

JAGORI TRAINING PROGRAMME

WOMEN AND LAW

DOMINANCE, SUPPRESSION & THE LAW
(WOMAN, FAMILY & HER BODY.)

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Our society has two standards of morality by which it judges sexual behaviour : one for its female members and another for male citizen. Religion and society ascribe impossible virtues to women and thus confine women to a narrow sphere of behaviour. The good woman is one who remains faithful to her husband and sacrifices her own aspirations and dreams for the sake of his family and his children. Manu had laid it down clearly "Though destitute of virtue, or seeking pleasure (elsewhere) or devoid of good qualities, (yet) a husband must be constantly worshipped as a God by a faithful wife". The husband has licence to "seek pleasure elsewhere".

These double standards of sexual morality have continued over the centuries. Let me give two examples. The first is the story of Kashibai told in the words of the 19th century social reformer Joterao Govindarao Phule :

"The poor Kashibai was a well behaved and beautiful young woman of a respectable family. She was a chaste woman. She served several months in his house (Phule's friends). But in his neighbourhood there lived a shrewd and cunning Shastriboora of a Brahmin Caste who tried his utmost to mislead this ignorant woman. Kashibai at first resisted his inducement, but at last she fell victim to his desires and immediately became pregnant. Afterwards by the persuasion of her paramour, she tried several poisonous drugs to commit abortion, but all her attempts failed. After nine months were completed Kashibai gave birth to a beautiful son, and for the sake of her disgrace she murdered the innocent infant with a knife, and the corpse was thrown into a well behind the house of her master. Two days later, she was arrested by the police on suspicion, tried before the session court in Poona, and sentenced to transportation for life.....".

The second story is of a Santhal woman in a Bihar jail told by Mary Tyler "Next to me slept Panno, an elderly widow from the Santhal tribe..... At night she would jerk and mumble and whimper in her sleep, seeing night mares of her daughter whom she had killed by hitting her over the head with a big stone. Sitting in the morning she would say to me : "I had to do it, The bitch brought shame on me. I had to do it. "Her daughter had become pregnant by the son of their village headman, who then refused to consider marrying her. Ashamed and embarrassed by the taunts and abuse of other villagers. Panno had at first given the girl a thrashing. Even that punishment, however, was not enough to mitigate the disgrace she had brought upon her family and one day Panno had taken her into the jungle to collect firewood, then attacked her from behind. The old woman had immediately surrendered to the police, and after four years in jail, had been sentenced to 20 years imprisonment."

The guilty men in both cases were not punished and there was no stigma attached. These are just two examples of Gender injustice. There are many aspects of gender injustice, and I am sure they will be dealt with in other sessions. Here, I am concerned with one particular kind of gender injustice : that of sexual inequality in our society and consequent double standards of judging sexual behaviour. The feminist struggle for a sexually egalitarian society has to be viewed in this context. The struggle has been misrepresented and distorted by the media and presented as a struggle for "free love" or "free sex".

One of the most articulated demands of the feminist movement is the right of the woman to control her own body. I shall first of all attempt to put this demand in its social and political prospective. Secondly shall argue that the Indian state through its legal machinery reinforces these double standards and sexual inequalities specially within the family and lastly I shall discuss the relevance of this to legal studies.

I. THE PROBLEM :

The woman's struggle for a control over their own bodies grew

out of an awareness that the relationship between the sexes were not biologically determined but in fact were power structured relationships. In 1966 Kate Millet put forward a systematic account of "sexual politics". She showed how in fact sexual relationships were in fact relationships of dominance and subordination.

Feminist critique showed the difference between sex and gender. Ann Oakley in "sex, Gender and Society" writes : "sex is a word that refers to the biological differences between male and female : the visible difference in genitalia, the related difference in procreative function. Gender, however, is a matter of culture : it refers to the social classification into masculine and feminine". Feminists began the task of disentangling "sex" from "gender". This task was made easier by the wealth of ethnographic studies. As Oakley says, Anthropologists have now made detailed studies of at least 2000 of the 5000 distinctly separate cultures that exist today. These studies reveal that although every society has ruler of sexual division of labour but these rules vary a great deal from society to another and generalizations about how biology inevitably dictates their form and content are not supported by the data.

Even in childhood women and men are socialised with regard to temperament role and status. Women are socialised to be more sensitive and perspective in their relationships with other people; they are more dependent on these relationships and are passive. Men are socialised into being aggressive, outgoing, more confident and are trained to control and manipulate the external environment.

This socialization of gender roles takes place within the Family. Family itself is looked upon as a natural institution arising out of biological necessity. There are many kinds of families in our society at this point of time. Whatever the family structure, the outstanding feature of these is that it is based on sexual inequality. It is the eldest male who has to control over the property, assets, management of family affairs. Even under the Marumakkathayam system where inheritance descent is

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traced through the female line it is the senior most male member who is the manager or Karnavan.

It is within this kind of family structure that a woman is socialised to accept a role and status which is inferior to the male members. Her own identity is through the family as a daughter, wife and mother. The society and religion reinforce this and as we shall see the law coerces her to accept this status. She is not recognized as a citizen with right to her own individuality. And she faces subtle denigration in daily life to the extent that she despises herself and other women.

What is the cause of this oppression? This is not the place for a detailed analysis of the various theories on women's oppression. Here I am concerned with the suppression of female sexuality within the Indian family whereby the woman is denied control over her own body because she is looked upon as the property of the father or husband. The insistence on virginity and fidelity for the woman is a prerequisite for the inheritance of property through the male line. This system of property ownership and succession made it imperative that the family secured control over biological reproduction.

From this control has arisen the double standard of sexual morality which denies women's sexual pleasure and allows for hypocrisy of men who publicly avow marital chastity while patronising red light areas. And this in turn gives rise to the twin images of women - the sexual property of men, the chaste mother of his children and the "other" woman who is a prostitute, a whore, or a loose woman.

The good respectable woman finds it impossible to demystify the source of her oppression. She tries to live up to the role, status and temperament. She accepts beatings, torture and every kind of humiliation from the family. She thinks it her duty to live only for her family and suppress her every other desire. Her love care and all feelings must be channelized into the upkeep and welfare of the family. She literally submits her body to the family and its needs : She bears children to

perpetuate the family name, she has sex when her husband desires it and neglects her own health.

The psychological effects of this suppression of female sexuality is only just beginning to be studied. There are no systematic accounts in our country, only a few scattered papers.

One study conducted by psychiatrists and psychologists of "bhoot charna" revealed that it is women who are the victims. The Baramathi Investigation Committee report cites many examples. Here is one :

"Another interesting case observed by the team members in the same village was of a 13 year old girl who was reportedly sick for the last six months, dull lethargic, nor eating and periodically exhibiting bizzarre behaviour such as screaming, shouting, taking off her clothes in public, etc. During such periods it was reported that her toe rings would disappear and reappear from her mouth, when she would spit them out. This girl was married six months back and her symptoms commenced soon after that. She had attained puberty only one month before we saw her. It was obvious that the girl was unaware of the facts of life, and had developed her "symptoms" only because she could stay away from her husband and in-laws, who were all total strangers to her. The spitting out of toe rings, which are symbolic of Indian married womanhood, were evidently unconscious expressions of her hatred towards her husband and marriage.

We can see also the effects of suppression and domination in women's songs and poetry. The poetry of the oppressed reveals them inner fears and aspirations. I should like to quote a poem by an Indian woman who is a trade unionist. The poem is translated from the original Hindi :

I desired to ~~move~~ move forward
He told me to hold his hand.
I refused
Then he showered upon me
blow upon blow
I stumbled, fell

rose ahead.
He stepped forward, blocked my way
Slowly, gently, I put his hand aside
and went ahead.
He drew back his hand
slapped me across the face
tears in my eyes
and walked on,
alone.
He was unable to withstand my freedom,
He wanted to take me in his arms
He wove a web of love & kisses,
threw it over me
so that in those folds
my soul should spend its life,
hopelessly fluttering
and die, suffocating, enmeshed
But I survived this onslaught too
I emerged from the maze
Then he pushed me into sinking sands
Showered me with accusations,
thinking I would accept defeat
at his hands,
his maleness
his worldwide supremacy
But I refused. I refused. I refused.

This poem expresses the dilemmas a woman has to face and the anguish. She experiences when she struggles against sexual inequality within the family. This sexual inequality, the dominance of the male and the double standard of sexual morality are strengthened and reinforced by the Indian state through its legal machinery.

II.

The law works at various levels and through various agencies. Much of the law is still not codified and in the name of religions freedom every antiquated anti-woman custom is preserved

because we still do not have one civil code. These irregularities are to be found in the law relating to marriage, divorce, inheritance, succession, custody, guardianship and the maintenance. In a basic sense these laws are designed to preserve the present family system based on male dominance and control of female sexuality and reproduction.

This can be most dramatic seen in the chapter 20 of the Indian Penal Code which deals with offences relating to marriage section 498 of the code makes it a crime for a man to entice or take away or detain with criminal intent a married woman. In interpreting this Section the Supreme Court of India has held that even if the evidence clearly shows that the woman is dissatisfied with her husband and has left his house and protection voluntarily and of her own free will and decided to live with another man - the other man would be guilty under the said section. Let me quote Justice P.B. Gajendragadkar (who later became the Chief Justice); "The provisions of Section 498 like those of S-497 we intended to protect the rights of the husband and not those of the wife. The gist of the offence under section 498 appears to be the deprivation of the husband of his custody and his proper control over his wife with the object of having illicit intercourse with her. The consent of the wife to deprive her husband of his proper control over her would not be material. It is the infringement of the rights of the husband coupled with the intention of illicit intercourse that is the essential ingredient of the offence under section 498". (Alamgis versus state of Bihar AIR 1959 SC 436).

Rape, adultery, kidnapping, seduction are offences. They have been made to protect the rights of the man against violation by other men. They are not designed to protect the person of the woman. For society looks upon the woman as a property of man whether he is father or husband. Those women who are not "owned" by a particular man have no protection. They are free game. And this we see clearly in nearly every judgement in rape cases.

A woman who is not "respectable" as defined by society has no protection against violation of her body. It is presumed by law and society that she must have invited rape. The cases of Mathura, Rameeza Dee, Khairunissa are just a few of the publicised ones. The policemen, in uniform on duty are acquitted despite overwhelming evidence against them. In a rape trial women's entire history is put on trial. If the woman is a woman of "loose character" as defined by society she is presumed to have invited rape.

The role of law in reinforcing the double standards of sexual morality can be seen by the law relating to prostitution. Prostitution has been practiced from ancient times. There have been various forms of prostitution throughout our history. And one of the chief concerns of those who have sought to abolish it has been that it endangers the institution of family. The first specific law on the subject was passed by our colonial masters as a result of concern for the health of British Soldiers : Contagious Diseases Act, 1968. And in 1975 the law Commission in its 64th Report discussed the need to amend Suppression of Immoral Traffic in Women and Girls Act, 1956 said. Thus being a threat to the family as an institution, and a means of exploitation of females, prostitution is a social evil which leads to injustice." What was the "injustice" that the law commission talking about? It was the injustice done to the institution of family not to the women who was a victim of an oppressive society. The Law Commission explicitly said that prostitution cannot be stopped and "instead of banning it totally, the law in every country has tried to regulate it so that it may be kept within to legitimate bounds without unduly encroaching upon the institution of marriage and family".

Prostitution itself is not a crime under law. The offences under SITA Act are : Punishment for keeping a brothel or allowing premises to be used as a brothel; punishment for living on the earnings of prostitution; procuring, inducing or taking woman or girl for the sake of prostitution; detaining a woman or a girl in premises where prostitution is carried on

and prostitution in or in the vicinity of public places.

Thus the law makes the prostitute a criminal but her male patron is not made a party. The question of making the male client a party to the crime was considered by the Law Commission and it decided against incorporating any provision to make the patron a party. The Law Commission turned down the suggestion to have criminal sanctions against the patron. It has quoted an European authority of 1920 with approval : "The professional prostitute being a social outcaste may be periodically punished without disturbing the usual course of society.... the man however, is something more than a partner in an immoral act; he discharges important social and business relations, is a father or brother responsible for the maintenance of others, has commercial or industrial duties to meet. He cannot be imprisoned without damaging society (i.e. those with influence in society).

And the commission has another quote (Davis in 1966 quoted in R. Merton and Nisber, contemporary Social Problems 1966)

"Although the service is illegitimate, the citizen cannot be held guilty, for it is inadvisable to punish a large portion of the populace for a crime ... that has no political significance. Each such citizen participates in the basic activities of the society in business, government, the home, the church etc. To disrupt all these by throwing him in jail for a mere vice would cause more social disruption and inefficiency than correcting the alleged crime would be worth".

Thus we find that the woman victim of rape is treated as a guilty party by the law and by society. The law acquits the rapist and so society stigmatizes the raped woman. She is ostracized and either lands up in a brothel or in a protective home.

We must ask ourselves why a woman who has been sold, raped and wronged needs to be thrown into a protection home. Who does the protective home protect? Even a cursory glance at any commentary on SITA Act will reveal that the protective home is designed to protect the society or the general public from this "social voice". I need not spell out the gross hypocrisy of this reasoning before this audience.

So far I have discussed only the blatant, explicit examples of

gender injustice. However, gender injustice is built into our legal system, it permeates it and works in various subtle and implicit ways.

It works through the minds of biased, conservative judges, brutalised policemen and commercial advocates stereotyped images of women are reinforced by mass media and social custom. Women internalize these values, and this has consequences that are only just beginning to be realized by society, and reflected in the recent changes in the law. A new chapter has recently been added to the Indian Penal Code S-498A of the amended code makes it an offence for a husband or the relative of the husband to treat a woman with cruelty, and the definition of cruelty includes mental and physical cruelty.

While we should welcome this amendment because it recognises the problem we must realise its implications. The State and the legal machinery will only be able to reinforce the institution of family. The law does not attack the cause of the cruelty - the sexual inequality on which family is based. It is not directed against gender injustice, it only seeks to control gender violence.

III. LEGAL STUDIES : It is of utmost importance that we understand the social and political basis for gender injustice and incorporate this understanding into the legal studies. This is a dimension which is entirely missing in our law text books or in the syllabus. For instance in our criminal law paper we were given a question : if an impotent man goes to a prostitute and cannot perform. The prostitute laughs and makes fun of him so he kills her. Can he take the defence of provocation. Nearly all the women students wrote that he could not since he knew he was impotent. And we did very badly in our paper.

We do not need just a separate course on women and legal studies; we need to incorporate our ideas and perceptions into the legal thinking. We have to develop a new jurisprudence which is sensitive to the reality in which women live.

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