woman’ and ‘womanhood’, have shaped the discourse on culture, society and politics in independent India as well. The question of gender has remained overwhelmingly important right
from the social reform movement wherein concern for women is quite visible. The woman’s question also figured prominently in the agenda of nationalist movement, and has come up repeatedly in the political debates in post-Independence India as well.

Early feminists argued that the disadvantage women face as women can be addressed by recognising the inequalities between the sexes, or that crimes against women like rape or sexual harassment were expressions of mere male domination. However it was soon recognised that the disadvantages faced by women was not only a result of inequalities of power between the sexes but had also to do with oppressions based on caste, religion, class, etc. In other words, gender injustice or gender-based oppressions are intermeshed with divisions and discriminations between castes, classes and religions. Therefore some feminist activists and theorists have pointed out that the struggle for gender justice had to take into consideration the operation of multiple patriarchies, namely the patriarchies of caste, class and religious community. Therefore in addition to the State, the civil society also becomes a crucial site of struggle for gender justice. Nonetheless, the IWM has sought State intervention on such issues as rape and dowry, and citizenship rights, which needed to be addressed by law and legislation.
While calling for reforms in laws, the IWM has also questioned the patriarchal nature of rights and citizenship and the patriarchal culture of law and adjudication. Thus one of the arguments of the feminists was that women's rights should not be collapsed into the question of law or legislation on the assumption that the legal system is secular or gender-neutral. The legislations and reforms in law were a result of the protests and insistence from the IWM. However, as I shall demonstrate in the following chapters, the emancipatory impact of these legislations is limited because the concept of justice underlying the legislations has remained confined within a patriarchal perspective.

The main endeavour in my study then, as mentioned above, is to analyse the patriarchal nature of the institutions of the society and the state as exposed by the IWM and by the Indian feminist scholars. This analysis would be undertaken in conjunction with a critical evaluation of some important feminist interventions in political theory.

1.2: The Literature on Feminist Justice and the Indian Women's Movement

Feminism does not derive its theoretical or conceptual base from any single formulation. This is evident from the existence of different kinds of
There are varieties of feminisms because, as Nussbaum observers: “Feminism begins from the real lives of women, and the lives of women are highly varied”. Though earlier feminism was identified as western in origin, feminist literature has also sprouted from developing countries, providing a new dimension to the study of women’s oppression and the redress thereof. Thus in my study I have dealt with both the western and Indian contributions to the theory and practice of gender justice.

There is a range of literature available on various feminist critiques and interpretations of mainstream political theory. A lot of work has been and is being done to expose the absence of women or their disadvantaged position in political theory. The literature that I have used for this study relates to the following: the feminist critiques of mainstream political theory in general and of Rawls’ theory in particular; the literature on the Indian Women’s Movement, historical and analytical; on the Constitution and law; and the literature on the debates surrounding the UCC and the reservation of seats for women in the legislative bodies.

The western critiques include those by major contemporary feminist theorists like Susan Moller Okin, Diana Coole, Jane Flax, Catharine Mackinnon, and Carol Gilligan. I have also borrowed ideas from Mary
Deitz, Elizabeth Kiss, Will Kymlicka, Chantal Mouffe, Kathleen Jones, Anna Jonnasdottir, Iris Marion Young, Carole Pateman, Jean Bethke Elshtain, Diemut Bubeck and Martha Nussbaum.

The Indian feminist critiques which I found to be important and which are relied upon in this dissertation, include those by Nivedita Menon, Zoya Hasan, Uma Chakravarti, Kumkum Sangari, Flavia Agnes and Madhu Kishwar. For the literature on the history of the IWM I have mainly depended on the works of Radha Kumar, Geraldine Forbes, Neera Desai, J.M. Everett, and Nandita Shah and Nandita Gandhi. For understanding the impact of law and legal process on women I have relied on the writings of Flavia Agnes, Ratna Kapur and Brenda Cossman, Archana Parashar and Anjali Kant. In understanding the theoretical dimensions of the oppression of women in India I have also greatly benefited from the works of Uma Chakravarti, Kumkum Sangari and Sudesh Vaid, Lata Mani, Partha Chatterjee, Susie Tharu and Tejaswini Niranjana. Their insightful analyses of the various patriarchal practices have been helpful to me in gaining a proper understanding of the complex processes that hinder justice for women in India.
1.3: Objectives and Scope of the Study

One of the main objectives of my study is to examine, from a feminist perspective, the silences and deficiencies in mainstream political theory, especially the theory of social justice, and also to assess some of the feminist attempts to overcome those silences and deficiencies. I shall be paying attention to both Indian and western feminist perspectives. In the following chapters I shall try to argue why and how the concepts like equality, justice, rights, citizenship, etc. must be defined not with exclusive reference to male experiences and interests, but with reference to female experiences and interests as well.

Another related main objective of my study is to critically examine how gender justice is addressed in the IWM (both in pre- and post-Independence periods), the Constitution, and the laws pertaining to rape, dowry, the personal laws of different religious communities and the reservation of seats for women in legislative bodies. The overall objective of my study is to argue the need for and to define, at a preliminary level, some key features of a gender-sensitive conception of justice.
The salient features of my thesis are as follows:

- Bringing out the importance of and need for gender-justice for a good society.

- Select feminist critiques of and correctives to mainstream political theories, with special reference to Rawls' theory of social justice.

- Examining the claims of the ethic of care as a feminist alternative to justice-centred political theory.

- Some feminist reconceptualisations of such political concepts as equality, rights and citizenship.

- Examining some issues of gender justice raised and addressed by the IWM, both before and after Independence.

- Bringing out the strengths and limitations of the gender justice provisions of the Constitution.

- Examining the role of law in addressing issues of justice for women.

- Examining the inter-relationship between gender oppression and different patriarchal institutions within castes, classes and religious communities.

Having indicated the objectives of my study above, I must add a word about some of the limitations of my study. In order to keep the study within manageable limits I have not gone into the origins of feminist movements
and theorisations, say in the writings of Mary Wollstonecraft, Virginia Woolf, Simone de Beauvoir and Simone Weil. I have restricted the scope of the study to include more recent feminist theorists within India and the west. Another limitation of my study is that I have not looked into the specifics of the regional variations of the women's movement in India.

1.4: Organization of the Thesis

In the next chapter (Chapter 2) I analyse the problem of gender justice in political theory and political practice. I shall discuss some important feminist critiques of mainstream political theory, particularly Rawls' theory of social justice. I analyse the ethic of care as propounded by Carol Gilligan and others, and examine if the care theory could be a viable feminist alternative or corrective to theory of justice. I shall also discuss some of the feminist revisions of the concepts of equality, rights and citizenship, and some feminist theorisations like 'patriarchy', 'sexuality', 'family', 'gender', 'public/private' and 'universal/particular'.

In chapter three I study the origin, growth and development of the IWM in pre-Independence India, and examine some issues of gender justice raised during this period. I examine how and to what extent the social reform and
the nationalist movements addressed the issue of justice for women. I also briefly examine the impact of two simultaneous processes at work during this period: the education of women, a domain from which the Indian women (along with the Shudras) had been excluded, and the formation of women's association, which bred leadership qualities in women. The contributions of Gandhi to both the women's movement and a gender-sensitive political theory are also brought out in this chapter.

The fourth chapter is devoted to a critical examination of some gender justice provisions of the Indian Constitution and law. After a brief survey of the IWM in post-Independence, I analyse the issues of dowry and rape as specific cases of gender discrimination and sexual violence, and examine the implications of some of the reforms in laws regarding rape and dowry. I also critically analyse to what extent do the Constitutional provisions of gender justice and of law address the question of gender-justice in India.

One of the major concerns of justice for women in India today has to do with problem of rights and citizenship, which has come to the forefront in the debate over the Uniform Civil Code (UCC) and which I examine in the fifth chapter. The Shah Bano case gave rise to a number of concerns for the feminists. Accordingly, I shall analyse the complex relationship between
gender, religion, secularism and citizenship. I shall also discuss some feminist alternatives to UCC. The main attempt in this chapter would be to show the interconnected nature of gender-based and community-based oppressions and inequalities.

In chapter six I examine the debate surrounding the reservation of seats for women in legislative bodies, and the proposed Women's Reservation Bill (WRB). After an introduction to the debate, I briefly discuss the political culture of India and its implication on the political participation of women. Backing the demand for seats for women in legislative bodies are two amendments providing similar reservation for women in bodies of rural and urban governance. Accordingly I would analyse women's participation and their experience as a result of the 73rd and 74th Amendment Acts. I also enquire into and examine the present-day debate surrounding the Women's Reservation Bill (WRB) and the feminist concerns in the debate. In the light of this debate I finally analyse the inextricable connections between caste, class and gender concerns.

In the concluding chapter (Chapter 7) I shall summarise my main findings and arguments about how gender justice has been addressed in mainstream political theory and in the women's movement in India. In the light to these
arguments, I shall present some features of, what in my view would constitute a gender-sensitive conception of justice.
NOTES AND REFERENCES

1 My use of the term IWM does not intend to suggest that the women’s movement in India has been monolithic. Nevertheless I use the term IWM as a convenient broad rubric to cover all the women’s movements in India. In this study, I have used the term IWM very broadly and loosely.


3 Refer, for instance, Diana Coole, ‘Re-reading Political Theory from a Woman’s Perspective’, *Political Studies*, Vol. 34, 1986.


6 Martha Nussbaum, *Sex and Social Justice*, p. 6