



Book Review

Gender Justice and the Law

Shilpi Roy Chowdhury*

Elaine Wood (ed.), Gender justice and the Law: Theoretical Practices of Intersectional Identity, The Fairleigh Dickinson University Press, UK, 2021, pp.286+xviii

ISBN 9781683932390

The book titled *Gender Justice and the Law*, takes a plunge into the depths of intersectional identities. It has twelve articles covered in three sections. The sections are titled *praxis and policy*, *policing bodies*, and *activist politics of resistance*. Through each section, the reader is exposed to the substantive and formal inequalities in the law and society. It posits the rights available to gendered intersectional marginalities and the way such rights are applied and realised. This voluminous work is an eye opener for every reader, insofar as understanding that laws and justice do not exist in binaries. There is no guarantee that just because a law exists, it is fair, or even if it is fair, that it will be justly applied. We have made long strides in reforms for gender justice, but our flaw is in viewing women as a homogenous group, with homogenous experiences. The book exposes the variety of ways in which different women face different discriminations, making each experience unique, and thus ill-suited for the one-size-fits-all formula for achieving equality and justice.

Praxis and Policy

Praxis means practice or custom. This section illustrates how, in spite of reformative and corrective measures within the legal

* CHRIST (Deemed to be University), Bengaluru; shilpiroy.chowdhury@christuniversity.in

systems, the marginalised sections (especially gendered marginalisations) have not been sufficiently eradicated. Through the four chapters in the section it has been demonstrated how legal reforms have been introduced in various jurisdictions for women facing multiple marginalisations, and how these very systems of reform have further marginalised these women. The common theme emerging here is that the reforms, though well intentioned, are constructed without stakeholder participation. These welfare laws are drafted by persons who do not entirely understand the situation of the marginalised groups, and end up being very patronising. Praxis ends up not achieving the goals of the policy.

Arunita Das, in her chapter *Constructing criminality: R v Gladue, intersectionality and the criminalisation of indigenous women*, focuses on a Canadian law which sought to reform the way indigenous women are tried in court. The law sought to improve the method of sentencing for indigenous women who had been charged with crimes. As per the law, the judges were to take into account their background and upbringing, their 'unique history and experiences of oppression' (2), and only then sentence them. This was supposed to improve the condition of indigenous women facing incarceration in Canada. However, it resulted in over incarceration of indigenous women and left them worse off than they were prior to this criminal amendment. The author here takes the example of the *R v. Gladue* case to expose how this law actually operated. The court viewed the indigenous woman through a whitewashed, colonial lens, and actually gave her a tougher sentence than they would have given a white woman (5). The author's contention here is that even if there is a law to protect indigenous communities, the police and the judges make an assessment of these women through their own understanding of what marginalised indigenous women should be like. Their view of a victim is that of a helpless woman, rather than

someone who is aggressive. Allowing for the adoption of a white male's construction of victimhood and violence is a very dangerous precedent to set, because this exact practice continues as racial profiling outside of the legal system anyway. To allow it to formalise and crystallise might undo any progress made for the upliftment of indigenous communities.

Laura Lane-Steele in the chapter titled *Losing custodial mothers in child support reform*, examines problems faced by custodial parents. The primary focus in this chapter is on mothers who have custody of their children. The limitations are that the issues examined here are of heterosexual couples only, and within those couples, of those cases where the mothers have custody, and the fathers need to pay child support. The chapter observes that the state generally has good enforcement mechanisms when it comes to payment of child support. If the noncustodial father defaults in payments, the state is able to deduct the amount owed directly from their salaries (27). However, these mechanisms only work in the case of middle to upper class people. Such an enforcement mechanism fails miserably when it comes to persons belonging to lower income classes. Even when the state punishes the non-custodial father for non-payment of child support, the custodial mother is the one who ends up bearing the physical, mental and financial cost of child rearing, with no support from the state. The chapter makes suggestions as to how best to resolve this issue, and make child support violations more reformative and rehabilitative rather than retributive. Only through reformative and rehabilitative approaches can the custodial mothers be truly helped with their burden.

The chapter titled *Justice, gender and caste: a case for dalit feminist testimonio*, authored by Lissa Lincoln brings forth the problems of homogenising feminist theory. The author argues that feminism has usually portrayed the voices of only those who

have the most access to power. According to the author, even feminist literature does not adequately capture the experiences of dalit women. During the struggle for universal adult suffrage in America, something similar was observed. Slavery had been abolished, and black people were just starting to experience their freedom. White feminists at the same time started the fight for universal suffrage. When black women tried to join this fight, their white counterparts distanced themselves from the black women, fearing that the presence of the latter would undermine their efforts. This example very sharply brought into focus that all women do not have the same experiences, even though they may be of the same gender. To say that feminists in India represent and struggle for all women would be incorrect. The point of focus of this article is that even in literature, only those voices are visible and legible who hold more power. The author here is of the opinion that poetry then has started to become the space for dalit women to voice and lay bare their experiences, since prose has been monopolised by either savarna feminists or dalit men.

Shirley Lin in her chapter *Dehumanisation "because of sex": the multiaxial approach to the title VII rights of sexual minorities*, demonstrates the intersectionality of experiences of discrimination, and how the law's and legal system's narrow construction of Title VII rights distances gender and sexual minorities from justice. This article demonstrates that even though Title VII of the Civil Rights Act of the USA entitles a person to not be discriminated against on the basis of their sex, this protection only extends to the binary classification of sex (66). Further, the courts interpret sex to also include sex stereotyping, but again only extend that protection to binary categories. The author here analyses Title VII cases and establishes that even the progressive judgments ultimately operate on a theoretical basis of the binary of gender. Lin proceeds to then propose a multiaxial approach in determining

Title VII claims of sexual and gender minorities (71). She concludes that by viewing discrimination through multiple lenses of the individual self, the harasser, the society, and the state, the justice delivery may be far more holistic.

The common thread through this section is the gap between theory and practice. Every article herein identifies either a law or a feminist legal theory, and analyses how each of these laws, theories or doctrines have come in the way of the very marginalised group they were created to serve. The laws which are created for bridging the gap between praxis and policy end up being the perpetrators of the divide.

Policing Bodies

Christin M. Mulligan, in *Divorce ruling without consent: gender, penal law and faminised body in Nuala O'Faolain's my dream of you*, explains how faminisation is akin to feminisation. This is explained through the example of the Irish Famine. When Ireland was hit by the Great Famine of the 1840s, it lost its autonomy, much like women do in patriarchal societies. Ireland also had a loss of autonomy because it was colonised, and famines are caused not as a result of food shortages, but as a result of political decisions. The author examines Nuala O'Faolain's historical novel titled, *My Dream of You* (93). She explains the relation between gender, colonisation and colonial laws, and faminisation through the eyes of the narrator of this book. The author draws out the paternalistic nature of laws drawn up by the English which adversely affect non-English women. The contention laid here is that colonial laws erased the voices of women in the nineteenth century. Christin Mulligan employs Athena Athanasiou's '*aporetic dispossession*' to display that women were dispossessed through colonial laws (93). The nature of the laws also led to logical disjunction from rights women had, which in turn kept women very far away from justice. Mulligan takes an instance from the life of the narrator of O'Faolain's novel to explain how non-Anglo

women would 'other' themselves, thus contributing to and continuing the distancing from their rights (97).

The scope of the article is limited to Ireland. However, the readers of this review, sitting in India, are well aware of the effects of colonial laws on Indian penal and personal laws. The article could very well be describing one of our grandmothers and her ordeals under colonial rule.

Rebecca Smyth traces the evolution and current form of sexual and reproductive health rights (SRHR) in international human rights law through the chapter titled *Gender and justice in international human rights law: the need for intersectional feminist approach to advance sexual and reproductive health and rights*. Using a discursive approach, she explores how SRHR currently appears in regional systems, particularly focusing on the European, African and inter-American regional human rights mechanisms (116). Sexual and reproductive health rights are still a nascent group of rights, which is amply reflected in the various regional human rights regimes. SRHR discourse first started emerging around the middle of the twentieth century, more as a necessity for population control than as a human right. However, with the passage of time the discourse shifted to a rights-based approach after transnational feminist groups drew focus to SRHRs. Till about 2010, SRHR have largely been treated as a women's rights issue. Only post 2010 has it expanded to include LGBTI rights as well. The adoption of these rights into the domestic legal systems has been choppy, and according to Smyth, American countries have been more receptive to SRHR than their European counterparts. The chapter emphasises on the need for substantive rather than formal equality approach to be adopted in domestic regimes in order to better realise SRHR as a human right (128).

Lisa Beckmann, through the chapter titled *"Like cats and dogs in the streets": disability and sexuality in the eugenic legal imagination*, brings to the fore the discrimination faced by disabled people

who experience sexuality. Just like with gender, there are societal stereotypes associated with persons with disability, and any digression from these stereotypes have been met with a heavy hand. This has been either in the form of pathologising of their sexuality, or ostracism, or even resulting in punitive action against the disabled persons. The author here particularly focuses on the eugenics movement in early 20th century America, which imposed very harsh rules on persons with disabilities and their right (or lack thereof) to sexuality (146). American eugenicists were quick to 'other' disabled bodies by positing economic and financial arguments against them. Their stance on the right to sexuality of disabled persons was simple; they should not have any desire to express their sexuality. If they do wish to procreate, they should not be allowed to do so as it would be a huge economic burden on the country. Another worry was that disabled persons would beget disabled children, thus ruining the good 'strains of blood' in the country (147). This invariably led to whitewashing of the concept of a 'normal body'. A 'normal' person's image became that of a white and college educated person. The chapter further delves into the origins of eugenics and the misplaced understanding of how disability occurs. The weight of discrimination against disabled persons was borne more heavily by disabled women, as they faced far more stripping of autonomy (150). A lot of disabled women were committed to institutions, and in order to avoid pregnancies and monthly periods, these institutions routinely removed their reproductive organs (155). The discrimination became more severe along with the stereotypes as mental disabilities started being more misunderstood. The testing mechanisms were context-inappropriate, resulting in higher numbers of misdiagnoses. Further, the doctors' reports were extremely paternalistic, and infantilised persons with mental disabilities. The language used to categorise such persons also contributed to their marginalisation. The article highlights how these early

systems have impacted the disabled community in the USA and are possibly still reeling under the effects of it.

The chapter on *Victims of state violence: indigenous and women of colour sex workers' interaction with law enforcement in Canada*, authored by Menaka Raguparan analyses the intersection of gender, colour and sex-based discrimination in Canada. In order to examine this, she has analysed sex workers of colour, and their experiences with law enforcement agencies in Canada, who not only enforce the law, but also take upon themselves the role of morality guardians (168). The research involves qualitative data that has been gathered. The author reveals snippets of the interviews, and a theme that is starkly visible is that women or trans women of colour have faced humiliation and abuse at the hands of police officers consistently, whereas white women engaged in sex work have reported having more civil interactions with law enforcement (170). Another pattern that emerges in the chapter is that sex workers of colour are not taken seriously by the police when they try to lodge complaints of crimes committed against them. Their credibility is questioned due to their race and occupation. An earlier chapter in this book has examined the relationship between the law and its faulty application to indigenous women in Canada, and this article illustrates the strained relationship between law enforcement and women of colour in Canada. The picture presented here brings little comfort to the reader.

The section on Policing Bodies displays the social construction of gender, sexuality, race and disability. The authors in this section have brought to the fore the problematic fetishisation and stereotyping of each of these categories. This in turn results in marginalised groups being stripped of bodily and decisional autonomy. The paternalistic nature of the law, law enforcement, and even medicine has resulted in deepening the wedge of discrimination.

Activist Politics of Resistance

The chapter titled *Intersections of gender and (in)justice: Bibi Titi Mohamed and women's struggles during and after independence in Tanzania*, authored by Catherine Cymone Fourshey and Marsha L. Jacksh takes the reader through the mindset in post-colonial countries by taking a few examples of East African countries.

Bibi Titi Mohamed was an important female figure in the Tanzanian political landscape. However, she was generally treated with derision by men in upper echelons of the government. She also faced judgment at the hands of other people for failing in her duty as a 'good wife'(190). It appears that her inability to conform to her gender role overshadowed her contributions to the Tanzanian freedom struggle, and subsequent work for the upliftment of women (191). The authors here make a pointed accusation at the post-colonial mindset for the treatment Mohamed faced. The authors juxtapose Mahomed's example with experiences of women leaders in Kenya, where even though women do not hold formal positions, but rather are very active in local organisations, and can mobilise movements. Even women in Zanzibar resisted colonial oppression in trade by resisting European made *khanga*, a cloth worn traditionally in some east African countries. In spite of heavy involvement of women in East African countries' freedom struggles, all of these histories have failed to give women the space that they deserve(201).

The chapter authored by Ava Ladner titled, *Policing and place making: Trans* persecution and resilience*, focuses on the erasure of the Trans* community from the rights discourse. The chapter mentions that the term used in place of LGBT is Trans* (trans asterisk) since it is a broader umbrella term (217). The author uses activist Angela Davis' words to bring trans* rights into perspective. Angela Davis questioned the government's ability to take care of its population if they could not even take care of the smallest section of society, which

comprised of the trans* population (218). The author takes the example of the trans* persons in a tribe in Hawaii. Their existence and identities seem to be erased in the histories told about them. There are cultural depictions of four trans* persons who were healers in their community, and were revered by the people. However, even though there are relics depicting their existence and importance, it never was reflected in written history, which was compiled by European missionaries. Eventually even natives of Hawaii came to internalise transphobia as a product of European education(220). Through the years, white colonists have successfully altered cultural references, occupations and laws to reflect their own narrow understanding of gender in binary. The 1969 Stonewall Riots highlighted the marginalisation of the queer community, but that was again promptly forgotten during the AIDS epidemic of the 1980s and 1990s. Language was used successfully against the queer and trans* community to marginalise and 'other' them. The chapter further delves into the methods employed by the American establishment to continue to dehumanise and animalise the existence of trans* persons by way of refusing them to change their identities legally, deadnaming them, and in extreme cases, even resorting to killing them. Deadnaming a person means to address a person by their birth name rather than their chosen name, especially in the context of gender identity (229). These instances of violence that have been recounted occurred as recently as 2017. The problem of exclusion and discrimination is intensified when gender identity intersects with race, as is evident in the examples put forth by Ava Ladner. Persons of the trans* community routinely face illegal police action, abuse and even incarceration, and this is made easier for the law enforcement agencies because a lot of trans* persons do not have familial support. Further, the bodies of trans* persons are easily fetishised by 'normal' persons, thus making it easier to dehumanise them and subjugate them (232). Their bodies are

policed and objectified heavily, thus resulting in a complete absence of their voices in histories and legal change.

Theodore Davenport in the chapter, *Becoming Theodore: spatial legal consciousness and transgender name changes*, traces the journey of name changing for a trans* person and the challenges faced thereby. The contention of the author is that in the United States of America, the laws might be present to enable such a change, but the legal processes are arduous and difficult to navigate, making the name changing process very exhausting. In spite of jurisprudence which suggests that gender identity is a personal choice, and the state machinery should enable the transition as best as possible, judges often end up viewing attempts to change names suspiciously. The author quotes a judge declaring that changing one's birth name due to gender identity is a 'type of fraud on the general public' (241). The author also acknowledges the position of privilege owing largely to race, and how it has been possible to present as transmasculine without much fear of persecution. The readers are taken through the personal journey of growing up in a state which did not protect transgender persons' right to work, as a result of which the author initially chose not to change name legally. This ends in a success story, as is evident by the name published (247). The chapter astutely observes how gender identity alone is not necessarily made the target of discrimination. The layering of gender identity with race exposes a very different set of experiences. Persons with multiple marginalisations often become victims of discrimination by state agencies. The systems in different jurisdictions across the USA also vary with respect to changing identity legally. Certain jurisdictions require proof of 'lower surgery', whereas certain jurisdictions outright reject applications for a name and gender change (244). This further makes the process of bringing about change, both in personal life and social life excessively difficult. Sometimes the processes are so complicated that it puts any hope of realising

one's true identity out of reach for them. Even if a person successfully changes their gender identity and name on legal documents, they are subject to further scrutiny by the authorities. This may be exacerbated for persons of colour, and may also lead to unjust incarceration. The struggle has now started shifting from bringing about legal change to that of procedural change. Even if laws to protect transgender rights are present, the cis and heteronormative processes continue to plague the heralding of a transformed society. The need for documentation in public spaces is so severe that it obscures a person's true identity.

John Felipe Acevedo, through his chapter on *The model speaks? obscenity laws in the United States*, states that obscenity laws have been static since the 1970s in the country (258). Censorship is often done in order to maintain stasis in the United States; that of a white, cis and heteronormative hegemonic structure. The artist and the model do not find a voice in obscenity laws. Even radical feminists like Catharine MacKinnon and Andrea Dworkin have argued in favour of anti-pronography and anti-obscenity laws, on the grounds that it dehumanises and objectifies women, thus disabling them from holding power (265).

My personal unstructured observation regarding obscenity laws and their implementation in popular culture has consistently pointed towards a disturbing pattern. The censor board does not seem to have a problem with nudity, as there are plenty of violent and graphic visuals scattered across Indian cinema. The problem appears to be with agency and autonomy. A female character who has agency enough to consent to sexual acts has a tougher time making it to the final cut of the movie, rather than a female character who plays her gender well by getting violated and victimised. The author of the chapter also raises a similar concern. Books, performances, cinema, and other art forms are all arbitrarily categorised as obscene or not. Any depiction of consent or agency on the part

of the performer (like dancers) faces scrutiny and ridicule. The gaze employed here to ascertain the quality of art appears to be that of a heterosexual white male, along with all his insecurities and idiosyncrasies. This singular perspective of art results in heavy censorship. Further, this is usually also the voice that law is written in. The artist and model's voice becomes insignificant before the dominant voice that dictates the law. Obscenity laws can also be theologically traced back to Judeo-Christian thought, prevalent in Europe, brought to the Americas and transplanted into the systems. The law operates on a binary rather than on a spectrum. It assesses whether a work is obscene or not by gauging whether the viewer's 'prurient interests' are aroused (261), rather than understanding the purpose and intent of the work. The law does not punish the model, but the distributor of the obscene work, and thus the model finds no place in the legal process at all. Even in cases of child pornography, the fact that the content is pornographic or not is defined by the gaze of the viewer(271). Additionally, even though the law protects the child here, the child, just like the model is silenced. The only contribution the child makes is that of confirming their age. They have no relevance to a case beyond that. The laws protecting children fall short of actually protecting them, because the laws are worded in a manner which require the child to be either nude or engaged 'in actual sexual acts'. These paradigms are very faulty, because sexualising of children's bodies through clothing then becomes normalised. According to the author, the way forward is not to outlaw obscenity law, because that could lead to other kinds of targeting of marginalised communities, but rather to give models the space to speak. They should be a party to any obscenity lawsuit alongside the artist and the viewer.

This section has consistently emphasised the erasure of marginalised voices from history. This has been enabled by state agencies. The reasons attributed to this erasure can be

traced back to colonial roots in Europe, where the understanding of gender was confined to the binary. Further, European colonists actively engaged with colonised communities to erase marginal voices from the collective memories and histories of the colonised people. This erasure was methodical and insidious to the point that the colonised communities started treating this inequality and discrimination as their own value system. The current legal systems continue to reflect this value system by taking a very narrow standpoint on the rights of women and transgender persons. It appears that legal systems continue to operate very paternalistically. They believe that they are granting these communities privileges by allowing them to identify with a gender of their choosing, or allowing them space in the public sphere. What should be available without question to every person as a matter of right is being posited as a benevolent grant by the legal systems and law makers.

All the articles discussed in the book very accurately capture the intersectionality of society and how it affects our decision making either as part of a legal system, or as a part of cultural, moral and social systems and how, all of these three sections reflect the intersectionality of society, and whether justice can truly be achieved. The purpose of the book is to trace how marginalised communities of gender, sexual orientation, race, and caste are not only multiply marginalised, but also face discrimination at various levels. The first part of the book evidences how the legal frameworks consistently fail these communities. The second part showcases how the physical person of one belonging to one or multiple marginalisations is policed, and their autonomy stripped away. The third part traces a few instances of social change, and how legal, political, and social structures have tried to snub out these voices by actively engaging in victimisation and harassment.

It is important for every feminist and queer activist to not just understand their struggles in isolation, but to view them in the context of other groups as well, as has been presented in this book. Situating oneself and one's struggles on a socio-political location might help to understand how best to overcome marginalisations and help create a truly equitable world.