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Deconstructing Gender Equality: A Jurisprudential Critique of Rights and Social Justice

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ABSTRACT

This essay critically examines the concept of gender equality from a jurisprudential perspective, addressing its limitations and structural challenges within legal and societal frameworks. It explores the foundations of gender equality in the Indian Constitution, its alignment with international human rights principles, and its categorization as a second-generation right requiring state intervention. Drawing parallels with caste-based inequalities, the essay critiques the inadequacies of the current legal framework in addressing the patriarchal and social constructs that perpetuate gender hierarchies.

*Incorporating insights from Angela Saini's *The Patriarchs: The Origins of Inequality*, the essay delves into the historical and anthropological roots of gendered oppression, revealing how laws, customs, and capitalism have entrenched male dominance. John Rawls' *Veil of Ignorance* is employed to propose a fair and impartial framework for justice, advocating for substantive equality over formal equality. Inspired by B.R. Ambedkar's vision of dismantling caste and social hierarchies, the essay calls for transformative legal and social reforms to render gender identity obsolete, ultimately envisioning a society rooted in true equality and justice.*

Keywords: *Class and Gender, Feminist Jurisprudence, Gendered Oppression, Marxism, Genderless Society.*

Although not an explicit constitutional right in the Indian context, traces of 'Right to Gender Equality' can be seen in Articles 14, 15, and 16 of the chapter on Fundamental Rights. Article 243D(3) directs that at least one-third of the total number of seats in every Panchayat shall be reserved for women. Countless Fundamental Duties and DPSPs also inculcate the same ideology much more brazenly, although their applicability is little.

Gender Equality became an integral part of international human rights law when the UN General Assembly adopted the Universal Declaration of Human Rights in 1948, just in time to be an important supplement to the Indian Constitution. According to The UN Entity for Gender

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Equality and Empowerment of Women, Equality between women and men (gender equality) refers to the equal rights, responsibilities, and opportunities of women and men and girls and boys. Equality does not mean that women and men will become the same but that women's and men's rights, responsibilities, and opportunities will not depend on whether they are born male or female. Gender equality implies that the interests, needs, and priorities of both women and men are taken into consideration, recognizing the diversity of different groups of women and men. Gender equality is not a women's issue but should concern and fully engage men as well as women. Equality between women and men is seen both as a human rights issue and as a precondition for, and indicator of, sustainable people-centered development.²

Evidently from this definition, this right to equality is one belonging to the second generation of rights. Rights of this nature require enabling provisions from the government for its exercise. Genders are not naturally equal. The state is required to aid the weaker genders so as to bring them at par with the well-established ones.

The development of such a right can be traced back to when the difference between genders began to be recognized. The difference was in the concept of gender; it was a socially corresponding identity to one's sexual characteristics.

The way I simplify it, (the issue of) gender arose is through the consideration of gender or sex, as used in the Indian Constitution, as one of the discrimination bases. Marxist Feminism presents the concept of gender as a class. Since jurisprudential study requires labels to be placed with the utmost intent and understanding, The Marxist definition of a class society under capitalism describes how one class controls the means to produce goods. Wealth accumulates to this small group of owners because they hold what Marx calls the means of production – the elements that harness profit. All of these facets are privatized, all of them owned, since private property anchors a class society. In addition, that ownership class dictates how everyone else can use these resources.”³ It's the way patriarchy works basically. The patriarchal norm was a result of gendered socialisation.

Angela Saini's *The Patriarchs: The Origins of Inequality*⁴ holds a historical and anthropological account of how civilization was not inherently gendered. States imposed gendered laws and human classification, slavery shaped patrilocal marriage, empires induced gendered oppression

² OSAGI Gender Mainstreaming - Concepts and Definitions (no date) United Nations Women. Available at: <https://www.un.org/womenwatch/osagi/conceptsanddefinitions.htm> (Accessed: 20 December 2024).

³ Armstrong, E. (2020) 'Marxist and socialist feminisms', *Companion to Feminist Studies*, pp. 35–52. doi:10.1002/9781119314967.ch3. Available at: https://scholarworks.smith.edu/cgi/viewcontent.cgi?article=1014&context=swg_facpubs

⁴ Saini, A. (2024) *The Patriarchs: The Origins of Inequality*. London: 4th Estate.

to most of the world, capitalism widened gender inequality, and religions and customs continue to be used to engineer the idea of male dominance.

The Fundamental Right to Equality lists out specific grounds of discrimination including race, sex, class, and caste in Articles 14, 15, and 16 of the Constitution. All these criteria have the common feature of classifying humans into pigeon holes based on man-made conceptions. Gender, just as class, is the relationship between the oppressed - female and the oppressor - male. "Gender and racial issues are often compared to class, but gender and race struggles have their own material bases in society distinct from class, but exist within the class structure... The struggle of gender and race are critical political and social issues because without these struggles and victories there can be no real unity between workers. Unity is imperative for workers to free all humanity from exploitation, so long as workers are divided, we will continue to be conquered."⁵ Thus, gender is not so far from a class/caste system. The right to equality is meant to reverse the damage of the ramifications of these discriminatory concepts.

John Rawls' thought experiment, The Veil of Ignorance, discussed in his preliminary work, *A Theory of Justice* is an exemplary solution to societal inequality. John Rawls proposes a fair procedure for defining justice through the concept of the "Original Position," where individuals choose principles of justice without knowing personal details about themselves, such as wealth, race, or status. This "veil of ignorance" ensures impartiality and unanimous agreement on just principles. This is assured as people, unaware of their own circumstances, will not support measures that benefit them at the expense of others. Instead, they will select ideals that are fair and equitable for all. Essentially this method is forgetting societal differences including gender.

B. R. Ambedkar, father of the Indian Constitution, in his book titled *The Annihilation of Caste*, strongly opines on the injustice caused to women and society at large by the Hindu propagation of caste. A staunch believer in constitutionalism as well as liberalism, Ambedkar wanted the objectives of the Indian Constitution to be 'to remove social, political, and economic inequality by providing better opportunities to the submerged classes,' and 'to make it possible for every subject to enjoy freedom from want and freedom from fear'.⁶ This removal of inequality can only truly be achieved through desuetude of identification and concurrence to such terminology.

The caste system, the Indian manifestation of class society, theoretically holds no value in society today but in the reservation for opportunities. This upliftment of the weaker classes

⁵ *Glossary of Terms: Cl.* Available at: <https://www.marxists.org/glossary/terms/c/l.htm> (Accessed: 20 December 2024).

⁶ Ambedkar, B.R. (2014) 'States and Minorities', in *Dr. Babasaheb Ambedkar: Writings and speeches*. Dr. Ambedkar Foundation, p. 387. Available at: https://www.mea.gov.in/images/attach/amb/volume_01.pdf.

generally provides a temporary aid to bring all into a leveled entity. Reservation provisions to SC/ST and Backward Classes abound within the Constitution. This benefit is only installed until caste background does not affect the socioeconomic status of citizens. In other words, abolition of caste to form what Marx would call a classless society is the goal.

The addition of the label "socialist" to describe the nature of the country in the Preamble implies the stage of Marx's Historical Materialism India is presently at. Socialism is the penultimate stage in Marx's theory followed by Communism, that is, absolute classless society. If the ultimate goal of caste and class reservation is its eradication, gender, a class itself, should also strive for the same ends. Gender equality as a right is poorly developed as is its misleading name. Attaining equal status for all genders is a step below the ideal, wherein gender identity as a concept is obsolete. How can we as a society be prepared for a genderless society without even recognizing it as the end?

The exploitive class population of gender is larger spread in comparison to that of race and caste hierarchies. This makes its resistance ironclad and difficult to persuade to give up their power. It is the patriarchy that blinds the society to the real nature of gender which is an apparatus of class. This right has been worded foxily to halfheartedly meet the demands of the feminist movement. Patriarchy, by and large, dominates the discourse about struggles with gender and overshadows the ultimate objective of getting rid of the construct of gender as such. The concept of equality demands dismantling of patriarchal systems, gender, and the notion of gender equality, that upholds the same structures it proposes to reform. Only in a world beyond the very concept of gender can a society be founded on social justice.

The Right to Gender Equality, is far from social expectations since it is only possible through intervention of the state and it fails to shake off the deeper structural roots of patriarchy. The current legal framework as found in Articles 14, 15, and 16 of the Indian Constitution makes more room for formal equality and fails to address the social constructs which give rise to gender hierarchies. Unlike other rights, such as the Right to Caste Equality, that have a more structured intervention through reservations and affirmative action, gender equality lacks a clear roadmap to eliminate the concept of gender as a discriminatory class. The principle of substantive equality needs to be applied, with an outcome focus rather than a mere opportunity focus. This would include not only the temporary aid of reservations but a reshaping of social norms and legal structures so that gender identity is redundant, just as the dream is of an eradication of caste differences. These changes could be folded into the legal and social structures and brought one step closer to that end where society's needs do not include gendered rights.