

**THE IDEA OF DIFFERENCE IN FEMINIST THEORY:  
IMPLICATIONS FOR WOMEN'S RIGHTS**

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**DECLARATION**

I declare that the dissertation entitled “**The Idea of Difference in Feminist Theory: Implications for Women’s Rights**” submitted by me for the award of the degree of **Master of Philosophy** of Jawaharlal Nehru University is my own work. The dissertation has not been submitted for any other degree of this University or any other university.

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## Chapter 1

### Introduction

'Equal or different?' - the question has been almost a perennial issue in feminist theory. The debate has marked an "ever-present tension in feminist thinking between what Sally Alexander has called 'the plea for equality and assertion of sexual difference'" (Phillips 1987: 2). The equality-difference debate has coloured most agendas of the feminist movement ranging from the early suffragist movement to the current issues of diversity, politics of the body and so forth. At the same time, the debate seems to be increasingly becoming complex, especially with the challenge of cultural politics, and postmodernism that conceives all categories and identities as fragmented and discursive. The challenge to the earlier notion of female essence and the coherent category of women from many a quarter has left many feminists perplexed as to what politics has to be evolved for the cause of women's emancipation. However, it is also a pithy truth that most feminists have now come to the conclusion that the debate cannot be posited in terms of a dichotomy – either equality or difference; feminists approach most of the issues from the perspectives of both equality and difference (see Bock and James 1992).

More precisely, feminists now attack not 'equality' but the projection of equality as sameness between women and men. That is, equality is still a relevant issue for feminism; however, this notion of equality is no longer to be associated with sameness. The emphasis therefore is on challenging the basic tenet of sameness feminism that sought to deny or undermine difference. In other words, difference is not to be an anathema for the cause of liberation or emancipation; it has to be addressed in a positive light to actually ensure equality for women as in the case of pregnancy, abortion and other issues where women's bodily specificities are to be taken into cognisance for the fullest possible gender equality.

Interestingly, the critique of sameness feminism from the perspective of difference cannot be put into a single basket. The difference perspective is itself marked by differences and

often dissonances; it is internally too differentiated to be a coherent whole. This dissertation throws light on three distinct strands within difference feminism, represented by Luce Irigaray, Catharine A. MacKinnon and Judith Butler – the first one grounded in psychoanalytic feminism, the second being a critique of both sameness and difference as playing into the hands of male dominance, and the third being a case of postmodern feminism where the category of sexual difference gets obliterated on account of a plethora of differences that are constitutive of the female self. An underlying theme of all three approaches is a vehement critique of the sameness project of feminism that effaces difference, only to the disadvantage of women. The critique and the future course of theory and politics however take distinct forms in each of the feminists discussed in this work – ranging from the affirmation of the feminine in Irigaray, to the demystification of difference itself as an effect rather than cause of male dominance in MacKinnon, and finally, to challenging the very primacy of sexual difference derived from a natural biology in Butler.

The choice of these three specific strands has also been made in view of the contribution each has made to the question if sexual difference should be a foundation for feminist theory and politics. Irigaray, writing in the new French feminist tradition represents that strand of difference feminism which asserts and vouches for the affirmation of sexual difference between women and men, drawing upon the distinctive sexual anatomy of women. Interestingly, she is not invoking only the reproductive biology of women. In fact, 'virtues' associated with reproduction do not occupy so much space in Irigaray as much as her invocation of the sexual anatomy of women. Irigaray thus distinguishes herself from many feminists including some French feminists who draw upon women's differences from men in terms of reproductive biology and the 'virtues' entailed by motherhood and the process of mothering. MacKinnon, in her capacity as a critical legal feminist worried by both the equality model and special protection model of jurisprudence, presents a case where she wants to theorise on women's body and bodily needs like pregnancy, abortion, etc. without falling into the framework of sexual difference. MacKinnon points out how difference is either used as a disability or is evoked in the name of protection, with the consequence of preventing women from

accessing many avenues, in view of their status as the 'weaker' and 'vulnerable' sex. Sexual difference, in MacKinnon's view, is a consequence of male dominance. In her view, men have devalued the differences women have from them; while difference feminists like Gilligan extol such attributes like care, which are nothing but patriarchal constructions. That is, under male dominance, men want women to be caring, nurturing and so on and difference perspectives like Irigaray's or Gilligan's are no different from the patriarchal construction of women and their difference. In other words, MacKinnon's preoccupation is with the issue of sexual subordination and not with difference per se. Butler presents a very different case from Irigaray and MacKinnon when she, as a votary of 'queer' politics makes irrelevant the notion of sexual difference itself for a feminist project. Butler attacks most feminists including Irigaray and MacKinnon for working within the framework of an ideal body differentiated into two – male and female – based on two different sets of sexual organs. Butler not only dismisses such notion of sexual difference as constructions of heteronormativity, she also explains how sexual difference is not fundamental to the construction of human beings. That is, a man or woman is not only constituted by sexual difference; they are constituted also by other markers of difference like race, ethnicity, class and so forth. In short, this dissertation looks at three different strands within difference feminism – the first affirms sexual difference (Irigaray), the second takes into account the difference between women and men, especially in terms of biology, yet develops a feminist theory that attacks gynocentrism as a product of male dominance (MacKinnon), and the third renders insignificant the primacy of sexual difference in favour of an equal importance for a multitude of differences (Butler).

The chapters are also arranged with reference to how the feminists discussed in this work have engaged with each other. The order of the chapters hence becomes important as each feminist theorist discussed in this work has been subsequently discussed or critiqued in the works of the feminist discussed in the next chapter. That is, MacKinnon's works are a response to the dangers in the affirmation of the feminine, propounded, among others, by Irigaray who draws upon female sexuality and sexual pleasure (*jouissance*). MacKinnon views the pleasure in sexuality and sexual acts extolled by Irigaray as

actually the manifestations of male dominance. Butler on the other hand explicitly offers critique of both Irigaray and MacKinnon in her various works. While she attacks Irigaray for producing the same patriarchal notion of the feminine, her attack on MacKinnon is grounded in the latter's non-engagement with gender norms as well as the pre-eminence of a heterosexual framework.

The main thrust of the dissertation lies in its analysis of the positions taken up by Irigaray, MacKinnon and Butler towards the issue of difference and how they derive their notion of rights from the latter. Irigaray's affirmation of the feminine paves way for her notion of sexuate rights. Her project is in tandem with the general wave in Post-May 1968 France when women who were by then entitled to all the rights which men were entitled to felt the need to assert their identity as women and not as abstract individuals or citizens. MacKinnon is extremely critical of the 'male' state; yet she articulates a notion of rights made possible when the state frames rights from the view point of women. This notion of rights is however not derived from sexual difference; it is rather built on the view point of women once they are conscious of the reality of sexual subordination. Butler being a votary of the politics of subversion and more specifically the politics of drag and parody is sceptical of the normative underpinnings of rights even if they are extended to those who are outside the framework of heterosexuality. She however accords a subversive potential to these rights, to rework them to subvert norms.

In other words, the distinctive ways in which Irigaray, MacKinnon and Butler look at difference get translated into their project of rights. That is, all the three feminists challenge the abstract nature of rights and accept the limitations of an emancipatory theory and politics centred on rights. Yet the three views on sexual difference lead to three ways of seeing and invoking rights – making rights sexuate in Irigaray, framing rights from women's point of view in MacKinnon, and the reworking of rights imbued with oppressive norms, in Butler, to thwart the norms themselves. While Irigaray thus gives an almost direct effect of her take on sexual difference in framing a project of rights – affirmation of sexual difference is possible only through sexuate rights, MacKinnon and Butler show inconsistencies in this regard. While MacKinnon's works, especially her

early works are permeated with the seamlessness of male dominance and the impossibility of agency for women in sexual relations, she sees possibilities when the same laws are written from the view point of women. MacKinnon thus entails a feminist theory and politics that invokes difference only when it is 'relevant'. Butler presents a very negative view of rights for their inextricable entanglement with norms, yet fails or fears to say that one should do away with rights. At the same time, she fails to give an alternative basis for the articulation of rights if they are not to be grounded in sexed identity and norms. ✓

On the whole, this dissertation specifically looks at the feminist theories of Irigaray, MacKinnon and Butler and provides a critical analysis of not only their views on sexual and other differences but also the alternative notion of rights they claim to be propounding for liberation or emancipation. Chapter 2 is an introductory chapter to the idea of difference in feminist theory. This chapter gives an overview of the equality-difference debate in feminism. The chapter specifically addresses how women's issues are purported to be addressed in sameness and difference perspectives. The subsequent sections of the chapter also presents the dilemmas posed by identity politics and later on by postmodern feminism. The chapter also outlines a few basic frameworks in feminist theory like the sex/gender distinction and the impossibility of a strict 'either equality or difference' perspective. In crux, this chapter tries to see the trajectory of feminism in terms of its treatment of difference – from sameness to difference to differences.

The next three chapters deal with the three feminist theorists, mentioned above, who have worked on difference, also ordered according to chronology. Chapter 3 deals with the sexual difference feminism of Luce Irigaray, a representative of French psychoanalytic feminism. The chapter critically looks at the new notion of female subjectivity derived by Irigaray from *jouissance* and the alternative notion of the feminine she proposes to counter homology. The affirmation of sexual difference by Irigaray leads to what she calls "sexuate rights" which the state should guarantee to women for establishing their feminine civil identity, crucial not only for women's liberation but also for the survival of

civilisation. The chapter seeks to explore if the new feminine is emancipatory and if the idea of sexuate rights offers anything new for feminist theory and politics.

Chapter 4 is a critical appraisal of the works of the American legal feminist Catharine A. MacKinnon. MacKinnon views difference as not the source of oppression or emancipation but as the consequence of gender inequality itself. MacKinnon starts with the premise of a male state, but seeks a solution in laws and rights framed from the view point of women rather than the abstract rights that embody men's interests. MacKinnon hence attempts to provide a theory of rights where women's bodily specificities and needs are not represented in rights or law as exceptions; they rather form the core of rights. Thus one can clearly see how MacKinnon's works also take into account the sexual difference embodied in biology as one looks at her take on pregnancy. Nonetheless, on issues like rape, pornography, sexual harassment, etc., MacKinnon deviates from biological difference and explains them in terms of unequal power relations between women and men under patriarchy.

Chapter 5 attempts to critically study the notion of difference in the works of Judith Butler, the American post-structuralist feminist. Butler's works emphasise the incoherence of the category of woman, the danger of norms and the performativity of sex/gender which pave way for a politics of drag and parody. The body is a fluid category in this perspective, implying the non-fixity or naturalness of biology. The sexed nature of body is vehemently attacked by Butler whose politics of subversion thus posits a problem on how to theorise body-specific rights of women.

Chapter 6 makes concluding remarks, putting together the similarities and differences among these feminists and also trying to see the scope of their arguments as far as women's rights are concerned. Rights are emphasised in this dissertation considering not only their indispensability but also because they emerge as necessary in the works of the feminists discussed, despite all scepticisms and ambivalences. Moreover, if the various notions of rights articulated by the three feminists discussed in this work are anything new in feminist theory and politics remains a bigger question. That is, all three feminists

discussed in this work claim to be attacking the abstract notion of rights in favour of their own alternatives. They articulate women's specific needs in the language of rights rather than as policy matters that might enable women to exercise rights that are otherwise available to all regardless of sex/gender. The critiques of abstract notion of rights by Irigaray, MacKinnon and Butler therefore drive home a strong point – the definition of women in terms of male standards and the male bias in abstract rights. The dissertation however also endeavours to see if the alternatives are satisfactory, whether they can actually facilitate women's liberation or emancipation, and what could be the possible fall-outs of their feminist theories and the notions of rights that emerge from them.

## Chapter 2

### **From Sameness to Difference to Differences: An Overview of Difference in Feminist Theory**

Feminist theory and politics has been addressing the question-how to end the subordination of women- since the nineteenth century. However, the approaches to analysing and ending women's subordination and oppression have not remained the same over the years. A major debate in this context has been the equality-difference debate: - whether women's struggle should be on the lines of equality with the dominant sex- men, or whether it should be anchored on women's differences from men, and to what extent. In other words, feminism has attempted to rethink the humanist subject of Enlightenment and its transformative potential in terms of women's liberation. Indeed the issue has been very complex considering the 'essentially male nature' of liberal politics, which has been commented upon by most contemporary feminists: "If the liberal notion of the political realm is implicitly male, it has to be modified or replaced-we need a new conception of the political" (James 1992: 49).

The affirmation/denial of sexual difference has triggered a series of debates in feminism. Whether women should claim their rights on the basis of their sameness with men or claim difference from them is represented by 'Wollstonecraft's dilemma'- an immanent choice between equality and difference mostly arising from motherhood (Pateman 1992). Most commonly, these differences within the feminist movement and scholarship have been expressed in three different versions of feminism itself: liberal, radical and socialist (Jaggar 1983). Young (2006) however discards such a typology in favour of two types of feminism: sameness (humanist) feminism and difference (gynocentric) feminism. In Young's view, humanist feminism's assertion of sameness of human beings and equality of all, and gynocentric feminism's celebration of differences between sexes as a source of women's emancipation, can be traced in liberal, Marxist and radical feminisms; therefore it is not just to follow the otherwise held viewpoint that liberal feminism is humanist and radical feminism is gynocentric. In fact, the elements of both co-exist in liberal, radical



and socialist feminisms. More recently, we encounter with another version, postmodern/poststructuralist feminism, also called feminist postmodernism (see Bryson 1999).<sup>1</sup> Postmodern feminism has given a third option - the strategy of displacing the norms that define society as opposed to the equality perspective based on inclusion and assimilation, and the difference perspective based on reversal (Squires 2001). In a similar vein, Hekman (1999) points out three shifts in feminism: erasure of difference; emphasis on difference; and the shift from difference to differences. Not debunking these three perspectives that are in a way endeavouring to link up sexual difference, equality and rights in their own distinctive ways, Hackett and Haslanger (2006) identify one more perspective: the dominance approach which is critical of both sameness and difference feminisms and explains the necessity to see difference as a consequence of dominance, or the hierarchy and inequality pervasive in social relations.<sup>2</sup>

In other words, feminist engagement with women's subordination and strategies to end oppression and subordination could never escape the issue of difference. Sameness, difference, dominance and postmodern approaches deal with differences in their distinctive ways-by erasing or evoking primary or multiple differences. They primarily raise questions as to whether women should be treated as different from the dominant sex, and if they are to be different, whether there should be a primary difference based on sex or should other identities like race, class, religion and others be also taken into account.

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<sup>1</sup> Most of the writers who are put under poststructuralist/postmodern feminism, do not call themselves as feminists. They are interested in ending the oppression of women, but following the postmodern 'incredulity towards metanarratives', these writers see feminism also as a metanarrative that needs to be done away with. Many others like Butler take issue with the singularity and coherence attributed to postmodern feminism, since in their opinion, there are a variety of views within postmodern feminism itself; thus the term should always be in plural. Feminist postmodernism has been used by others to drive home the point that postmodern feminism does not derive its base *in toto* from postmodernism, unlike liberal or socialist feminisms.

<sup>2</sup> The dominance approach of MacKinnon is discussed in detail in Chapter 3.

The necessity of the equality-difference debate emerges from a number of reasons. A major reason in political thought has been the implicit and explicit 'maleness' that runs through the works of most political philosophers. Another reason, which western political thought too takes cues from, has been the influence of biological determinism which tends to treat women as socially inferior to men because they are inferior biologically. At another level, reflections by many feminists point fingers at how equality and difference are simultaneously resorted to in most agendas of feminism. The suffragist movement is a classic example for this. The following sections deal with these issues before getting into the notions of sameness feminism and difference feminism.

### **The 'Maleness' of Western Political Thought**

Western political thought has been accused by many feminists of a 'masculinist bias' (see Caverero 1992; Pateman 1992). Starting from Aristotle onwards, western political thought has been characterised by a 'fundamental repression of sexual difference', the relegation of women to the domestic sphere and their dependence on man.<sup>3</sup> Social contract theories, on the other hand, presupposed a state of nature with absolute equality, which creates a 'twofold valency of the male'; that is, these theories project an abstract, universal subject which is gender neutral but at the same time masculine in its attributes (Cavarero 1992). Thus mainstream political thought has repressed female sexual difference either by exclusion as in the case of Aristotle or by a homologizing, assimilating inclusion in which the neutral or the universal has been essentially male and women are "not another subject (with an equally genuine origin and therefore equal dignity and empowerment) but are a sort of empirical specification of the sole male subject", wherein only male needs and rights are universalised and female specific

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<sup>3</sup> Aristotle makes a distinction between the sphere of the *polis*, *politika* and the sphere of the household-*oikonomika*. His conception of the citizen is essentially the adult male and all others including slaves and women are regarded as inferior to and lacking rationality in relation to man. Thus it was only the man who was the political animal and citizen, and everyone else was defined in terms of their deficiency or lacking vis-à-vis him.

concerns like pregnancy would be treated as illness, as the male subject does not experience pregnancy (Caverero 1992: 34-7).

Liberal political theory has also contributed to a problematic in this regard in two ways. On the one hand, it dismissed differences of gender, race, ethnicity, class or temperament as of merely private significance (ibid; Jaggar 1983; Pateman 1992).<sup>4</sup> On the other hand, in its apprised public arena supposed to be indifferent to differences, the qualities expected of citizen are essentially male- rationality, culture, individualism, competition and so on (see Pateman 1992). Democratic liberalism in fact denied women full citizenship not merely by exclusion but also by “taking for granted a conception of citizenship which excludes all that is traditionally female” (James 1992: 48; Pateman 1992). It also follows from here that the public/private dichotomy in liberalism has only sought to ‘include’ women into a public sphere characterised by attributes like rationality, individualism and competition- regarded as ‘essentially male’ attributes, rather than challenging the dichotomy, de-masculinising the public sphere or more radically displacing the norms that have founded this dichotomous and hierarchical relation (Bock and James 1992). Therefore, one of the most contentious issues in feminist academia and politics has been how to deal with the ‘male’ subject of Enlightenment: whether to de-sex it, replace it with a ‘female’ subject, or challenge the entire paradigm anchored on the assumedly abstract but essentially gendered subject.

### **Biological Determinism and Women’s Subordination in the Nineteenth Century**

The assumption that women are naturally different from men is fundamental to the history of Western civilization (Weedon 1999: 5). Theological accounts of creation,

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<sup>4</sup> A contrary argument regarding the accommodative potential of liberalism vis-à-vis differences can be found in Anne Phillips (1991) and Will Kymlicka (1991). James (1992) uses the treatment of different people differently, permitted in liberal theory, to show how equality and difference are not binaries, but share a means-ends relationship. That is, liberalism treats difference not as something valuable in itself (as in the case of postmodernism and cultural feminism) but as a means to the end of equality of its citizens. Mothers need to be treated differently only to make them equal to other citizens.

Darwinism, modern science- all laid emphasis on “intrinsic” difference between women and men, only to inferiorise the former; these differences were determined by biological differences in most cases. Various ‘scientific’ studies upheld the grounding of social, intellectual and psychological differences in biology. An interesting aspect of the researches during this period is that despite exalting women’s capacity to sustain the species through reproduction, women’s capacities in other spheres of life were undervalued; thus women were supposed to be devoting their entire energy and time to their role as childbearers and childrearers.

This perspective, called biological determinism holds “that shared behavioural norms, and the social and economic differences between [women and men] arise from inherited, inborn distinctions” (Gould, in Miller and Costello 2000: 592). Biological determinism was rampant in western science and was used by society to justify the domination of women by men, provoking feminists later on to call these theses a ‘scientific elaboration of a sexist ideology’ (Hubbard 1990). Moreover, physiological differences were used as explanations to justify the sexual division of labour where women’s distinctive biology also ‘destined’ them for childrearing, emotionality, and domesticity, whereas men’s biology made them fit for competition, politics, commerce, etc. A couple of examples illustrate how biology was used to subordinate women. Darwin gave a theory of “the more highly developed weapons of males, acquired over eons of evolution through competition among males for access to females” and the females’ sharpening “their skills at discerning the most fit among their suitors” and acquiring “coyness and other wiles needed to captivate the best males” (Schiebinger, in Miller and Costello 2000: 592). In the late seventeenth century, anatomists who compared male and female skeletons advanced the idea that sex differences involved “every muscle, vein and organ attached to and molded by the skeleton” (ibid). In the nineteenth century, the differences in the size of brains of women and men was also evoked to prove the lesser intelligent level of women. Sociologists like Durkheim, taking cue from craniometrics, claimed that functional differentiation between men and women was revealed in the differentiation of skull capacity and hence intelligence (Miller and Costello 2000: 592). Besides skull capacity, endocrinal differences were evoked to justify women’s subordinate position in

society. Social and behavioural differences were explained by drawing on the “hypothesized differences in hormone levels of female and male fetuses or on hypothetical genes for spatial skills, mathematical ability, and competitiveness and aggression in men and for domesticity and nurturance in women” (Hubbard 1990: 64-5). Thus in the 1920s, not only a woman’s looks and traits, but also her behavioural patterns and aspirations were often traced to hormonal balance/imbalance. These hormones were given a very important role not just in the construction of sex organs but in the development of many other organs including blood vessels, bones, liver and brain.

Another case of biological foundationalism was the discipline of socio-biology that sought explanation of social behaviour in the reproductive organs and processes of man and woman. Sociobiologists like Brooks argued that the ovum transmits hereditary characteristics while the sperm cells transmit acquired characteristics; therefore men have the capacity to know the unknown: science, discoveries, philosophy, art, while women can know only the known: traditions, customs, etc. This implied that women are not only intellectually different but also inferior to men; the subordination of women is ‘natural’ because it is a mere consequence of the distinctions in biology (Brooks, in Moi 1999). Moreover, physicians argued that the reproductive capacity of women would be hampered if girls were to spend their energies in education. Thus the way energy is supposed to be spent also had direct consequences for social differences (Hubbard 1990: 66). This is proved in the aforesaid case where energy of women needed to be guarded against diversion from reproductive organs to the brain; or in the account of Geddes and Thomson who argued that the variability of males is natural considering their ‘catabolic’ as opposed to women’s ‘anabolic’ metabolism (Moi 1999; Connell 2002).

Bodily differences and social effects were often linked to “character dichotomy” as well (Connell 2002). Character dichotomy assigns one kind of attributes to women and another to men by virtue of their biological differences. That is, it assigns certain essence to women and men differently. Thus women are nurturing, passive, loving, emotional, and intuitive; men are aggressive, tough, rational, and analytic. Such analyses which assume reproductive or any other biological difference to directly reflect in other

differences like strength, speed, skills, etc believe that these differences are 'natural' and hence not only legitimate but also unalterable. These 'scientific' theses were indeed used to keep women out of the public sphere of activity and to reduce them as objects of sex and bearers of children. Even psychoanalysis in the twentieth century was not free from determinism by anatomy. Freud's explanation of jealousy and lesser sense of justice in women as directly emerging from the penis envy of girls is a case worth mention (Weedon 1999: 9-10).

### **Feminist Encounters with Biological Determinism: The Sex/Gender Distinction**

Given the pre-eminence of biology in deciding women's condition, first-wave feminists attacked women's subordination arising out of their distinctive biology. Modern feminist theory was indeed born at a time when sexist ideology legitimised subordination of women on appeals to biology (Moi 1999: 14; Nicholson 1987). Early feminists challenged the affirmation of difference between the sexes that had been used only to subordinate women and to legitimise the subordination by the appeal to biology. At this stage, the feminist challenge took the form of social constructivism, that owes a lot to Beauvoir's notion that one 'becomes' a woman rather than being born as one. Social constructivists separated biology and its social implications. Sex or biology was thus separated from its social counterpart- gender.<sup>5</sup> The sex/gender distinction that was coined in the 1960s feminist politics became a major breakthrough in dismantling the essentialism that emanated from biological determinism which subsequently justified women's subordination (Moi 1999).<sup>6</sup> Thus male/female became fixed biological

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<sup>5</sup> Feminism's thrashing of a distinction between the biological sex and the socially constructed gender is sometimes attributed to the encounter with the 'pervasive' picture of sex, which made distinctions not only between the male and female bodies but also classified everything as masculine/feminine. Thus war became a masculine affair while nature became feminine (Moi 1999).

<sup>6</sup> However, there are arguments pointing out how biology was not a determinant in social relations prior to the nineteenth century, with the 'one sex' model that explained bodily differences in terms of degree rather than as different entities. Thomas Laqueur's research on the notion of sex has been cited by many including Moi (1999) and Connell (2002). According to Laqueur, till the Middle Ages women and men were not perceived as anatomically different. Rather, it was only a different arrangement of the same parts, implying

categories whereas masculine/feminine became categories amenable to change subject to socialisation. It therefore becomes all right for a man to be an emotive caregiver and a woman to fight in a war.

Though the sex/gender distinction was first made in psychiatry, feminists invoked such a distinction to counter their exclusion and oppression 'naturalised' by appeals to biological differences. There was hence an acknowledgement that biological differences do exist; however, their interpretations and repercussions on women's position are socially determined. That is, sex was the biological fact, the difference between male and female human beings, whereas gender was the social fact, the difference between the masculine and the feminine. Gayle Rubin makes such a clear distinction, to reject biological determinism. In Rubin's account, sex nevertheless exists as a biological phenomenon, but it is gender that matters for women's struggle: "Sex is sex, but what counts as sex is equally culturally determined and obtained." (Rubin, in Moi 1999: 27).

The sex/gender distinction is also seen as an attempt to reject determinism based on bodily differences, by way of bringing in the superiority of the mind over body, adhering to the mind/body binary in western philosophy and thereby rejecting the conventional theories of science and society that grounded discrimination against women in their body. In this view of the sex/gender binary, sex becomes the body and gender the mind, bringing in the mind/body distinction of western philosophy (Moi 1999; Connell 2002). "Entirely divorced from the mind, the body is perceived as a mere object, subject to the

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that this 'one sex' model did not give much significance to anatomy and biology. From 1913 onwards, with Walter Heape's two sex model of sexual difference, the essentially different nature of women and men deriving from biology became prominent. The two sex model which emerged in the nineteenth century, on the other hand, was based on the heterosexuality, dividing not just persons but everything into male/female or masculine/feminine, giving rise to essentialism and biologism. Moi calls this portrayal of sex as *pervasive* (Moi 1999: 12-4).

mind's decisions, a blank slate on which gender writes its script. In this idealist view, the body (nature) is entirely subordinated to the mind" (Moi 1999: 27).<sup>7</sup>

In the sex/gender dichotomy, gender thus became a conceptual tool to analyse how distinctions based on biology have been used to propound inegalitarian social relations. The male/female distinction is acknowledged whereas the masculine/feminine is acclaimed as constructed by social norms; in a society steeped in hierarchical relations of gender such norms are undoubtedly oppressive and reflective of unequal relations of power. The ultimate goal of feminist politics was then seen as the creation of an androgynous world, where sex does exist, but does not determine one's social position or relations. In other words, the utopia perceives the disappearance of gender, which is oppressive;<sup>8</sup> sex nevertheless remains though irrelevant to social relations. Thus persons will be freed from all kinds of stereotypes pertaining to sexuality, behaviour and so forth. This is best expressed by Rubin: "The dream I find most compelling is one of an androgynous and genderless (though not sexless) society, in which one's sexual anatomy is irrelevant to who one is, what one does, and with whom one makes love" (Rubin, in Moi 1999: 27).

### **The Suffragist Movement and the Equality-Difference Debate**

A close reading of the women's movement would also impel one to recognise how equality and difference were never used as either-or options but were rather invoked in tandem with each other. The difference could however be seen in the strategies pursued, the definitions of equality as well as the goal envisioned. For example, from Wollstonecraft onwards, "women have demanded both equal civil and political rights,

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<sup>7</sup> Toril Moi argues that the sex/gender distinction made by feminists of the 60s has succeeded in countering the biological determinism of the nineteenth century. She however feels that a better approach to women's freedom has been provided by Beauvoir who does not use the term gender but clearly demonstrates how a woman is 'made' and not 'born' (Moi 1999).

<sup>8</sup> In Rubin's analysis of women's oppression, gender is a negative term that refers to arbitrary and oppressive social norms imposed upon sex and sexuality.



and that their difference from men should be acknowledged in their citizenship” (Pateman 1992: 17-8). The suffragist movement itself has been cited by many contemporary feminists to counter the inevitable oppositional binaries of equality and difference (Stoper and Johnson 1977; Pateman 1992; Offen 1992). That women were less rational than men, voting rights and public offices will impinge on women’s ‘primary duty’ as mothers and are therefore threats to the human race, etc were some of the misogynist arguments of the time used especially by anti-suffragists. The sameness of women with men was voiced in women’s right to vote. However, while the commonsensical assumption has been that the suffragist movement was a struggle for ‘equality’, many feminists trace both equality and difference arguments in the struggle for the right to vote (Stoper and Johnson 1977; Offen 1992; Pateman 1992). While equality was sought, women’s distinctiveness and its differential contribution were also put forth. Women’s superiority presumably was manifested in a host of virtues: wholesomeness, altruism, purity, compassion, nurturance, authenticity - as opposed to the corresponding allegedly male qualities of debauchery, selfishness, corruption, coldness, aggressiveness, emotional repression (Stoper and Johnson 1977). In fact, women were expected to clean up government, stop wars, and bring justice to a corrupt world, to the extent that there was talk of a ‘counterweight theory’ (see Stoper and Johnson 1977). Women’s qualities were considered as counterweights to the malaises men have produced and therefore women needed to be included to clean the system of its filth. Furthermore, women’s role as mothers was considered not just a counterweight but a transformational force. Many women argued that women are by nature different from and superior to men- largely because women are, or can be, mothers. Elizabeth Cady Stanton, for example, exalted the maternal instincts of women as a positive factor that can make a difference in politics (ibid). Thus the need of asserting the equality of women with men, as well as highlighting their more positive potential by virtue of some ‘essential’ qualities and attributes was prevalent even in one of the earliest struggles by women. Focusing on an underlying humanity of both the sexes versus affirmation of sexual difference is analysed below in terms of sameness feminism and difference feminism.

## **Difference as Anathema to Liberation: Sameness Feminism**

As discussed in the earlier sections, feminists realised that the idea that women ‘are different’ in the sense used by biodeterminists had been used to exclude women from ‘valued and fulfilling’ social engagement. The notion that women might not be capable of the rational, abstract, universalising form of reasoning required to engage in public arenas of work and politics therefore had to be countered with an assertion of women’s similarity to men. As Fraser notes, “[F]rom the equality perspective, then, gender difference appeared to be inextricable from sexism. The political task was thus clear: the goal of feminism was to throw off the shackles of ‘difference’ and establish equality, bringing men and women under a common measure” (Fraser, 1997: 100).

To begin with, one can argue without doubt that feminist theory and politics came to the scene emphasising on the common humanity of both women and men. Since men were already privileged in the realm of rights, feminist claim of rights was grounded on the endeavours to highlight how women were as human or same as men.<sup>9</sup> The sameness approach therefore aims at exposing the hollowness of ‘malestream’ theories’ assumptions that women and men are different in their faculties, point of view, life choices, etc and therefore are inferior to men. One can cite here the binaries in the grand theory of liberalism – rationality/emotion, nature/culture, mind/body and so on, which are hierarchical in terms of attributing the first term to men and the second to women, the first term being superior to the second. Sameness feminism, also known as humanist feminism stresses on similarities between women and men rather than their differences. It defines women’s oppression as the “inhibition and distortion of women’s potential by a society that allows the self-development of men.” (Young 2006: 174). The focus is on “sameness, often on underlying, shared humanity.” (Hackett and Haslanger 2006: 94). This has impelled commentators to view sameness feminists, including non-liberal

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<sup>9</sup> The first and second waves of feminism assumed men as a homogeneous group that was powerful in all spheres of life. Men were the dominant class. However, the third-wave informed by pluralism highlights how certain categories of men too are victims of not only race, class, etc but also by gender itself. For example, Carlos Ball examines how persons who defy gender norms- gays, lesbians, transgenders, etc. are denied their basic human rights by a society that is normatively heterosexist (Ball 2005).

feminists like Beauvoir to be relying on rather than challenging the values of liberalism, for they assume the liberation of women as an extension of the “values of liberalism” - the ideal of universal humanity and equal rights that flow from it (Young 2006: 183).

That women and men are essentially the same or the appeal to human essence therefore highlights sameness and negates the earlier assumptions that women and men are different and ought to be treated differently. The primary difference in sameness feminism is not between women and men but between human beings and the rest of nature (Young 2006: 175). Gender difference or any other difference is ‘accidental to humanity’. ‘Gender difference’ in this approach is either a straightforward myth or a contingent result of social conditioning, but in either case needs to be transcended (Squires 2001). Thus for sameness feminists, “sex oppression results from women not being treated as men are treated”; the solution therefore “*is to treat women as men are treated*” (Hackett and Haslanger 2006: 94, emphasis in original). Sameness feminists hence argue for better treatment of women (on par with men’s) by taking cue from the commonalities between women and men or their shared humanity.<sup>10</sup> For instance, they would argue that both women and men, by virtue of their humanity, are equally capable of exercising their suffrage rights. Sameness approach thus derives its arguments from the ‘universal humanity’ rationale and is not sensitive to inequalities and oppressions that can arise from differences- sexual, cultural or national. The sameness approach or humanist feminist project for equality hence does not invoke sexual/gender differences but aim at the transcendence of such differences to establish an androgynous society (see Jaggar 1983).

The strategies offered by sameness feminists focus on giving women the same opportunities as men, be it education in the case of Mill and Wollstonecraft or capabilities in the case of Nussbaum. Beauvoir by way of existential feminism analyses humanist feminism in terms of the distinction between transcendence and immanence. In

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<sup>10</sup> A few examples would include J.S. Mill, Mary Wollstonecraft, Sojourner Truth, Simone de Beauvoir, Anne Phillips and Martha Nussbaum. It may be noted that despite their humanist leanings, other political commitments differ from each other’s.

Beauvoir's analysis, patriarchal culture allows transcendence only for men while women are bound to immanence.<sup>11</sup> One can see in her project the emphasis to erase 'femininity', the immanence, in favour of subjectivity for women. In Beauvoir's framework, female biology- reproductive processes- do limit women's individual capacities, but it is gender, the social category that determines women's oppression more pronouncedly than biological factors (Young 2006: 175-6).<sup>12</sup> Sameness approach however does not stop at demanding the "same" treatment since all are the same. Thus Nussbaum's argument for sameness by appealing to the underlying humanity, that is, the potential to exercise certain human capabilities, is not one for identical treatment per se, but "the same" treatment in the sense that people deserve what they need to be able to actualise their human capabilities (Nussbaum 2006). Another instance can be seen in Anne Phillips' notion of including maternity leave and other pregnancy-related provisions as a policy so that women can enjoy their equal rights with men (Phillips 1991).

Sameness feminism thus purports to challenge the convention of treating women as inferior owing to their differences. It had inherited the vocabulary and problems of a context where differences were the cause of domination, and therefore needed to be eliminated for women's emancipation (Braidotti 1992:194). The emphasis on common humanity was a major breakthrough in the feminist politics of nineteenth and early twentieth centuries, in the light of the determination of women's position by their biology, in both moral and medical discourses: "If one could speak of a female morality at all, it was a morality indissolubly linked to woman's goal, to the economy of her reproductive body" (Finzi 1992: 127). Indeed, it was a milestone in a situation where woman's identities swung between two aspects of her reified body- her sexuality (as an

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<sup>11</sup> Transcendence designates the free subjectivity that defines its own nature; while immanence designates being an object, a thing with an already defined nature. Femininity is thus an essence, in Beauvoir's analysis, that restricts women to immanence, to being defined as the Other. Man exists as a transcending subject who defines his own individual projects, whereas woman in the patriarchal project exists as the object for the subject- man.

<sup>12</sup> In Young's analysis, Beauvoir argues that a woman is appraised first as a woman-whether she conforms to the requirements of femininity; it is only later that her achievements as an individual is appreciated (Young 2006: 176).

erotic object that needs to be disciplined) and maternity (that need to be encouraged, even violently) (Finzi 1992).<sup>13</sup> Access to suffrage, education, employment in public sphere- in those jobs traditionally held by men- was some of the struggles that were fought on the basis of sameness.

The sameness approach however was inadequate in addressing larger issues of women. Sameness demanded that women should be on par with men and those women who could not be like men were doomed to be 'unsuccessful'. The problems of such a perspective vis-à-vis feminism emerge when the struggle for women's emancipation is grounded on the devaluation of 'femininity'. Women were to be liberated from their "imprisonment in femininity" (Young 2006: 177). This is echoed in Beauvoir's words on pregnancy and maternity. Women who are continuously pregnant, she says, are "fertile organisms, like fowl with high egg-production. And they seek eagerly to sacrifice their liberty of action to the function of their flesh: it seems to them that their existence is tranquilly justified in the passive fecundity of their bodies" (Beauvoir, in Hekman 1999: 9). A similar view is expressed by one of the early radical feminists Shulamith Firestone who declared that "The heart of women's oppression is her childbearing and childrearing roles" (Firestone 1972: 81). Firestone wants "the reproduction of the species by one sex be replaced by artificial reproduction in which children would be born to both sexes equally" (ibid: 11-2).

The problem with such an approach that vilifies women's biology is that women's specific problems that could hamper their prospects in public life were glossed over; reproduction and other biological processes distinctive to women were relegated into a separate space- the private sphere. Thus women were expected to behave like men in the public arena and they lived as women only in the private sphere. Philosophically too, the equality/difference dualism posed problems as the dichotomy itself was gendered- the feminine is 'different' to the masculine 'same', and hence women should relinquish their

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<sup>13</sup> The different approaches towards sexuality and maternity in the eighteenth and nineteenth century moral discourses and psychology gets reversed in psychoanalysis. In the latter, it is the erotic desire of the female that gains centre stage while maternity is put in the periphery of discussion.

femininity before entering the public sphere (Braidotti 1992: 194). The appeal to the sameness of all human beings also denies all other sexual differences. A lesbian, gay, transsexual, man, woman-all would be equal by virtue of their human essence, while in actuality, they are denied even the most basic rights for their defiance of gender norms (Ball 2005).

In sum, sameness feminism subscribes to the view that differences have to be transcended. It sticks to the sexless universal paradigm without confessing that it is essentially a male paradigm which can not take care of the specific needs and concerns of the female subject. For instance, sameness feminists like Schechter argue that battered women should be treated as equal (read identical) to other victims. This requires that a battered woman killing her oppressor while he is asleep and a person who kills a stranger when the latter is asleep be treated as similar (Hackett and Haslanger 2006: 95). In another case, maternity will be treated on par with general sickness and not as something specific to women that needs a different approach from that towards general disability or sickness (Bock and James 1992). The emancipationist model of humanist feminism therefore works by claiming homologisation with the male subject; it works towards the erasure rather than the affirmation of sexual difference (Caverero 1992).<sup>14</sup> Pateman (1992: 19) gives us an example of the homologisation of the female subject in the public realm in her discussion of citizenship for women:

Women's inclusion into the political order needs special emphasis, since it is often assumed that the problem of women's citizenship is one of exclusion. A major reason for the complexity of women's political status is that it has never been a matter of mere exclusion. Women's political standing rests on a major paradox; they have been excluded and included on the basis of the very same capacities and attributes. ....Women were held by nature to lack the characteristics required for participation in political life, and citizenship has been constructed in the male image. Women, our bodies and distinctive capacities, represented all that citizenship and equality are not. 'Citizenship' has gained its meaning through the exclusion of women, that is to say (sexual) 'difference'.

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<sup>14</sup> The homologizing paradigm constrains women to become uniform with men. Female sexual difference even at its biological level (e.g. pregnancy) becomes an obstacle to emancipation in this case.

The female body, reproduction, childcare, housework- everything gets devalued in the sameness feminist project of women's liberation. At the same time, it was realised that the homologisation in the public realm does not preclude women from being different in the domestic sphere where their sexual difference comes to the fore in their construction as altruistic, caring, docile-the wife/mother model (Caverero 1992: 44). In short, in their spirit of rejecting biological determinism, the invocation of a common human essence by sameness feminists made biology irrelevant for social differences; they also went a little ahead to say that biology should be forgotten to realise women's human potential.

### **Difference as the Source of Strength: The Case for Difference (Gynocentric) Feminism**

A rethinking in feminism occurred with the second wave of the women's movement when difference began to be seen as not the source of oppression but the source of liberation and transformation. Difference feminists were critical of sameness feminism's implicit equation of human with men and its devaluation of female activity. As the term implies, the difference approach emphasises on differences between women and men rather than on their similarities; the only difference that can change our 'ontological placement' in this approach is sexual difference (Alcoff 1988). According to this approach, "sex oppression results from societies' failure to recognize and value appropriately that which is distinctly feminine or womanly" (Hackett and Haslanger 2006: 95). Women's oppression consists "not of being prevented from participating in full humanity, but of the denial and devaluation of specifically feminine virtues and activities by an overtly instrumentalised and authoritarian masculinist culture" (Young 2006: 178).

Gynocentric feminism therefore defines women's oppression as "the devaluation and repression of women's experience by a masculinist culture that exalts violence and individualism" (Young 2006: 174). It argues for the superiority of "the values embodied in traditionally female experience and rejects the values it finds in traditionally male dominated institutions" (ibid). Femininity is not the problem, but the resource for a

society that can be liberatory not only for women but for all,<sup>15</sup> summarised by Ferguson as follows:

The creation of women's voice, or a feminist standpoint, or a gynocentric theory, entails immersion in a world divided between male and female experience in order to critique the power of the former and valorise the alternative residing in the latter. It is a theoretical project that opposes the identities and coherencies contained in patriarchal theory in the name of a different set of identities and coherencies, a different and better way of thinking and living.

(Ferguson, 1993:3 - 4).

Nancy Fraser also puts the debate between sameness feminism and difference succinctly:

(t)he proponents of equality saw gender difference as the handmaiden of male domination. For them, the central injustices of sexism were women's marginalization and the maldistribution of social goods. And the key meaning of gender equity was equal participation and redistribution. Difference feminists, in contrast, saw gender difference as the cornerstone of women's identity. For them, accordingly, androcentrism was sexism's chief harm. And the centrepiece of gender equity was the revaluation of femininity.

(Fraser, 1997: 100).

Squires (2001) commends that the difference approach leads to a strategy of reversal in place of the strategy of inclusion advocated by sameness feminism. That is, while sameness feminism merely wanted an inclusion of women in the male realms, difference feminism emphasises on reversing the terms of such inclusion- female values are exalted as sources of transforming society. As Young (2006) rightly points out, while sameness feminism exalts the power, prestige, competition and violence in spheres of life, gynocentric feminism critiques the very superiority accorded by patriarchy to these masculinist values. The solution envisaged by difference feminism is just the opposite of sameness approach: be different from men, revalue the feminine. In other words,

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<sup>15</sup> The notions of difference as used by feminists have also varied. While difference feminism as used by Young implies that women are essentially different from men (Young 2006), MacKinnon uses the term 'difference approach' to refer to that approach which suggests that sex is a difference, but underneath it lies a "stratum of human commonality, sameness" (MacKinnon 2006: 244). Thus difference approach is analysed and critiqued by feminists from different perspectives.



difference feminism envisions 'achieving transcendence through the feminine' (Hekman 1999: 13). Difference feminism therefore sees more positive values in traditional female activities and the 'feminine' rather than in the traditional masculinist values. Thus women's reproductive processes sustain humanity's link with nature and promotes life; female eroticism is more fluid, diffuse and loving than aggressive male sexuality (Young 2006: 178).

In other words, by the seventies, feminists themselves began looking forward to women's distinctive biology and biological processes for an alternative notion of politics. An early example of this attempt can be seen in Mary O' Brien's *The Politics of Reproduction* (1981), where motherhood and reproduction emerge as central to the differences between women and men. O'Brien for example, sees reproduction as 'a process, an institution, a social phenomenon', and freedom for women consists in 'transcendence through the feminine' (Hekman 1999: 12).<sup>16</sup> Sara Ruddick, another exponent of gynocentrism presents a slightly different argument. Ruddick sees women's activity of mothering as a source of principles that can be used to formulate a 'feminist maternal peace politics' (Ruddick 2006). Similarly, Hartsock argues that feminine experience, including activities like cooking besides the biological processes, generates an ontology of relations and continuity which in her view is superior to atomistic metaphysics (Jaggar 1990: 248). Again, Chodorow (2006), in her object-relations theory postulates how mothers can instil a notion of relational self though the emphasis here is not on a distinctive biology but the distinctive socialisation possible of women. Carol Gilligan's 'ethics of care' as opposed to ethics of justice is also reminiscent of the revaluation of the feminine. Gilligan argues that women are less likely than men to make or justify moral decisions by the application of abstract moral rules; they are more likely to act on feelings of love and compassion (Gilligan 2006). Other examples of recovering the feminine include unlearning oppressive modes of being (see Lorde 2006), goddess worship (see Christ 2006; Walker 2006), ecofeminism (see Shiva 2006), displacement of phallogocentric discourse with a

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<sup>16</sup> O'Brien however focuses more on the social construction of these otherwise natural or biological processes (see Hekman 1999).

feminine language that can speak the specificity of female desire that is plural<sup>17</sup>. Thus while sameness tried to subsume sex under gender, gynocentrism brings in women's biology in a positive light. Alcoff (1988: 408) cites a few relevant sentences of Mary Daly, a difference feminist:

For Daly, male barrenness leads to parasitism on female energy, which flows from our life-affirming, life-creating biological condition: "Since female energy is essentially biophilic, the female spirit/ body is the primary target in this perpetual war of aggression against life. Gyn/Ecology is the re-claiming of life-loving female energy. Despite Daly's warnings against biological reductionism, her own analysis of sexism uses gender-specific biological traits to explain male hatred for women. The childless state of "all males" leads to a dependency on women, which in turn leads men to "deeply identify with 'unwanted' fetal tissue".

Thus though difference feminists affirm social construction of gender, this gender derives some positive values from sex; the key determinants of inequality are not biology or biological processes per se but the social experience of such processes. Difference feminism would therefore argue for reformulating the public sphere based on 'feminine virtues' like emotions, care, nurture and the like (Jaggar 1983).

However, the problem with difference feminism is that though 'femininity', 'woman', etc are deemed to be revalued, this has seldom happened. "[I]t seems to accept the definitions of "femininity" and "woman" dictated by patriarchy (albeit while calling for a revaluation of what is society defined), rather than challenging those sexist definitions themselves" (Hackett and Haslanger 2006: 95-6). Falling back on femininity as source of critique of patriarchal culture and the establishment of a better society also runs the risk of essentialism, which humanist feminists wanted to get rid of. Taking recourse to women's biological capacity to reproduce, mothering activity and care, women's specific life cycle as in continuity with nature and nurturing activities as sources for a peaceful society – reinstates the essential attributes assigned to women by patriarchy in terms of explicit biological determinism (Jaggar 1983). Difference feminism also runs the risk of replacing universal humanity with universal womanhood; it can resegregate women to "a specific women's sphere, outside the sites of power, privilege and recognition", leaving the male

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<sup>17</sup> This view is espoused by psychoanalytic feminists like Irigaray and Kristeva.

dominated spheres of life untouched and therefore blunting the politics of feminism (Young 2006: 184-6). This can be a regressive step in feminist politics, as this is bringing forth the biological essentialism and determinism pushed to the backseat by social constructivists. The ontology of a woman in the difference approach is not so much intervened by socialisation, social norms and the like; rather there is some attempt to trace some positive values to transform humanity in those values like nurturing that are derived partly from women's biology.

It is therefore clear that in both the sameness and difference approaches, biological determinism and social constructivism have their own distinctive places. Sameness moves towards a strategy of devaluing woman's biology, that is, her sexual difference is rendered unimportant and at times detrimental to the realisation of her self. Thus it deals more with gender than with sex which is an anathema for liberation; but the analysis of gender does not go beyond the acclaimed realm of the public sphere. For example, if a woman is given education, she can do as good as a man. The construction of gender - socially, politically or discursively does not figure in an approach that is founded on universal humanity and the notion of a human essence. This however changes in those approaches that derive their analysis from difference based on biology, affirming those values associated with the feminine as a source of transformation.

### **Cultural Politics and Responses within Feminism**

The rise of cultural politics in the eighties and nineties also had its implications for the notion of difference as well as feminist politics. The emergence of various identity movements based on cultural differences also weakened the thrust of difference and sameness approaches. The equality perspective failed to recognise the socially constructed and the implicative nature of the criteria of evaluation deemed pertinent to social inclusion, while the difference perspective failed to theorise the extent to which 'maleness' and 'femaleness' are themselves socially constructed and how it underplays the plurality of other forms of difference (Squires 2001: 13). Hekman explains the situation:

As feminists began to explore the social/discursive construction of sexual differences, they discovered that a wide array of differences were socially and discursively constituted, and that to accommodate these differences, new strategies were necessary. What was not clear at the outset, however, was that the emphasis on differences created a set of problems that demanded a new epistemology and methodology for feminist theory and practice.

(Hekman 1999: 18).

Indeed, the very dualism between equality/difference, sex/gender and male/female began to be increasingly challenged. There were attempts at synthesising as well as dismantling the dualisms themselves. Commenting on the inefficacy of the sex/gender distinction against the backdrop of changed realities, Moi (1999) finds the distinction between sex and gender not useful to answer the ontological question “what is a woman?” She says:

The concepts sex and gender represent two different ways of thinking about sexual difference. They do not pretend to explain class, race, or nationality, or anything else. When it comes to thinking about what a woman is, therefore, the sex/gender distinction is woefully inadequate. Many critics appear to believe that a sexed human being is made up of the sum of sex plus gender. From such a perspective it does look as if everything in a woman or man that is not sex must be gender and vice versa.....But this analysis forgets that a sexed human being (man or woman) is more than sex and gender, and that race, age, class, sexual orientation, nationality, and idiosyncratic personal experience are other categories that always shape the experience of being of one sex or another.

(Moi 1999: 35).

Identity movements based on cultural differences found that the slogan of ‘sisterhood is global’ or the idea of women as a homogeneous category current in both sameness and difference feminisms is exclusionary – taking cognisance of only white, upper/middle class women. The homogeneity of women invoked in these approaches was dangerous to their particular experiences of women belonging to different religions, race, cultures and so forth. Women’s impossibility to detach themselves from markers other than gender made futile the generic category of women in second-wave feminism that was allegedly representing white, middle class, educated, western, heterosexual woman: “The earlier assumptions of a shared oppression uniting women have given way to a recognition of

difference and diversity, while the notions of human subjectivity and progress on which the political project of feminism is allegedly premised have been challenged” (Charles 1996: 1).

The challenge from within feminism was posed by women of colour, lesbians, third world women and working class women. As Young (2006: 180) points out, one of the first tasks of black feminism was to attack the “victim/dependent image” of women’s situation that was dominant in the women’s movement of early seventies. Black feminists pointed out how the typical account of femininity as entailing weakness and dependence was not true of black women who had to be tough and physically strong; also such an account had a clear class and race bias. The black lesbian feminist Audre Lorde makes such an argument when she argues that sisterhood pretends homogeneity of experience; white women focus upon their oppression as women and ignore differences of race, class, age and sexual preference. Lorde feels the urgency to “recognize the differences among women who are equals, neither inferior nor superior, and devise ways to use each others’ difference to enrich our visions and our joint struggles” (Lorde 2006: 296-7). Thus Lorde sees a dangerous proposition in the views of certain black scholars not to see the oppression of women within the black community; at the same time she feels the need to recognise the diversity in the experiences of women.

A pluralisation of identity became pre-eminent that explained how sisterhood cannot be universal. Squires describes this juncture in politics as follows: “The identifications of sexuality, race and class were all highlighted as central to the personal experiences and political identity of most women. The whole debate shifted from an exclusive focus on gender difference to an exploration of differences among women” (Squires 2001: 14). The focus was now on differences but a plethora of differences rather than on the binaries between human selves and the rest of nature or between the male and female selves. Feminist academia and activism thus moved from their contentions with the “phallogocentric denials of the legitimacy of gender as a category of analysis” of the 70s to the “construction, examination, and most significantly, the institutionalization of difference *within* feminist discourses” (Mohanty 1987: 68, emphasis in original). In fact,

the challenges posed by black and Third World feminists against the universality of gender oppression have been at times appreciated as a way “towards a more precise, transformative feminist politics” (ibid: 69).

The politics of multiple differences and recognition was most manifest in the debates on political representation and how to evolve a strategy or foundation for women’s struggle given the disappearance of the generic category ‘Women’. Feminists of all genres tried to resolve it in their own ways. Most important in this challenge to the homogeneity of women was also the debunking of feminist politics as the politics of sexual difference only. The interventions by class, race and sexuality as equally useful categories of analysis challenged what Mohanty calls the ‘feminist osmosis thesis’ - that “females are feminists by association and identification with the experiences which constitute us as female” (ibid: 71). It also exposed the hollowness of the universal of gender oppression that assumes gender oppression as a priori, without empirical investigations culturally and historically.

The emergence of identities other than sexual difference was also compelling on the part of feminists to reconcile their politics with the demands of multiple differences rather than undertake a confrontationist approach. Nancy Fraser’s bivalent conception of justice that “encompasses both distribution and recognition without reducing either one of them to the other” testifies to this (Fraser 2008).<sup>18</sup> The necessity to accommodate and give attention to differences like race and class in women’s movement and to challenge the exclusive politics of the second wave is manifested in the statement that feminism is more a political commitment rather than a lifestyle (hooks 1997). The approach to these innumerable differences and multiple identities took several forms which Young refers to as the concept of “multiple genders” (Young 1987). An instant response of feminism was to come out with what Spelman decries as an ‘additive’ type of analysis: “In sum, according to an additive analysis of sexism and racism, all women are oppressed by sexism; some women are further oppressed by racism” (Spelman, in Nicholson 1987: 43).

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<sup>18</sup> Fraser views gender as a bivalent category, implying its relation to both class and status; in other words, both the distribution and recognition paradigms together can only solve the issue of gender (Fraser 2008).

Spelman thus argues that woman's gender identity and gender attributes differ according to her race, class, religion, etc, and therefore one must restrict the comparison to women and men of the same class, race or nationality (Young 1987:193-4). At another level, Ann Ferguson proposes that "[I]nstead of a concept of sisterhood based on shared gender identity, it may be more helpful to posit different racial gender positions, and possibly different class gender positions" (Ferguson, in Young 1987: 194). The confusion with regard to the ways in which gender, class and race can be treated as bases of oppression has been tremendous. The same books and anthologies would contain references to gender, race and class as "intersecting systems", "interlocking systems", and "multiple bases of oppression", or as "distinct axes" or "concentric axes" (West and Fenstermaker 1995: 9).

The idea of multiple genders and multiple identities however has created ferment among feminists who challenge the universal notion of gender oppression as well. For example, the internal analysis of gender relations with respect to class, race, etc prohibit an analysis of gender relations involving two races or classes - example, harassment of a proletariat woman by her boss or the rape of a black woman by a white man. This therefore defeats the very purpose of expanding the analysis from between men and women to other differences (Young 1987: 194-5). More importantly, in challenging the unity and essence of the category of women, multiple genders conceptualise categorical unities to other categories like class and race (Bordo 1987). Taking stock of new ways of forging women's struggle, and describing women as a social collective without essential attributes, Young offers another approach. Young (1987) proposes that gender, race, class and all other categories need to be seen as a 'seriality' instead of as a group, the seriality drawing from the material object of women's bodies and the social practices of heterosexuality.<sup>19</sup> According to this view, women are different from each other; they have

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<sup>19</sup> While group stands for "the self-consciously, mutually acknowledging collective with a self-conscious purpose", a series is "a social collective whose members are unified passively by the objects around which their actions are oriented or by the objectified results of the material effects of the actions of the others....The unity of the series derives from the way that individuals pursue their own individual ends with respect to the same objects conditioned by a continuous material environment, in response to structures that

no common attributes; neither do they consciously come together for a common a priori goal; but they are a series who may form a group when some problem confronts them, which they think need to be acted together upon. Thus there is a huge shift in feminist scholarship that precludes any essence or sharing based on biology or the situation of women that necessitates self-conscious collective action, to a very contingent nature of women's beingness and reflexivity. In a different tone, expressing the desirability of dropping mathematical terms of 'additives' and 'multiples', West and Fenstermaker (1995: 9) assert that "while gender, race, and class- what people come to experience as organizing categories of social difference – exhibit vastly different descriptive characteristics and outcomes, they are, nonetheless, comparable as mechanisms for producing social inequality".

#### **"The End of Sexual Difference?"<sup>20</sup>: Postmodern Feminist Approach to Difference**

The previous section reveals that feminism has been engaged in contesting what Teresa Ebert calls "the "difference" of difference", that is, woman as the sexual 'other' and "*how* to write difference into culture as well as *what* to write as a difference" (Ebert 1991: 889, emphasis in original). The debate now has taken a new and complex turn in which "a postmodern notion of difference calls into question the very possibility of identity", that was the foundation of 'cultural feminism' (ibid). Indeed, postmodernists suggest that "ideas of shared identity are not the obvious outcome of being of colour, lesbian or working class but discursively produced in relation to hegemonic discourses which privilege whiteness, heterosexuality and the middle and upper classes" (ibid: 106-7). The basis for a shared politics in postmodern approaches stems from shared forms of oppression rather than shared identity; the alliance is therefore contingent and cannot be

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have been created by the unintended collective result of past actions." (Young 1987 : 199). Series therefore is not bothered about who I am or what my attributes are but my orientation around the same objects and structures as others in the series. Young borrows the notion of seriality or series from Sartre who gives the example of people waiting for a bus, amongst others, as a series. Their actions, goals, orientations, etc may be totally different from one another; their relation to each other is minimal; their collectivity brought about only by the bus (material object) and public transportation (social practices).

<sup>20</sup> This is the title of an essay by Judith Butler in her book *Undoing Gender* (2004).



made in advance. That is, an Afro-American woman may join hands with an Afro-American man in the struggle against racism; she may also join hands with other women to fight against patriarchy including black patriarchy.

Postmodernism, in the view of many theorists on women's subordination, offers "a way of theorizing and explaining both the strengths and limits of an idea of sisterhood that was unproblematically grounded in 'being a woman'" (Weedon 1999: 105). Postmodern feminism therefore problematises the ideas of female subjectivity and identity by postulating that the identity is "internally fractured and often contradictory" (ibid). Postmodern feminists therefore problematise the very category of 'women' that was central to trans-historical accounts and the essentialist assumption that women have a shared identity, arising from their belongingness to a group which has common attributes. While many feminists have disapproved postmodern feminism as "textual politics" or "sexual politics"<sup>21</sup>, that can rob women of subjectivity and agency (see Hartsock 1990; Bordo 1990), others have been trying to see its potential as well.<sup>22</sup>

Postmodern feminism has therefore created a churning in feminist politics by challenging its very foundation – the category of woman and the shared attributes or oppression of women across cultures. A crucial aspect of deconstructing the category of women has been the deconstruction of the binary oppositions that were the cornerstone of the idea of sexual difference on which women's politics thrived for many years. Deconstruction reveals that the binary oppositions are not "expressions of a natural order, but rather

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<sup>21</sup> These terms have been used by Toril Moi (1985).

<sup>22</sup> Teresa L. Ebert makes a distinction between "ludic postmodernism" and "resistance postmodernism". Ludic postmodernism addresses "reality as theatre for the free-floating play of images, disembodied signifiers and difference.....this results in a rhetorical or textual politics aimed at obscuring prevailing meanings and disrupting the oppressive totality of what Lyotard calls "cultural policy"." In contrast to this, Ebert posits resistance postmodernism "that views the relation between word and world, language and social reality, or, in short, "difference", not as the result of textuality but as the effect of social struggles." (Ebert 1991: 887). Even without making such distinctions, many others have examined the valuable insights that postmodernism can provide feminism (see Butler 1990; Butler and Scott 1992), whereas some others have tried to transform both to strengthen both (see Fraser and Nicholson 1990).

discursively produced under specific historic conditions” (Weedon 1999: 102). The violence of such a binary opposition is also manifested in the way it excludes many sections- lesbians, gays, transvestites and even some of the heterosexuals who are not ‘adequately’ masculine or feminine- as ‘abnormal’. By way of deconstruction, postmodern feminism therefore claims to arrive at a notion of subjectivity where multiple identities are constitutive of the self in contrast to the humanist subject of Enlightenment that constitutes and produces discourses and chooses identities. Postmodern feminism, therefore argues that “there is no such thing as natural or given meaning in the world”, challenging all theories of “sexual and gender difference which appeal to the fixed meanings of bodies” (Weedon 1999: 102). It questions the foundations of modern theories of sexual difference, heterosexism and female subjectivity and even the fixity of sex.

Postmodern feminism therefore engages in a more radical engagement with difference. For postmodern feminists, both sameness and difference feminism are problematic- they preoccupy themselves with differences as a “mode of *identity*” (Ebert 1991: 891, emphasis in original). They thus find it problematic to accept that any category has identical interests, experience or goals. Thus both sameness and difference feminisms “are alike in essentialising an “identity” for women- whether based on “sameness” or “difference” between women and men- in terms of which women are defined as sharing the same set of traits and experience, thus constituting a unified group” (ibid). For instance, the anti-essentialism of postmodern feminism has been attractive to many women scholars of colour who want to demonstrate how a politics of difference that recognises race should also take cognisance of the interventions made by class, gender and other identities: “Employing a critique of essentialism allows African-Americans to acknowledge the way in which class mobility has altered collective black experience so that racism does not necessarily have the same impact on our lives. Such a critique allows us to affirm multiple black identities, varied black experience” (hooks 2006: 366).

In a nutshell, postmodern feminism awakens us to the need of a rethinking of sexual difference from the classical difference between two sexes-women and men, to that of

multiple differences. In other words, the politics of gender or sexual difference must be replaced with a plurality of difference where gender loses its position of significance:

Politically, this means that the terms of possible feminist political coalitions are not to be sought in the categories of “sameness”- be it sisterhood, the “second sex”, or some other commonality of oppression. The political focus is shifted instead toward a politics of coalition based on the confrontation of differences among women. Here, issues of race and ethnicity and - especially in Europe- of national identity, nationalism, and religion are of greatest importance. In this regard, sexual difference can be seen as a critique of emancipationism, or equality-minded feminism.

(Braidotti 1997: 28).

At the same time this approach is not in favour of a celebration of differences with the hierarchy traditionally associated with it; rather the attempt is to de-essentialise differences and reduce them to processes by which power and discourses are produced. This also demands the interrogation and deconstruction of the category called “women” (Riley 1988; Scott 1990; Butler 1990). The gendered identity is objected to not because of an apriori genderless core self, but because the self itself is constituted by various ‘identities’ of which gender is only one of them:

Apart from the foundationalist fictions that support the notion of the subject, however, there is the political problem that feminism encounters in the assumption that the term *women* denotes a common identity. Rather than a stable signifier that commands the assent of those whom it purports to describe and represent, *women*, even in the plural, has become a troublesome term, a site of contest, a cause for anxiety.....the term fails to be exhaustive, not because a pregendered “person” transcends the specific paraphernalia of its gender, but because gender is not always constituted coherently or consistently in different historical contexts, and because gender intersects with racial, class, ethnic, sexual, and regional modalities of discursively constituted identities. As a result, it becomes impossible to separate out “gender” from the political and cultural intersections in which it is invariably produced and maintained.

(Butler 2006: 354).

For poststructural feminists, the sex/gender distinction does not challenge biological determinism and essentialism, for sex is treated as something fixed, natural, essentialist and unchangeable. The distinction fosters what Nicholson calls the “coat rack” view of

the body, where gender is simply inscribed on the natural sex (Nicholson 1987). In other words, sex is fixed and unalterable and gender is just put on it as in the case of coat-rack. Thus the check on essentialism is limited, for the body is perceived as ahistorical, universal and essentialist. Therefore, if gender tries to counter biological determinism, sex and sexual difference accept the same (Scott, in Moi 1999: 32). For poststructuralist feminists, sex is hence as culturally constructed as gender or 'perhaps sex was always already gender?' (Butler 1999).<sup>23</sup> In such an explanation, sex is not the cause but the effect of gender. For example, Butler (1999) argues that 'opposite sexes' is a projection of the cultural pattern of heterosexuality. Thus it is heterosexuality that produced two sexes-women and men, and not biology.<sup>24</sup>

The constructed nature of biology therefore becomes central to postmodern feminism. While female body had its own place in all strands of feminism (other than sameness feminism with its 'somatophobia'), as "the primary site of women's difference from men, and of the exercise of patriarchal power over reproduction, motherhood, sexuality and women's labour power" in radical feminism, or the socialist feminist conception of the body as "historically and socially produced in the interest of particular class, gender and racialized interests", it is in postmodern feminism that "the most developed attempts have been made to theorize the body in non-essentialist and historically specific ways" (Weedon 1999: 99-100). Thus body and its relation to difference and gendered subjectivity have gained momentum in the postmodern phase of feminism. Jane Gallop, Elizabeth Grosz, Judith Butler- are prime examples of this kind of theorisation. These writers are engaged in an attempt to disrupt the binary oppositions of Enlightenment philosophy which has been involved in defining the body as well-inside/outside, subject/object, active/ passive, etc. In doing so, they also give us a different notion of

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<sup>23</sup> Other poststructuralist feminists claim that sex is constructed by gender, or by the same regulatory discourses that produce gender. Thus ultimately, in poststructuralist analysis, there is no difference between sex and gender (see Moi 1999).

<sup>24</sup> Such theses have been suggested in scientific research as well. For example, testosterone 'the male hormone' has been discovered to be found in women also. This is true of the 'female hormone' oestrogen as well. It has also been established now that many women have higher levels of oestrogen than many men, and after fifty years of age men have more oestrogen than women (see Connell 2002: 33).

corporeality, in which the “female body is a site of resistance to patriarchy, but one which is refused representation by the patriarchal symbolic order” (Gallop, in Weedon 1999: 121). In a similar vein, Grosz draws a distinction between the hitherto dominant notions of the body as “a surface on which social law, morality and values are inscribed” and her notion of the “lived body”- ‘the lived experience of the body, the body’s internal or psychic inscription” (Grosz, in Weedon 1999: 121).

Furthermore, postmodern feminism not only finds the sexual difference theory as inappropriate in a world of increasing fragmented identities, it also finds it constructed discursively. Haraway’s ‘postgender’ world is an example. Haraway uses the image of the ‘cyborg’ to undermine ideas of true identity based in nature, psychoanalysis and the heterosexual family. In the postgender world, the sexed character of bodies would be erased and there will be enjoyment of our multiplicity rather than a ‘mythical original wholeness’ (Haraway 1985). This perspective is moving further away not only from the blurred lines between the sexes but also between humans and the rest of the nature: “From another perspective, a cyborg world might be about lived social and bodily realities in which people are not afraid of their joint kinship with animals and machines, not afraid of permanently partial identities and contradictory standpoints” (ibid: 196).

Postmodern feminism therefore offers an option to challenge the fixity of body, its rootedness not only in biology but also in human nature or in any kind of universalist claims. This is significant for feminism because of its longstanding engagement with sexual difference; the social constructionist accounts also leave room for a fixed, natural anatomy which is problematic for transvestite humans and others who are oppressed and discriminated against due to their sex which does not fall in the binary of man/woman that was central to the feminist project-sameness, difference or dominance. The binaries also gloss over the differences within each side - the differences within women or men. Also important is the lack of room for sexual minorities in this binary that has perpetuated the norm of heterosexuality. “...[I]ts questioning of universals and the possibility of objectivity, and its focus on the very criteria by which claims to knowledge are legitimized, provide for theory which can avoid generalizing from the experiences of

Western, white, heterosexual, middle-class women” (Weedon 1999: 129). The valourisation of multiplicity and pluralism aims to establish solidarity in politics without erasing differences. Recognition of and respect for differences are therefore central to postmodern feminism. Haraway contrasts the new kind of politics with the earlier one: “The recent history for much of the U.S. Left and the U.S. feminism has been a response to this kind of crisis by endlessly splitting and searches for a new essential unity. But there has also been a growing recognition of another response through coalition- affinity not identity” (Haraway 1985: 197).

As evident from the discussion above, the notion of difference in women’s movement and feminist scholarship has undergone substantial changes in the last few decades. Early feminists began with the assumption that biological difference is the cause for women’s subordination, the difference should be erased. Difference feminism opposed this position on the premise that patriarchy has branded the ‘feminine’ as inferior; the solution therefore is to celebrate it. The dominance approach rejected both these views and instead argued that difference is actually the effect and not cause of domination. The postmodern approach posits that there are multiple differences, differences at all levels, and these need to be attended to in feminism. The postmodern feminist approach therefore argues about the futility of a politics based on one kind of difference-sexual difference, and necessitates coalition politics removed from any notion of essential unity. This has serious ramifications for women’s politics wherein we need to see its implications for women’s subjectivity and agency. While other feminisms talk of rights and their indispensability, postmodern feminists devise ways to subvert the norms in society - this has important implications on feminist politics and women’s rights.

## Chapter 3

### **Reclaiming the Feminine and Sexuating Rights: Difference and Women's Rights in Luce Irigaray**

Sexual difference is one of the major philosophical issues, if not the issue, of our age. According to Heidegger, each age has one issue to think through, and one only. Sexual difference is probably the issue in our time which could be our "salvation" if we thought it through.  
(Irigaray 2005b: 7).

I am a woman, a woman who favours difference, even though I understand that equality can, and sometimes must, come first in order that the differences can be seen for what they really are. To be in favour, for example, of the difference between man and woman cannot be interpreted as a return to a hierarchical situation; instead, we have to move into a new era, in which it is recognized that the irreducible core of a community is to be found between a man and a woman who respect each other in their differences.  
(Irigaray 2000a: 24).

[t]he universal is two: it is woman, it is man. And it is found in the encounter between these two universals. At this crossroads, or in this cradle, which is both natural and cultural, humanity can be born or reborn.  
(Irigaray 2000a: 29).

As discussed in the previous chapter, sameness feminists have been votaries of an underlying equality between men and women on the ground of common humanity. The Aristotelian notion of justice as treatment of like cases alike and different cases differently here took the form of a sex-blind approach to rights that consisted in the struggle for right to equality, right to property and other rights that were already available to men (Jaggar 1990). This notion of equality however has been accused of hampering the cause of women's rights, for its equation of equality with sameness also required the glossing over of or making irrelevant the specific conditions of women arising from their distinctive biology as in the case of reproduction. Reproduction, however, was just one

issue. Over time, feminists of various ideological backdrops, attempted to retrieve a new notion of female subjectivity rooted in the specificities of women. An example could be the gynocentric feminist projects of ethics of care or the object-relations theory. At yet another level, especially in Europe, feminists resorted to psychoanalysis to develop an alternative notion of the feminine, although by admitting and challenging its phallogentrism. These feminists, trained in psychoanalysis, critiqued the Freudian model and took inspiration from the Lacanian imaginary, the stage before the repression of mother-daughter relations. The difference feminism that evolved from such endeavour gives priority to the desiring rather than the willing subject<sup>25</sup> (see Braidotti 2002). A new notion of politics emerges here that draws upon the distinctiveness of female sexuality and female desire.

Luce Irigaray, who belongs to the new French feminist tradition, attacks sameness feminism for its underlying premise of requiring women to be same as men, implying homology. Irigaray writes in a context when the French Republic had already guaranteed to every woman all the rights guaranteed to men (see Picq 2002). Thus right to vote, education and employment as well as the right to work were already secured by the women's movement in France. New French feminists, including Irigaray, however realised that feminism also has to challenge the representation of women as the other of man, an inferior other, his 'specular' other. Influenced deeply by Lacanian psychoanalysis, Irigaray, like many others, embarked on a project to recover a notion of the feminine that has so far been repressed by patriarchy. She therefore emphasises on difference and rejects sameness. This also has marked implications for Irigaray's theorisation of women's rights, for these rights are expected to embody the new notion of the feminine. She therefore positively affirms rather than undermines or negates the feminine.

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<sup>25</sup> The willing subject, or the subject that wills or decides or chooses is part of the humanist project. The self here constitutes the world around it and is a coherent, unitary self, in contrast to the postmodern fragmented self.



Irigaray thus redefines the notion of feminist politics and rights through a project of the culture of two subjects – man and woman rather than the homologisation of the sameness project or the reversal of power in most versions of gynocentric feminism. The novelty in Irigaray’s project lies in her endeavour to discover a new notion of the feminine that can pave way for emancipation as well as coexistence of both men and women. Her perspective is however permeated with strong currents of biological essentialism, celebration of the female and the feminine as source for social transformation, and the project for ‘sexuate’ rights. This chapter examines Irigaray’s analysis of equality and difference and their implications for feminist politics. This chapter also intends to see if Irigaray is actually putting forth an alternative notion of the feminine, and if her endeavour for sexuate rights is positive or reactionary as far as women’s emancipation is concerned.

#### **Affirmation of Difference: A New Notion of the ‘Feminine’?**

Irigaray makes the following statement in *Democracy Begins Between Two* (2000a: 38)<sup>26</sup>:

The right which has to be established or re-established as first condition of a democratic regime, is the right to exist or to be oneself with sovereignty. Such a right is, as yet, non-existent for women who, at best, are permitted to present themselves as neutral or assimilable to men, as reproductive nature or as productive manpower, in a community where, as women, they go unrecognized.

The statement by Irigaray testifies to a disillusionment with the sameness feminist project. Irigaray understands equality and sameness as synonymous terms; in other words, her opposition to equality is actually the opposition to sameness and not against woman being on an equal footing with men. That is, Irigaray assumes that equality necessarily means sameness and is therefore detrimental to feminist politics (Whitford 1991: 76). She argues that in this challenge, it becomes “demanding to speak as a (masculine), ‘subject’”, by which she means that we “postulate a relation to the intelligible that would maintain sexual indifference” (Irigaray 1991: 124). In Irigaray’s

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<sup>26</sup> The same view can be found in Irigaray (2003: 386-91).

analysis, the right to exist and the right to be sovereign are denied to women, which is a negation of democracy itself. Their sexual difference makes them aliens and exceptions, for women are “at best tolerated only as neutral individuals, or as men, as reproductive bodies or as productive labour, in a community where they remain alien by virtue of their being women” (Irigaray 2003: 390).

Irigaray’s disillusionment with sameness feminism emerges mainly out of three reasons – the definition of women according to male standards, the absence of the existence of woman as ‘another subject’ rather than the other of man, and finally the undermining of the uniqueness of female sexuality. To put in one sentence, all these accrue to her disenchantment with defining women in terms of men. Irigaray contends that feminist discourse has not confronted the issue of sexual difference satisfactorily. Irigaray is therefore interested in exploring the differences between men and women rather than highlighting their fundamental sameness. She is engaged in “distinguishing between the apparent neutrality of discourse and the systematic bias towards masculinity that informs that discourse at every turn” (Chanter 1998: 592). Irigaray therefore says,

Making equal opportunities for women possible does not imply that women should simply model themselves on masculine ways of being and doing, but that they should enjoy equivalent opportunities to men in all aspects of life and particularly in the sphere of education. So it is a question of discovering what woman is and what she wants; and opening up ways for her to bring her identity and her subjectivity into being.

(Irigaray 2000a: 1-2).

In other words, women have always been understood as the counterparts of men, that is, the term of reference has always been the male sex and women have been defined in terms of their deficiency vis-à-vis men; this also explains the vision to be equal to men (Mortley 1991). Irigaray feels that “the liberation of women does not consist in becoming male, or the desire for male parts or objects of men, but in the revaluing of the expression of their sex as feminism subjects” (ibid: 67). Man as the referent of everything, including woman has also resulted in the marginalisation of sexual difference in feminist theory (Mortley 1991). Irigaray however also claims to discard the notion of the feminine

constructed by patriarchy; in her view, sexual difference as defined and represented by patriarchy in the form of feminine actually ends up in the very erasure of the feminine. That is, what is defined in the patriarchal logic as the feminine devalues and erases the actual feminine that offers an alternative politics in Irigaray.<sup>27</sup> She commends on the difficult situation for women for whom it is difficult to follow either sameness or the difference set by patriarchal standards:

But to what reality would woman correspond, independently of her reproductive function? It seems that two possible roles are available to her, roles that are occasionally or frequently contradictory. Woman could be *man's equal*. In this case, she would enjoy, in a more or less near future, the same economic, social, political rights as men. She would be a potential man. But on the exchange market – especially, or exemplarily, the market of sexual exchange – woman would also have to preserve and maintain what is called *femininity*. The value of a woman would accrue to her from her maternal role, and, in addition, from her ‘femininity’. But in fact that ‘femininity’ is a role, an image, a value, imposed upon women by male systems of representation. In this masquerade of femininity, the woman loses herself, and loses herself by playing on her femininity. The fact remains that this masquerade requires an *effort* on her part for which she is not compensated. Unless her pleasure comes simply from being chosen as an object of consumption or of desire by masculine ‘subjects’. And, moreover, how can she do otherwise without being ‘out of circulation’?

In our social order, women are ‘products’ used and exchanged by men. Their status is that of merchandise, ‘commodities’. How can such objects of use and transaction claim the right to speak and to participate in exchange in general?.....The use, consumption and circulation of their sexualized bodies underwrite the organization and the reproduction of the social order, in which they have never taken part as ‘subjects’.

(Irigaray 1991:130-1, emphasis in original).

In other words, theories aiming at women’s liberation or having potential for the same<sup>28</sup> have argued that unless women renounce their ‘feminine’ identity and agree to live up to

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<sup>27</sup> Even in grammar, Irigaray notes, the devaluation of that which is the feminine is the rule. For instance, in French, the sun (*le soleil*) is masculine while the lesser object moon (*la lune*) has been the feminine (Irigaray 1991).

<sup>28</sup> Read as those theories of sameness feminism and other non-feminist theories that can be extended to argue for women’s equality and rights on the premise of the inherent sameness of human beings.

the ideal of the masculine, they are mere objects and cannot be subjects. The normativity of male or masculine is attacked by Irigaray for whom it is self-defeating for women to accept male standards to attain subjectivity. She says, “The ‘feminine’ is never to be identified except by and for the masculine, the reciprocal proposition not being ‘true’” (ibid: 131). Indeed, she reflects on the inadequacy of any universal that overlooks sexual difference (ibid: 205; Irigaray 2005b: 8). Thus law becomes a sexuate law where the female genre is inscribed – not ‘equal laws for all’- but laws which take account of the fact that women are not equal to men (Irigaray 1991: 205-12). At the same time, Irigaray condemns the objectification of women when they resort to their specificity – femininity.

Irigaray therefore offers an interesting position which once again claims to debunk any single either-or position in feminism in terms of equality or difference. That is, Irigaray feels it practically impossible and unjust to rely on equality or difference approach *in toto* to address women’s issues and to achieve rights for women. This is clearly stated by Irigaray when she says:

..... my thinking about women’s liberation has a dimension other than the search for equality between the sexes. That does not stop me joining and promoting public demonstrations to obtain this or that right for women: the right to contraception, to abortion, to legal support in cases of public or private violence, the right to freedom of expression, etc.

If, however, these struggles are to be waged other than simply putting forward demands, if they are to result in the inscription of equal (but necessarily different) sexual rights before the law, women – and couples, come to that – must be allowed to access another identity. Women can only take up these rights if they can find some value in being women, and not simply mothers.

(ibid: 31).

As mentioned earlier, Irigaray’s critique of sameness emerges from its homological underpinnings. This makes her reflect also on the philosophical subject which in her view has so far been masculine with woman being a mere other of the man.

Irigaray hence calls for reconsidering the “nonneutrality of the supposedly universal subject” that constitutes scientific theory and practice (Irigaray 1985a; 2005a; 2005b).<sup>29</sup> She writes, “the self-proclaimed universal is the equivalent of an idiolect of men, a masculine imaginary, a sexed world” (Irigaray 2005b: 103). In other words, Irigaray rejects man and masculine as the norm, the conformity to or distance from which defines the female/feminine. As Jane Gallop commends, for Irigaray, the “‘neutral’ subject is actually a desexualized, sublimated guise for the masculine sexed being”, for woman can be a subject only “by fitting male standards which are not appropriate to, cannot measure any specificity of femininity, any difference” (Gallop 1982: 58).

The affirmation of sexual difference is manifested in Irigaray’s discussion of language as well. Changing linguistic codes is crucial to the attainment of the project of sexual difference. Language, in Irigaray’s analysis, is certainly enmeshed in social reality. For example, she argues that the signs for the plural can remain in the masculine provided that male relations only are involved, and this indicates that exchanges on the public level are exclusively masculine exchanges (Mortley 1991: 64). Neutralising grammatical gender is therefore equivalent to the annulment of the difference in sexual subjectivity which can increasingly exclude sexuality from culture (ibid: 65). The devaluation of that which is feminine is pervasive in language. For instance, she says, while living beings, animated beings and cultivable beings become part of the masculine, objects which are inanimate, deprived of life and inhuman turn out to be feminine. According to Irigaray, such designation of certain objects as masculine and others as feminine has connotations for subjectivity as well. That is, men have attributed subjectivity to themselves while reducing women to the status of objects (ibid: 67).

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<sup>29</sup> Irigaray argues that the subject of science is not a neutral universal but a sexed subject which is masculine. The sciences have always focused on bivalence, solids, etc which are attributable to the masculine and not the feminine. She cites instances from various scientific disciplines to prove her point. For example, biological sciences have been reluctant to study the constitution of the placental tissue, or the permeability of membranes. Similarly, social sciences especially Economics prefer emphasis on scarcity and survival rather than abundance and life associated with women. (Irigaray 2005b: 103-7).

It is therefore Irigaray's contention that if women have been typically construed as the other of men, then women's subordination should also be understood in terms of their objectification. "Women have become the objects of desire, the mirror of the other, without having developed a sense of their own subjectivity" (Chanter 1998: 593). Thus the sameness project would only once again reduce and reinforce the reduction of women into objects rather than subjects. This further makes it clear that Irigaray does not want women to give up their struggle to attain subjectivity; she is rather presenting the difficulties in construing subjectivity if patriarchal relations and representations are taken for granted and women want to ascertain their sameness with men. Though she is not opposed to women's struggles for equal rights, she suggests that "equality exacts an enormous price; it means becoming-a-man" (Whitford 1991: 76).

Irigaray provides us with a notion of the subject different from that provided by sameness feminists. For example, Irigaray considers Beauvoir's repudiation of woman as the 'other' of the masculine subject not only inadequate but also regressive and erroneous since it implies "the negation of an/other (woman) [*d'un[e] autre*] equal in value to that of the subject" (Irigaray 1995: 8). She laments the othering of woman against the norm of man in most philosophies:

For them (men), being drawn to the other means a move toward one's mirage: a mirror that is (barely) alive. Glacial, mute, the mirror is all the more faithful. Our vital energies are spent in the wearisome labor of doubling and miming. We have been destined to reproduce – that sameness in which, for centuries, we have been the other.

(Irigaray 1980: 71).

Irigaray, as discussed earlier, dismisses the othering of woman with reference to man. At the same time, she also dismisses the idea of many subjects. Irigaray thus critiques the singularity assigned to and assumed about the philosophical subject, which since the nineteenth century began recognising 'the other', but only to acknowledge this diversity in a hierarchical, imperialist fashion: "the *many* always subjugated by the *one*" (Irigaray

1995: 7).<sup>30</sup> Thus the enforcement of such a norm resulted in a hierarchy pitted against perfection and less perfections:

Others were only copies of the idea of man, a potentially perfect idea, which all the more or less imperfect copies had to struggle to equal. These imperfect copies were, moreover, not defined in and of themselves, in other words, as a different subjectivity, but rather were defined in terms of an ideal subjectivity and as a function of their inadequacies with respect to that ideal: age, reason, race, culture, and so on. The model of the subject thus remained singular and “others” represented less ideal examples, hierarchized with respect to the singular subject.<sup>31</sup>

(Irigaray 1995: 7).

At the same time, Irigaray does not seek the replacement of the ideal singularity with a concrete singularity or multiplicity (Irigaray 1995; Irigaray 2000a). The solution lies in moving away from the “all-powerful model of the one and the many” to the “model of the two, a two which is not a replication of the same, nor one large and the other small, but made up of two which are truly different” (Irigaray 1995: 12). This is so because in Irigaray’s view, the singular model can “at best, allow for an oscillation between the *one* and *the* many, but the one remains more or less obviously in charge of the hierarchy of the many” (Irigaray 2000a: 127-8). That is, “the singular is unique and/but ideal, Man. Concrete singularity is only a copy, an image” (ibid: 128). Irigaray writes,

We have to rethink the model of subjectivity which has served us for centuries, not in order to add a little bit here or a little bit there, but so that we can abandon the model of a single and singular subject altogether. This does not mean that the one of the subject can become many (plus one or minus one), but that the subject is at least two, man and woman, a two in relations that are not biunivocal.

(Irigaray 2000a: 6).

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<sup>30</sup> Irigaray implies by this statement the idea of the human being that was presented as the ideal: “one, singular, solitary, historically masculine, the paradigmatic Western adult male, rational, capable” (Irigaray 1995: 7). The differences and diversity that were realised in course of time thus became the exceptions to the already established fundamental model of human being; others were just imperfect copies of this ideal.

<sup>31</sup> The same views can be found in Irigaray (2000a: 122, 171).

On the other hand, she proposes an “inverse of the Beauvoirian subject”, “an/other subject” instead of “the other of the same” (Irigaray 1995; 2003).<sup>32</sup> “The question of the other has been poorly formulated in the Western tradition, for the other is always seen as the other of the same, the other of the subject itself, rather than an/other subject [*un autre sujet*], irreducible to the masculine subject and sharing equivalent dignity” (Irigaray 1995: 8). This also shows the anxiety of Irigaray regarding the abstract philosophical subject devoid of any characteristics that can acclaim its difference from the ‘subject’. In other words, Irigaray denounces projects that seek to trace similarities with the normative subject; her venture aims at establishing actual another subject altogether, by virtue of the latter’s differences. That is, while Beauvoir and many others seek to establish woman as a subject by unravelling the similarities to the masculine subject, Irigaray endeavours to establish woman as another subject itself (Irigaray 1985b; Irigaray 2000a). As she writes,

Rather than refusing, as Simone de Beauvoir does, to be the other gender, the other sex, I am asking to be recognized as really an other, irreducible to the masculine subject...for me, it wasn’t a question of admitting that my sex and gender should remain ‘second’, but of wanting the sexes and the genders to become two, without there being a first or a second.

(Irigaray 2000a: 125).

Thus the differences that tell women from men, in Irigaray’s view, should constitute another subject or a different kind of subjectivity for women rather than the race to be the same as man: “the question of who the other is has not been well formulated in the western tradition, in which the other is always the other of a singular subject and not another subject, irreducible to the masculine subject and of equal dignity” (ibid: 123-4).

The ‘other’ in Irigaray is therefore not gender-neutral: “it is no longer possible to designate indifferently both the masculine and the feminine using the same word”

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<sup>32</sup> Beauvoir rejects woman as the “other” of man- the subject. Her attempt has been to claim equality for woman with the subject, i.e. man. In other words, Beauvoir proposes sameness- the demand for treating women as ‘same’ and not as the ‘other’ while Irigaray wants an alternative subject in woman, that is, Irigaray proposes difference rather than sameness.



(Irigaray, cited in Irigaray 1995: 9). That is, for Irigaray, the issue is not whether sex/gender is secondary to the human self; rather, for her, “sexes or genders are *two*, without being first or second” (ibid: 10, emphasis in original). This clearly tells that Irigaray envisages woman not as the same human self contained in man, but rather, she finds distinctiveness in man and woman that there are two selves themselves- masculine and feminine. Her critique of Freud for his dwelling on female sexuality in terms of an envy for and anxiety to have a penis also points out her discomfort with the singular model of subjectivity – that is, the philosophical subject as a singularity and as an ideal necessitates the other to emulate and strive to achieve even the sexual organs possessed by the subject that is essentially male (ibid).

It is at this juncture that sexual difference becomes an imperative in Irigaray’s project of feminism as well as the notion of the actual other subject: “The paradigm of the two lies in sexual difference. Why there? Because it is there that two subjects exist who should not be placed in a hierarchical relationship, and because these two subjects share the common goal of preserving the human species and developing its culture, while granting respect to their differences” (ibid: 11-2). Irigaray thus lauds the feminine subject; however she does not reduce everything to the feminine. In fact, she believes in the non-substitutability of either sex for the other (Irigaray 1991: 171; 2005a: 13). Thus, “The existence of two subjects is probably the only thing that can bring the masculine subject back to his being, and this thanks to woman’s access to her own being./ To accomplish this goal, the feminine subject had to be freed from the world of man to make way for a philosophical scandal: the subject is not one, nor is it singular” (Irigaray 2005a: 12).<sup>33</sup> She commends on the distinctiveness of the two sexes as necessary for the becoming of not only women but also for men (Irigaray 1995; 1996). The process of the becoming of

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<sup>33</sup> Grosz argues that Irigaray is affirming not the existence of two identities but two positions in any relation (Grosz 1994: 344). This argument may be invoked to counter charges of essentialism as well as an inevitability of the heterosexual framework in Irigaray. Such a view can be found in Goux (1994) as well. Goux argues that Irigaray believes in sexuation, but this sexuation does not “draw any conclusions in advance about what that masculine and feminine might historically and culturally become” (Goux 1994: 181).

the self “must engage self and self in a dialectical operation, should instead engage two subjects, in order not to reduce the two to the one, the other to the same” (Irigaray 1995: 18). Thus the case is not only that I cannot be reduced to the other; the other can also not be reduced to myself – a clear repudiation of the feminine self of gynocentric feminism. Also, it is different from those gynocentric versions which preclude any role of the male subject in the becoming of the female subject. In other words, in the dialectical relationship involved in the becoming of the female subject, Irigaray finds a crucial place for the male subject as the other- whose recognition as the other by the female subject in her becoming is necessary (Irigaray 1995).<sup>34</sup> Irigaray says: “In my view, the alterity of the other accompanies, and results from, the arrival of the other and as existent. The encounter with the other as other represents an event for the subjectivity and consciousness of each” (Irigaray 2004: 75). As Mortley writes, for Irigaray, the living world is sexual, but this world is composed of not just one sex but two; therefore “culture should express the sexuality of both the sexes: man and woman” (Mortley 1991: 71). Drawing on the singularity of the self exalted in both Freud and Lacan, Irigaray concludes that this self is necessarily masculine by virtue of its being the same and single (Irigaray 2005a: 103). Furthermore, Irigaray wants a ‘feminine other’ with her own specific face rather than the face of or the face defined by man. She therefore expresses concern for “the possible alterity of ‘woman-for-herself’, instead of woman simply as the ‘other of the same’” (Whitford 1991: 159). Irigaray gives the crux of her views on equality and difference in feminist theory as thus:

Women make up half of human society. It is only just that *they themselves should define the standards* that suit them but *not that they should have to become men* in their own right to

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<sup>34</sup> In this dialectical relationship proposed by Irigaray, the negative is very different from the negative in Hegel’s dialectics. “The negative will remain insurmountable, and it will serve to maintain the singularity of the subjectivity of the one and the other as well as the inalienability of the relation between the one and the other by the one or the other, or by any third party” (Irigaray 2004: 70). That is, unlike in Hegel, man and woman are not a pair of opposites; neither are they a unity but a duality of beingness. Indeed, her attempt is to make hollow the attempt of man to constitute the feminine as “the pole opposed to his becoming” (ibid: 76).

participate in the public sphere. It is only just that, *as women, they should be able to defend the values they hold dear.*

(Irigaray 1994: 75-6, emphasis added).

This further points to Irigaray's notion of different subject positions of women and men. Irigaray argues that men and women occupy "different subjective configurations and different worlds" which is revealed by the different linguistic configurations (Irigaray 1989: 194). In her assessment, the female subject always addresses or speaks in terms of 'subject- subject relations', while the male subject speaks in terms of 'subject- object relations'(Irigaray 1995: 16).<sup>35</sup> For example, Irigaray says, women almost always prefer a relationship with other subjects<sup>36</sup> to a relationship with the object (Irigaray 1985b; Irigaray 2000a; 2000b). Thus, women would say, "I shall go with him tonight", while men would say, "I came with my motorcycle". Women prefer being 'with', being two, while men's language always denotes relationships between one and the many through a relationship with the object (Irigaray 1995: 16). In another instance, in her work on the language of those suffering from dementia and schizophrenia, Irigaray observes the differences in sentences uttered by male and female subjects. The typical sentence

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<sup>35</sup> Irigaray also points out a couple of other differences in the language of women and men- women prefer the present and future tenses while men prefer the past tense; women speak in terms of contiguity and a concrete environment while men prefer metaphor and abstract transposition; women lauds relations based on difference while men like relationships between likes (Irigaray 1995: 16).

<sup>36</sup> Irigaray does not deny that women's relationship with the other gender can have counter-effects as well. In her view, women are more relational than atomistic. However, they choose the masculine other in most relations. That is, the relationality of women ends up in a choice of the masculine and not the feminine. Irigaray attributes this choice to language and culture, clarifying that this is not a free choice (Irigaray 2000a: 152). Irigaray's position here is similar to that of MacKinnon who lays bare the role of masculinist ideology in determining what is passed off as women's choice. However, while MacKinnon makes this masculinist view point a totalising structure, Irigaray endeavours to delineate the feminine from its male construction. For example, care feminism would be receptive to Irigaray unlike the opposition of MacKinnon on the ground that care is a male construction and it is men who want women to be caring, for according to Irigaray, care is part of a distinctive female subjectivity as it emanates from women's specific ability to procreate and nurture from within their body (For detailed discussion on this, see the next chapter).

produced by a man is 'I wonder if I am loved' or 'I tell myself that perhaps I am loved'; the sentence typical from a woman on the contrary is 'Do you love me?' (Irigaray 2005b: 114). Thus the male subject speaks to himself; there is no place for the other in his speech. At the same time, one notices the problem with female subjectivity when the sentence is posed as a question, in which the yes or no of the other underlies the meaning of the utterance and the only subject of utterance is the person addressed (ibid). Irigaray says, "The subject who is apparently producing the message occurs only as the possible object of the person addressed, an object that is no longer a point of convergence for the protagonists of the utterance, an object of exchange, because the only subject is (you)" (ibid: 114-5). The 'I' and 'you' in both the speeches represent two unequal parts of the world and this proves the sexuation of discourse (ibid: 115). Indeed, she works upon new ways to affirm other as equal to the self without the latter losing itself, grounded on the irreducibility of man and woman to each other (Irigaray 2000a; 2000b; 2005a). This is exemplified by her language "I love to you" instead of "I love you" (Irigaray 1996; 2000b). The "to" signifies that love is between two subjects- I and you irreducible to the other, while "I love you" implies that 'I' am the subject and 'you' are the object of my love.

### **The Feminine Libido and Female Subjectivity**

It is beyond doubt that Irigaray does not favour the sameness project in feminism. However, she claims to be departing from the difference approach as well. Irigaray turns to psychoanalysis for this purpose. She is of the opinion that equality cannot be a reality "so long as women remain objects of exchange within a masculine sexual imagery" (ibid). Drawing upon psychoanalysis and the symbolic, Irigaray resorts to recover the feminine and female desire from the clutches of definitions given by patriarchy. This is attempted at through the notion of a distinctive female sexuality which in turn constitutes woman as another subject in lieu of her place in conventional philosophies as the other of man.

The feminine is attempted to be recovered through the notion of a distinctive feminine libido, in contrast to the latter's definition in early psychoanalytic theories as a lack. As Weedon points out, "Luce Irigaray goes beyond Freud and Lacan to produce a radical theory of the feminine libido, based on female sexuality and auto-eroticism which celebrates the female body in separation from men" (Weedon 1987: 56). Female sexuality, in Irigaray, is not constituted by a lack; it is "fundamentally other to male sexuality" (ibid: 63), "a distinct positive feminine" (Weedon 1999: 21). In Irigaray's view, the patriarchal definition of female sexuality "caused women to lose touch with their essential femininity which is located in the female body and its capacity for multiple and heterogeneous pleasure" (ibid).

Sexuality therefore becomes central in understanding women's subjectivity. Irigaray challenges the definition of female sexuality "within masculine parameters" (Irigaray 1981: 99). In this endeavour, she attacks the sexual norms prescribed for women from the vantage point of masculine sexuality – the two alternative behaviours assigned to women's sexuality- " "virile clitoral activity/ "feminine" vaginal passivity" (ibid). Irigaray thus finds in the mainstream notions of sexuality a reduction of female erogenous zones to clitoris-sex which is valued much below the phallic organ. In other words, women's sexual organs are considered only as facilitating man's sexual desires; women's sexual pleasure can be achieved only by allowing the male sexual organ into them; or otherwise they can enjoy only clitoris-sex which represents a lack.<sup>37</sup> Thus the absence of woman and her pleasure is obvious in the sexual relationships conceived as 'normal':

Woman and her pleasure are not mentioned in this conception of sexual relationship. Her fate is one of "lack", "atrophy" (of her genitals), and "penis envy", since the penis is the only recognized sex organ of any worth. Therefore she tries to appropriate it for herself, by all the means at her disposal: by her somewhat servile love of the father-husband capable of giving it to her; by her desire of a penis-child, preferably male, by gaining access to those cultural values which are still

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<sup>37</sup> In many biological as well as psychoanalytical theories (including Freud's), the clitoris is considered to be a little penis which is pleasurable to masturbate.

“by right” reserved for males alone and are therefore always masculine, etc. Woman lives her desire only as an attempt to possess at long last the equivalent of the male sex organ.

(ibid).

Irigaray vehemently attacks such representation of female sexuality that objectifies women and denies them subjectivity. Irigaray asserts, “all Western discourse presents a certain isomorphism with the masculine sex: the privilege of unity, form of the self, of the visible, of the specularisable, of the erection” (Irigaray, in Burke 1994: 38). This logic of western discourse “does not allow for the expression of the female sexual organs, which cannot be described, let alone represented in unitary terms” (Burke 1994: 38). This resounds in her critique of Freud and Lacan as well. Irigaray contends that Freud defines female sexuality with respect to the masculine (Irigaray 1991: 118). In doing so, Freud precludes the possibility of the female sex having its own specificity; feminine sexuality in Freudian analysis always becomes something that is with reference to man and his sexuality, wherein we are made to believe that the feminine is always in terms of “deficiency or atrophy, as the other side of the sex that alone holds a monopoly on value: the male sex” (ibid: 118-9).<sup>38</sup> The masculine has served as the norm to define the female sex as a lack or deficiency with reference to the male sex and the norms represented by the masculine. In another instance, Irigaray opines that psychoanalytic science is based on the two first principles of thermodynamics in Freud’s model of the libido, which is in fact a model of male sexuality with its emphasis on alternations of tension-discharge, conservation of required energy, and return to equilibrium, etc. (Irigaray 1994: 21-26; 2005b: 103-7), whereas, “[W]omen do not obey the same sexual economy as men” (Irigaray 1994: 24). Irigaray contends that female sexuality can be better explained as ““dissipatory” structures”<sup>39</sup>, which “function through exchanges with the exterior world, which proceed in steps from one energy level to another, and which are not organized to search for equilibrium but rather to cross thresholds, a procedure that corresponds to

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<sup>38</sup> For example, Freud explains even the desire to have a child by a woman as something that can satisfy her desire for the male organ which she lacks; in other words, everything gets explained in terms of an attempt to get over penis envy.

<sup>39</sup> Irigaray acknowledges Prigogine who gave this alternative scientific model of sexuality which is modelled on female sexuality.

going beyond disorder or entropy without discharge” (Irigaray 2005b: 106). This provokes Irigaray to argue that woman is not the subject in Freudian analysis; it is rather her complementarity or even negativity to male sexuality: “Woman herself is never at issue in these statements: the feminine is defined as the necessary complement to the operation of male sexuality, and, more often, as a negative image that provides male sexuality with an unfailingly phallic self-representation” (ibid: 119). Thus the sexuality of the little girl, the adolescent girl and woman is interpreted in terms of the sexuality of their male counterparts (Irigaray 2000a: 126). Grosz puts forth a similar concern on the dependence of woman on man in psychoanalysis. In Grosz’s view, “[T]he mother is either construed as, in the preoedipal period, phallic or, in the oedipal period, castrated. In both cases, she is defined only by the presence or absence of the male term” (Grosz 1994: 338). In other words, from a Freudian perspective, female subjectivity looks like a deformed or insufficiently developed form of male subjectivity rather than a different subjectivity with its own positive points. This view therefore holds that “[S]exual indifference” in Freud and others “is not a lack of sexuality, but lack of any different sexuality, the old dream of symmetry, the other, woman, circumscribed into woman as man’s complementary other, his appropriate opposite sex” (Gallop 1982: 58). That is, female sex organs become the ‘blind spot’ in psychoanalysis, where woman’s genitalia is viewed as an absence and not as something different from the phallus (ibid). As Gallop rightly puts it, what Lacanian psychoanalysts including Irigaray exposes is this overlooking of the ‘materiality of sex’ and privileging of the ‘Idea of sex’, the idea being essentially male (see Gallop 1982: 61).

Irigaray, however, does not critique Lacan with the same fervour. She does critique that “there is no place for the female subject” (Burke 1994: 41) in Lacan’s theoretical model where the phallus enjoys the privilege of being the signifier.<sup>40</sup> Nonetheless, her works may be explained as an answer to Freud’s question taken up by Lacan: ‘What does

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<sup>40</sup> Lacan’s theory gives suspicions as to whether the phallus is the same as the penis. The phallus however signifies the penis and this is how the entry to the symbolic is secured. Anyhow, the signification first takes place for the male organ. This has been attacked, for instance, by Butler as a case of phallocentrism (see Butler 1993; 1999).

woman want?’ Lacan concluded that “there is pleasure [*jouissance*] beyond the phallus” (Lacan in Burke 1994: 41); but insisted that no one, including women and women analysts could explain this *jouissance* (Burke 1994: 41). Irigaray’s works endeavour to explain the *jouissance* of women. More importantly, she also attempts to transform the world on the basis of the distinctive sexuality and multiplicity of erogenous zones of women.

Irigaray begins her notion of female sexuality by condemning the passivity assigned to female sexuality by norms of sexual relationships dictated by male sexuality. For example, she breaks down the conception/perception hierarchy that associates feminine with perception and masculine with conception that is more active (Irigaray 2005b).<sup>41</sup> Irigaray argues to the contrary that both men and women can perceive and conceive. “To receive the self and to envelope the self” are common and not unique to man and woman and without any hierarchy (ibid: 79).

However, Irigaray accords a special and emancipatory role for feminine sexuality and *jouissance* that has been repressed by men.<sup>42</sup> Irigaray’s engagement with the issue of subjectivity indeed involves a project that can recover “the repressed feminine that she sees as having been systematically sublimated by a logic of representation that functioned according to a monolithic economy geared towards masculinity” (Chanter 1998: 588). Irigaray opines that Western discourse presents “a certain isomorphism with the masculine sex”, by which she means the privilege of unity of the self.<sup>43</sup> Such singularity

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<sup>41</sup> This dichotomy has a lot to do with biological determinism. Conception is active and is regarded as the privilege of man. Irigaray herself contends that the ovum and the female body are still regarded as passive even though biology itself has proved otherwise (Irigaray 2005b: 79).

<sup>42</sup> Irigaray also argues that women can play a more transformative role in society than men, for “it may be possible for them [women] to interpret this culture in which they have less involvement and fewer interests than do men, and of which they are not themselves products to the point where they have been blinded by it” (Irigaray 1994:6). Also, she writes, that “in theory, women should not be in a hierarchical relationship to men. All other types of minorities potentially are” (ibid).

<sup>43</sup> In fact, Irigaray proposes to discover cultures other than the West – those cultures where subject coexists and its self-consciousness is questioned (Irigaray 1994/2000a: 3). Such a project is the central theme of her



implies, Irigaray contends, the masculinity of the self, for the female self is not singular but multiple (Irigaray, in Chanter 1998: 588).

The traditional sexual imaginary, in Irigaray's view, however valorises male sexual acts that women acquire subordinate, passive and dependent existence:

Woman, in this sexual imaginary, is only a more or less complacent facilitator for the working out of man's fantasies. It is possible, and even certain, that she experiences vicarious pleasure there, but this pleasure is above all a masochistic prostitution of her body to a desire that is not her own and that leaves her in her well-known state of dependency.

(Irigaray 1981: 100).

Irigaray on the other hand breaks down the activity/passivity dichotomy in male/female sexuality by taking cues from the very biological constitution of male and female sex organs that require different kinds of activity to arrive at pleasure. While the female genitals shaped in the form of two lips in constant and continuous touch allow women autoeroticism, the male organ requires another instrument like a hand or a woman's body for stimulation. Men therefore are heteroerotic (Irigaray 1985b).

Irigaray further contends that "women have sexual organs all over their body", implying the multiplicity or plurality of female sexual pleasure in contrast to the male libido

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work *Between East and West: From Singularity to Community* (2005). A few references can also be seen in *To Be Two* (2000b) where Irigaray refers to cultures and practices of the 'Far East' including yoga, that give a different view of the nature of man and woman. For example, Irigaray notes that while Aristotle taught the world that men are hot and women are cold, Eastern cultures hold that men are hot from outside and cold from within while women are hot from inside and cold outside. This also offers an alternate relationship between genders to the Aristotelean one: the latter holds that "woman should be warmed by man; she should seduce him in order to be warmed by him, rekindled by him", while the former means that "man can point out to the woman who is faithful to herself the way back to the source of her energy: hot, while woman can allow man to return to his: cold" (Irigaray 2000b: 55). That is, while the Aristotelean idea suggests the superiority of man as well as his inevitability for woman, the Far East tradition suggests the inevitability of both sexes for each other. Irigaray's philosophy also envisions the harmonious coexistence of both man and woman.

centred on the penis (Irigaray 1985b).<sup>44</sup> She emphasises on the “multiple or plural styles of female sexuality and expression, in the figure of the sexual lips that are constantly “in touch” with the diffuse sensuality of the female body” (Burke 1994: 44-5). This also challenges intercourse as the single form of sex. In fact, penetration becomes a form of sex defined and imposed upon women by male sexual desire, whereas women enjoy other forms of sex like fondling, kissing and so on (Irigaray 1985b). Indeed Irigaray argues that notions of sexual acts like intercourse that portrays women as mere objects of male sexuality are “foreign to female eroticism” (Irigaray 1981: 101)

The attempt to uncover a distinctive notion of female sexuality further prompts Irigaray to challenge the liberal feminist assumption that ‘free sex’ can lead to women’s liberation. Irigaray finds no real liberation for women in sexual liberation in a system that is defined by the masculine. She feels that “the superegoization of sexual access” is in fact detrimental to women’s liberation; it is basically capitalist and is an “appropriation-exploitation” of the bodies of women (Irigaray 1991: 49). The female self, however, does have the potential to desire though she is not to be produced by the existing ideological structure or its culture that is patriarchal, implying the possibility of a female sexuality and selfhood different from its current treatment as ‘woman-mother’. Desire or pleasure rather than control, in fact, becomes central in Irigaray, who retrieves possibilities of desire between women in her earlier works<sup>45</sup>, and later on in heterosexual relations too.

As discussed earlier, Irigaray idealises a particular notion of the human couple where both the sexes appreciate each other without appropriating the other (Irigaray 1996; 2000a). Irigaray writes, “Renouncing the desire to possess the other, in order to recognize him as other, is perhaps the most beautiful of the tasks which fall to us. It allows us to

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<sup>44</sup> Irigaray emphasises on the “indefinite plurality” of female genitalia, which includes clitoris, vagina, lips, cervix, breasts and many others (see Gallop 1982: 63). On the other hand, the male sex in Irigaray’s works, takes unto itself “the privileged status of “oneness””, the “unitary representation of identity in analogy with the male sexual organ” (Burke 1994: 38).

<sup>45</sup> *Speculum of the Other Woman* and *This Sex Which Is Not One* suggest more towards the possibilities of lesbianism. This idea of female separateness was appropriated to establish separate spaces for women in Italy in the form of *affidamento* (see Irigaray and Whitford 1991).

move into a new stage in the History of the relation between the genders but also of that between races, generations, traditions” (Irigaray 2000a: 7). Non-possession of the other or recognising the other without reducing the latter to an object also leads Irigaray to not reduce sexual drives to reproduction and nurturing. In fact, she asks “And when will they cease to equate women’s sexuality with her reproductive organs, to claim that her sexuality has value only insofar as it gathers the heritage of her maternity?” (Irigaray 2005: 278). The liberation of women from an identity of an object for procreation and care is a major agenda for Irigaray, the first of the four crucial concerns<sup>46</sup> which she puts as thus: “The liberation of women from subjection to a natural function: that of being the one who is used for love-making, for giving birth, for providing nourishment without enjoying an identity and a dignity of her own in private or public life” (Irigaray 2000a: 3). Hence women have a right to their existence and desire in their own right and not as means or objects for some other ends: “Women can only take up these rights if they can find some value in being women, and not simply mothers. That means rethinking, transforming centuries of socio-cultural values” (Irigaray 1991: 31). This endeavour to differentiate, or more appropriately to recover womanhood from motherhood, is pervasive in Irigaray’s works. In other words, Irigaray does not collapse womanhood into motherhood; woman’s body is therefore irreducible to her reproductive role. Indeed, she sees it problematic that the male subject prefers to see woman as the ‘maternal-feminine’ than a woman. This has implications for Irigaray’s notion of rights discussed later. For example, Irigaray welcomes technological advances like contraceptives as well as socio-political ventures like legalisation of abortion, as these have enabled women to control their reproduction to some extent, which in turn has opened up some possibility of seeing the “identity of women *as women*”<sup>47</sup> as separate from their identity as mothers, and to raise the question of women’s identity outside their role as ‘reproducer of children, as nurse, as

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<sup>46</sup> The second area of concern or the second point of Irigaray’s political agenda consists of the discovery of non-Western cultures which question the universal model of the subject. The third is a call to open up national boundaries to set up coalitions on the lines of the European Union; the fourth envisages a relational self not only to end exploitation of human beings but also of the planet (Irigaray 2000a: 3-4).

<sup>47</sup> Irigaray attributes the evolution of this idea of ‘women as women’ to the May 1968 ‘cultural revolution’ in France (see Irigaray 2000a: 30; 2003).

reproducer of labour-power” (Whitford 1991: 26, emphasis in original). She writes, “...within the family, women must be mothers and men must be fathers, but we have no positive and ethical values that allow two sexes of the same generation to form a creative, and not simply procreative human couple” (Irigaray 1991: 32).

Irigaray thus offers room for the feminine desire and emphasises the need to affirm woman’s desire as different from male desire rather than overcoming it as a phallic construct that forecloses the possibility of feminine desire – *jouissance* (Cornell 1993: 105-6; 134). However, she takes cues for her notion of feminine desire from female anatomy. Her imagination of two women making love testifies to her positive valuation of feminine sexuality, a form of sexuality that has been concealed under the rubric of male sexuality:

No surface holds. No figure, line, or point remains. No ground subsists. But no abyss, either. Depth, for us is not a chasm. Without a solid crust, there is no precipice. Our depth is the thickness of our body, our all touching itself. Where top and bottom, inside and outside, in front and behind, above and below are not separated, remote, out of touch. Our all intermingled. Without breaks or gaps.

(Irigaray, in Cornell 1993: 135).

The specificity of feminine desire, in Irigaray’s opinion, is irrepressible; its denial only sustains phallogocentrism. In fact, the distinctive notions of male and female sexuality – the idea of feminine sexuality as multiple and plural or a multiplication of sites and directions of pleasure in female body, as opposed to the singleness of male has ramifications for subjectivity as well as Irigaray’s vision of social relations and social organisation (Duchen 1986: 90). The female subject itself is feminine, multiple and plural, as her sex organs are multiple and not single. Multiplicity therefore begins at the level of anatomy, in libido and *jouissance* (ibid: 97). Duchen writes thus on the notion of multiplicity in French feminists including Irigaray:

On a philosophical level, it [multiplicity] means resistance to organisation, to the one-ness, the unicity, of phallogocentrism, challenging the values and concepts of masculine discourse from a

position marginal to that discourse, distanced from it....; on a political level, multiplicity means resistance to organisation and hierarchy of structure, commitment to a plurality of voice and style and structure.

(ibid).

The subject therefore becomes plural and fragmented and multiple rather than atomistic, unitary and isolated. The very fact that woman is already multiple implies that she contains an otherness within herself. Similarly, the future consists not in a reversal of the existing phallogentric social order but one where coexistence of differences are respected and facilitated: "But if the female imaginary were to deploy itself, if it could bring itself into play otherwise than as scraps, uncollected debris, would it represent itself, even so, in the form of one universe? Would it ever be volume instead of surface? No." (Irigaray, in Ferguson 1993: 21-2). In other words, the invocation of the female imaginary will not be another parallel to phallogentric subjectivity that "*reduce[s] all others to the economy of the Same*" (Irigaray, in Ferguson 1993: 125, emphasis in original). As Ferguson explains, Irigaray mainly emphasises on the feminine "as disruptive of phallogentric discourse, on its resistance to systematization" (Ferguson 1993: 24). Rather than envisioning a "different system" or a "different order", Irigaray hence seeks a "particular and preferred kind of disorder" (ibid).

### **Establishing Feminine Identity through Sexuate Rights**

Irigaray seeks the recovery of the repressed feminine through both mimesis and law and rights. The main strategy seems to be laws and rights despite her ambivalent stance on law, characteristic of most feminists writing outside liberalism. Irigaray argues, "The law has sex, and justice has a sex, but by default. / The law was written from a pro-slavery viewpoint as far as the difference between the sexes is concerned" (Irigaray 1994: 15).<sup>48</sup>

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<sup>48</sup> Irigaray argues that that women have to be subservient to man has been the premise of laws as well. For example, in an indirect attack on feminists who demand wages for housework, Irigaray argues that this makes women "forget the respect and rights due their sex" (Irigaray 1994: 15). Irigaray arrives at such a position as she makes a distinction between female identity and social roles or functions. Mothering, keeping house, etc are not part of female identity but mere social roles (Irigaray 1994: 18). Irigaray seems

Furthermore, “patriarchal law” is problematic in that it “deals almost exclusively with issues of property” (ibid 1994: 16). The project of rights counts because “women are forced to make specific choices in their relationships with men, and that the choices cannot remain individual or private but must be guaranteed by law....” (Irigaray 1996: 14).<sup>49</sup>

Law and rights are therefore not entirely detrimental or hostile to the women’s cause. In fact, women’s right to their civil identity as women is sought through refashioning of the juridical codes and a reassessment of the boundary line between natural and civil law<sup>50</sup>(Irigaray 2000a: 38; 2003). In other words, Irigaray does not see a solution in treating the state as something that has to be done away with because of its oppressive power. On the other hand, her project of rights helps individuals assert against the State, for the rights are a protection against state, national or supranational power. Irigaray thus says that rights make possible “a positive historical tension between the State and each citizen, male and female” (Irigaray 2000a: 162). Laws and rights provide the necessary mediation that can check arbitrary, authoritarian power:

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to be pushing forth an argument that sees such laws as only perpetuating the patriarchal order, very much in line with later feminists like MacKinnon who argue that it is not capitalism but patriarchy more so that confines women to the private domain (see MacKinnon 1989). Irigaray however seems to be collapsing the distinction between social roles imposed by society on women and a notion of female identity as we go deeper into her project of the feminine (discussed elsewhere in this chapter).

<sup>49</sup> Irigaray makes this statement to express the inadequacy in sameness feminism that asks merely for equal rights with men.

<sup>50</sup> Irigaray argues that women’s situation of being denied a civil identity as women represents a state of nature. In other words, women still are in state of nature tied to their natural properties. For example, she says, wars are waged over women’s capacity to love and procreate. On questions of maternity, representation and love, women are still subject to the decisions of the State, Church, etc. (Irigaray 2000a: 40-48). Irigaray basically premises this argument on the denial or lack of specific rights: “[a]nyone, man or woman, who does not enjoy specific rights, who is subject to the rights of others, is a slave” (ibid: 43). Irigaray cites the example of right to abortion v right to maternity discussed earlier to prove this point. We should also pay heed to her decision to avoid the superior power of decision making in the hands of the man responsible for the procreation (see ibid: 44).

Women who are more sensitive to a culture or politics of difference also contest the necessity of civil rights specific to women, for they fear the law as requiring servitude to the State. Yet civil rights for individual persons represent, on the contrary, a guarantee that citizens can oppose the power of the State as such; they maintain a tension between individuals and the State, and can even ensure the evolution of a state- controlled society into a civil society, whose democratic character would be supported by people's individual rights.

(Irigaray 1995: 14).

Irigaray argues that there may be instances where law enacted by a parliamentary majority acts to the detriment of women. She however contends that it is harder to change a law, meaning it is quite important to make laws positive for women. On the contrary, if we are to rely on advantages with no legal protection, we should be cautious that they can be easily done away with (Irigaray 2000a: 162). Individual rights for women therefore become central in Irigaray's project even in the most progressive societies. She says:

I can only hope that women understand and promote what is at stake in individual rights, both because these rights are essential to protect them and to affirm their identity, and because as feminine subjects, they are more ready to take an interest in rights having to do with the individual and with relationships between individuals, rather than in rights determined by assets- possessions, property, belongings- rights which make up the majority of masculine civil codes.

(Irigaray 1995: 14).

There are two points to be gauged from this – that rights are the chief strategy of feminist struggle even to establish a feminine identity; and that women privilege rights as intersubjective – as instruments pertaining to relations between persons rather than as mechanisms to gain control over property. Irigaray realises the constraints imposed upon women who are unable to exercise their choice and thus the immanent need for legal interference to establish their feminine identity. This becomes pertinent in cases of reproduction, work patterns, sexuality, and bringing up of minor children after divorce, as well as multicultural marriages where traditional spousal rights may conflict in different cultures. In fact, she acknowledges the uneven distribution of rights between the sexes, wherein the rights become mainly duties, especially for women in the form of sexual duties, duty to have children, etc. (Irigaray 1991: 201). This makes her depart from

sameness feminism's equality rights which should be read as same rights for women and men. This has also been the cue for Irigaray's differences with Beauvoir where she elaborates the crucial difference between the fight for equal rights and her alternative conception of sexual difference.<sup>51</sup> For Irigaray, 'equal' implies 'equal to men' and thus equivalent to the imposition of a male norm whose conclusion can be nothing but genocide of women (Whitford 1991: 23-4). Irigaray wants to advance the cause for "rights specific to women" (Irigaray 1991; 1995; 1996).

The second part of the statement throws light on how Irigaray attributes, in a very essentialist fashion, two approaches as far as women and men make use of rights. Irigaray insists on the priority of civil rights relating to individuals and the relations between them over the rights relating to ownership of goods and property (Irigaray 1994; 2000a). This is evident in her indictment of the masculine codes as embodying rights of property, of ownership and possession rather than relations between persons<sup>52</sup>; Irigaray

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<sup>51</sup> Goux (1994: 182) argues that Irigaray, "might also, in her own right, be subscribing to Simone de Beauvoir's famous dictum: "One is not born, but rather becomes, a woman". Goux's argument is based on his reading of Irigaray as a non-essentialist though she subscribes to biological dimorphism. Thus, two biologically different sexes do exist, but what they ought to be is not decided in advance. This provokes Irigaray to speak differently from Beauvoir. Woman's being is acquired, but unlike in Beauvoir, woman's biology is not devalued; the being is in fact acquired through "an elaboration of the sexuate" (Goux 1994: 182). Goux however fails to prove how sexuation can be effected without resorting to biology or at least some positive values. As discussed elsewhere in this chapter, many of Irigaray's writings point toward the inescapable links of 'feminine' values like inersubjectivity with women's biology.

<sup>52</sup> Irigaray's analysis on goods and property is very similar to Marx's theory of alienation in *Economic and Philosophic Manuscripts* (1844). She argues that human beings' craze for goods has resulted in them being controlled by the world of goods. This in turn has taken away from us our sensibility to be in harmony with others, including nature. As she writes, "Why have we reached the point of being unable to plan, to love, to hope? Perhaps because we now find ourselves, male and female, exiled from ourselves, swamped by manufactured products which are too big and too numerous, too foreign to us, too distant from us. We are lost, not in a natural wood, which would cause us to feel anguish but would exile us from ourselves, particularly from our sensibility" (Irigaray 2000a: 166). Irigaray also offers a critique of capitalism and consumer culture that have devalued and diminished intersubjectivity: "We have seen that capitalism treats differently the one who possesses and the one who works, but we have not perceived clearly enough that its products alienate all of us, male and female, turning each and everyone of us into interchangeable numbers



seeks an overhaul of the content of rights from possession to relations through the feminine civil code (Irigaray 2000a: 134). Hence rights for men also need to be redefined in their capacity as individuals who relate themselves to other individuals, though women are better placed to enter into a relationship between two subjects (ibid: 135-6).<sup>53</sup> This however may have a counter-effect when it comes to women's right to property, wages, etc.

A novelty is also manifest in Irigaray's different expectations from sexuate rights as far as the relationship between women and state are concerned. Sexuate rights also imply that women and men have certain duties and responsibilities. She writes, "My purpose in demanding these rights for women is to make them take responsibility for themselves socially, make them responsible adult citizens" (Irigaray 1994: 81); the rights, unlike rights granted by a paternalistic state "would not leave them in a position where they are perpetually making demands as social minors" (ibid: 82). That is, Irigaray is not seeking protection from the state for women as a weaker sex. On the contrary, these rights are claimed to assert the sex-specific identity of women which is superior to men's but has been suppressed by patriarchal culture. Civil rights as women thus revamp the society by privileging feminine values and making it possible for women to take responsibility of themselves as well as others and their culture (ibid: 81-2).

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in a dehumanized world" (ibid: 167). Irigaray hence posits alienation in terms of the fear of losing what we possess, the desire to have more goods, and envy and competition with others (ibid: 169).

<sup>53</sup> Irigaray gives an example of this in Antigone's law, which she says "does not deal solely with the ownership of goods, but concerns respect for persons, for concrete persons, for persons who surround us..." (Irigaray 2000b: 77). On the contrary, Creon represents egoism, arbitrary power, force and violence, and the "passage from singularity to abstract universality in order to establish such power" (ibid: 78). Irigaray arrives at this conclusion from the very language of women which is more intersubjective than the subject-object relation in men's language (Irigaray 1985; Irigaray 2000a). She gives examples of the little girl who often asks her mother, "Mamma, can I play with you?", etc. On the contrary, little boys generally speak as isolated rather than relational subjects- "I want a bike". Irigaray however also gives a biologist explanation for this (see Irigaray 2000a: 135-41). She argues that the qualities of a woman including those of giving birth makes woman more relational than men (Irigaray 2000a: 136).

At the same time, Irigaray does not discount the rights already achieved by the women's movement in the name of equality (Irigaray 1994). But "women's rights must be redefined so that women can tailor the rights they have gained in the name of equality to their own identity as women" (ibid: xv). In the context of same rights for men and women in France, Irigaray writes thus:

Obviously, we cannot be talking about the same difference. The reality of the hierarchy before equality and the reality of the sexual identity in which each person enjoys rights appropriate to her or his sex are not one and the same. And denying that women and men are different in the name of some hypothetical social equality is a delusion, a bias in favour of a split – an impossible split – between private life and social identity.

(ibid: viii).

Irigaray illustrates the problems of abstract rights in her example of "assimilation of male identity" by women in the public sphere (ibid: 80). Irigaray contends that giving up their female identity prevents women from "exercising their function of regulating social order" (ibid), meaning their potential to transform society and social values. Irigaray argues that, indeed, this is used as an excuse to confine women to the private realm "in the hope that women's influence in the private sphere of the family will have a beneficial effect on male public government" (ibid). Irigaray therefore seems to be arguing that women's identity as women and feminine values are inevitable for social order; if women give these up once they enter the public, they might be sent back home, for society needs these values – in public or private – for its own order and survival.

However, Irigaray's evocation of difference does not forbid her, or should not forbid any feminist from working towards the realisation of rights that are granted to men as well. For example, women's claim of right to abortion should not preclude them from arguing for right to vote or freedom of expression, etc, on the ground that the latter are 'primarily' men's rights. So is the case with custody of children, political participation, representation and so forth. What Irigaray finds striking in women's liberation is that some concessions have been attained by women in power - meaning rights on par with

men; however, no new values have been established (Irigaray 1991: 166; 1994: xiv; 2005b: 8). Irigaray says:

There are still no civil rights proper to women and to men. This is particularly true for women, since existing law is better suited to men than women inasmuch as men have been the model for citizenship for centuries, the adult female citizen being poorly defined by rights to equality that do not meet her needs. Strictly speaking, there is still no civil law in our era that makes human persons of men and women. As sexed persons, they remain in natural immediacy. And this means that real persons still have no rights, since there are only men and women; there are no neuter individuals.

(Irigaray 1996: 21).

Thus Irigaray does not want women to confine their struggle to the attainment of those rights men already have; she also wants to change the notion of rights in a way that they reflect the feminine. Irigaray thus expresses the inevitability of special rights for women: “In my view, the lack of special rights for women does not allow them to move from a state of nature to a civilized state: the majority remain nature-bodies, subservient to the State, to the Church, to father and husband, without access to the status of civilians, responsible for themselves and the community” (Irigaray 1995: 14). In her view, rape, abortion and other issues related to women’s specificity or difference from men should be formulated as ‘feminine civil rights’, and hence her reinstatement of the demand for a ‘feminine civil code’ (Irigaray 2003: 386-7).

In fact, Irigaray’s notion of rights derives itself from her affirmation of the feminine which has been denied representation in the patriarchal logic of sexual difference. As she puts it, “the exploitation and alienation of women are located in the difference between the sexes and the genders, and have to be resolved in that difference, without trying to abolish it, which would amount to yet another reduction to the singular subject” (Irigaray 2000a: 126). The very existence of two subjects - men and women - implies that rights have to be distinctive. Irigaray argues for “sexuate rights” which are guaranteed to women taking cognisance of their sex-specific identity. In other words, “abstract rights appropriate to non-existent, neutral individuals” should be replaced with “rights

appropriate to the two sexes” (Irigaray 1994: xv). This is vital not only for gaining rights specific to female identity but also to retain those rights that have already been gained (ibid: xv-xvi). In the absence of sexuate rights, Irigaray feels, women will not be able to “solve the problems of their rights and duties as women towards themselves, their children, other women, men and society” (ibid: 79). For example, she says, women may choose when they want to be mothers “but they do not have a female identity that would enable them to make that choice” (ibid: 79-80). The choice exercised in the capacity and nature of a neutral individual is not enough. This is elaborated by Irigaray in her views on abortion law in France:

We obtained the *permission* to have abortion without *punishment*, without penalty, and not the positive right to freely choose our maternity. Still, the rights obtained were rights in terms of male rights and that had to be so in order to give them a real value. Rape was called a crime and is still a crime. This eludes the question of respect for the woman’s body as such and does not warn a potential rapist of the real offence that rape represents.

Many other rights that would provide women with a civil identity, with a sovereignty of citizenship adapted to the requirements of a regime deemed democratic, were still lacking: the right to a female culture with its own linguistic and religious values, the right to representation and to public and political representativity, specific rights to assist mothers in the guardianship and education of their children, especially in intercultural couples, the right to work.

(Irigaray 2003: 387, emphasis in original).<sup>54</sup>

It could be observed therefore that the focus of Irigaray is not on negative rights in the nature of what she calls “permission granted within the context of a patriarchal family” (Irigaray 2000a: 31). The emphasis rather is on positive rights for women grounded on that notion of the feminine which has been repressed in patriarchy: “The step which women have to take is to obtain positive rights of citizenship in a female mode” (ibid: 38). For instance, Irigaray views new reproductive technologies with scepticism rather than optimism, for, she believes that such technology is a way of “once again reducing women to motherhood, and the couple to nothing but the reproductive function” (Irigaray 1994: 8), or by an “excessive privilege for the family over the sexual couple” (ibid: 12).

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<sup>54</sup> The same view can be found in Irigaray (2000a: 30-9).

Thus women's civil rights are a question of sexual difference rather than equality (Irigaray 1991). The idea of sexuate rights in Irigaray is a testimony to this notion of rights based on sexual difference. Sexuate rights imply "the idea that each *genre* or sexual kind should have rights and responsibilities which correspond to its specificity" (Whitford 1991: 161). This necessarily means seeing women not merely in terms of reproduction and transmission of patrimony from one generation to another.<sup>55</sup> On the other hand, it encompasses a totality encompassing natural, civil, penal and religious rights (Irigaray 1991: 198). In other words, rights on sexuality are not the only rights that can bring about subjectivity for women; thus the project is not about sexual rights but about sexuate rights (ibid: 198-212).

Irigaray also enlists the sexuate rights she wants women to struggle for to be codified in civil law. These include the right to human dignity; the right to human identity; mother-child duties; civil right to defend life and culture against male law; economic rights; a new system of linguistic exchange; and equal representation in religious decision-making. The right to human dignity includes an end to commercial use of women's bodies and images; valid self-representations of women; and an end to the exploitation of their motherhood – 'a functional part of their selves' – by civil and religious powers. The right to human identity interestingly involves the recognition of and entitlement to two components as part of female identity: virginity and motherhood. Right to virginity<sup>56</sup>

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<sup>55</sup> Irigaray makes an attack on Hegel's theory of family and state. While Hegel offers a dual possibility for men- to be citizens operating in the domain of the universal (state), and having their particular needs attended to in the family, this possibility is denied to women. Women's particularity is subordinated to the state and the family. In other words, men are the spirit while women are nature. Irigaray cites this to show how family makes women's access to the universal derivative, ie, through husband, son, etc. (Irigaray 1991: 198-203).

<sup>56</sup> For Irigaray, virginity is not just a physiological problem of "the keeping or losing of the hymen" (Irigaray 1994: 74). Rather, right to virginity implies the right of women to their physical integrity, which covers all forms of sexual abuses and not the tearing of hymen alone (ibid). Right to virginity is in effect a guarantee against not only non-consensual sex but also against prostitution and pornography that violate

allows “girls to be given a civil status and a right to preserve their virginity for as long as they like”, penalising those who interfere with it including the ‘sale’ of virginity. Right to motherhood<sup>57</sup> similarly implies women’s right to choose to be pregnant and to decide the number of pregnancies (ibid: 208-9).

Evidently, Irigaray extends sexuate rights into realms other than those like reproduction specific to women. For example, she argues how women’s right to work should be “a path to release from slavery and not simply a means of access to an economic identity” (Irigaray 2000a: 45). Hence women should work for civil autonomy as women where their differences are affirmed. For instance, women’s entry to the public sphere should not be by giving up on their feminine identity. Also important is the transformative role Irigaray accords to femininity even in something like work. Pregnancy rights and maternity benefits are not enough to guarantee women their identity as women. She writes, “Allowing women the choice to get married, to have children *and* to work is not a recognition of them as women” (ibid: 146, emphasis in original). Irigaray argues, “Entering the world of work as it is defined by men does not yet mean having the right to work as women. The right to work should imply, for example, being able to choose one’s working objectives and conditions and, amongst these one’s working hours” (ibid: 147). For example, Irigaray contends that the right to work for women should not be limited to the rule of ‘equal work for equal pay’ (ibid: 132). In her words, “This rule is not, in fact, applied though it also implies respect for, and valorization of, women as regards the

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and disrespect women’s body and sexual identity through practice or representation (see Irigaray 1994: 74-7).

<sup>57</sup> Irigaray argues that it is women who should have the ultimate say in case of motherhood. She admits that children are conceived by both women and men together. However, men’s role ends at the level of conception. In her view, the “work of gestating, giving birth, breastfeeding and mothering is up to women” (Irigaray 1994: 76). This is yet another case of Irigaray’s biological essentialism as well as her slippage into conventional notions of family and motherhood that are based on the ‘primary nurturer’ rather than the more recent ‘primary caretaker’ argument. In fact, she believes that women should be “the preferred guardians” of their children (ibid). Fathers, in Irigaray’s view, can have some rights regarding their children, but “experience shows that their rights must not take priority, because many fathers abuse them or use them without fulfilling the corresponding duties” (ibid: 77).

choice of means and ends in production, as of professional qualifications, relationships in the workplace, etc.” (ibid: 132).

This proposition of Irigaray makes her a staunch votary of the essentialism characteristic of gynocentric feminism. The right to equal pay, choice of working hours, etc have been invoked by other feminists, both liberal and socialist. Irigaray however makes a different proposition when she states, “‘Equality of opportunity’ would mean revalorizing [these] more female professions, revalorizing them economically and culturally” (ibid: 148). Irigaray argues that women would prefer professions that are grounded in intersubjective relations – nursing, teaching, interior decoration, looking after parks, social work, etc,<sup>58</sup> they would not enjoy making arms, or more correctly, arms manufacturing does not respect women’s identity as women (ibid: 147-8). The problem however lies in the cultural devaluation of such vocations as well as the low pay for such jobs (ibid: 147-9). Moreover, Irigaray feels that some concessions have been given to women but no new values have been established (Irigaray 2005b: 8). In other words, those jobs which valourise feminine values and women’s civil identity do not fetch good money; they are also looked down upon by society. To put it differently, Irigaray wants to maintain the distinction between masculine jobs like arms manufacture<sup>59</sup> and feminine jobs like nursing and interior decoration. Her concern is to secure greater pay and cultural value for these jobs. Indeed, her pessimism towards women entering into the domain of war, etc. is very much similar to difference feminists of care and maternal peace like Gilligan and Ruddick. This becomes more essentialist as Irigaray traces the different subjectivities of women and men from qualities (Irigaray 2000a: 151)<sup>60</sup> derived from their distinctive

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<sup>58</sup> Irigaray also points out that women are in a majority in these ‘devalued’ and less paying jobs (Irigaray 2000a: 147).

<sup>59</sup> Irigaray does not condemn all jobs that have been predominantly in the male domain. For example, she herself has been part off politics, policy formulation, etc. Her essentialism lies in the celebration of women as intersubjective beings who would not like such things like war and hence the opposition towards arms.

<sup>60</sup> These qualities or factors that determine different subjectivities for women and men are: a) being born of the same or different gender from one’s own (daughter or son of the mother); b) “whether or not one can conceive a living being in one’s own body” (women can and men cannot); c) whether one procreates within or outside oneself (women procreate within their body while men procreate outside their body); d)

biologies where reproduction and nurturing too have their place despite her condemnation of any politics that reduces women to mothers.<sup>61</sup> An inherent danger in such a proposition is that it can be used to give lower paying jobs for women in the 'male' domain, as the Sears case (discussed in the next chapter) points out.

The idea of distinctive female subjectivity and sexuate rights also leads to something like "a different voice" of women in Irigaray, which can have its impact on representational politics as well. By and large, Irigaray's arguments lead to the point that only women can articulate their concerns. This is exemplified in Irigaray's discussion of Creon, the king in Sophocles' play *Antigone*<sup>62</sup> in *To Be Two*. Again, in another instance, Irigaray writes, "But all of these philosophers were men and they were debating between men. Their solution was, of course, a masculine one" (Irigaray 2000b: 86). In the essay titled 'She Before the King', in *To Be Two*, Irigaray argues that "[T]he discourses of men and women are (do) different that it is difficult to imagine that there could be one same elected official for the two genders. In which language will this person speak: man or woman?" (ibid: 79). However, a contradiction emerges in another text written in the same year where Irigaray strongly challenges the different voice of women. Her strong acknowledgement of Renzo Imbeni as a champion of sexed rights in the European Parliament, better than many female members, in *Democracy Begins Between Two*

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"whether one can nourish another living being from one's own body or only through one's own labour" (women nourish children from within their body, e.g. lactation and men's body does not have this feature) (Irigaray 2000a: 151). Irigaray iterates in *To Be Two* the position that woman being born of 'one similar to herself' can be a guide for man since she is more capable of a relationship between subjects in lieu of the subject-object relationship that is part of man's subjectivity (Irigaray 1994: 17-20; 2000b: 57). In this text, Irigaray also argues that women are more spiritual than men.

<sup>61</sup> At the same time, one can see an anti-essentialist reading of Irigaray by many feminists. Butler and Cornell present such a case. Butler feels that the feminine in Irigaray stands for critical mimesis rather than essentialism (Butler 1998). Similarly, Cornell comments on Irigaray's mimesis as an effective way of repudiating the feminine without failing to realize the non-feminist way in which women are "symbolically encoded or marked as feminine" (Cornell 1998: 20-1). Cornell argues that the feminine in Irigaray is actually a "radical other" to the concept of feminine we now have (ibid).

<sup>62</sup> The distinctive subjectivities Irigaray finds in *Antigone*, the woman and Creon the male ruler has been outlined in an earlier context.



testifies to this (Irigaray 2000a: 79). Here she also establishes the prerequisite for women to articulate their demands pertaining to their civil identity: “To be born a woman should not be sufficient grounds for claiming to represent the rights of women, without a code of rights which ensures an objective mediation between the woman who represents and the women represented” (ibid: 83). The crux of her take on representation contradicts the earlier point where she argues that an appropriate civil code is all that matters for bringing into effect policies and rights that affirm women’s identity as women:

What we are talking about here is the impossibility of representing an individual, male or female, without the mediation afforded by appropriate rights. Political representation then takes place in the name of a right which is common to the person who represents and to the person represented; and whoever governs is simply the woman or man who sees to the application of the law. The person who governs does not enjoy arbitrary power, not even a form of power or a mandate linked with her/his nature since this would constitute a larger danger politically. S/he is in the service of the application of the civil self-representation of each person, male or female.

(ibid: 100-1).

Irigaray’s take on rights can be summed up as thus. Irigaray feels that the equality approach to women’s liberation securing equal wages, presence in public sphere, autonomy, etc. is not enough to guarantee respect for the human identity of women, as women have to “submit to the imperatives of a culture<sup>63</sup> which is not theirs”, which leads to their further depersonalisation (Irigaray 1991: 206-7). Irigaray further says, “In order to stand some chance of living free, women are in fact forced to submit to men’s means of production and to increase their capital or socio-cultural patrimony. Despite everything, they enter into circuits of labour, but they alienate their female identity in them” (ibid: 207). Further, she expresses the crux of her argument for differential rights: “What I mean is that there is still almost no type of work which allows a woman to earn a

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<sup>63</sup> Irigaray falls into an essentialist trap in this argument. In her view, women, for instance, have to collaborate with making war weapons or instruments of pollution or use another language. This implies that she clearly postulates the existence of a culture essentially for women which is different from that of men. In other words, the nature/culture divide and women’s proximity to nature and other ecofeminist values emerge from this argument.

living like any male citizen without alienating her identity in issues and working conditions which are adapted to men alone” (ibid). Irigaray clearly offers a solution: “All this confusion could be resolved by the recognition that there are different rights for each sex and that equality of social status can only be established when these rights have been codified by the civil powers” (ibid).

Irigaray also seeks to address the issue of diversity in women through sexual rights whereby she uses sexual difference as the model to address other differences. Irigaray says, “Moreover, rights to protect the identity of women would offer a means of defining a level of equality between women without diminishing their diversity. Insofar as they [women] are citizens, women are in some sense equivalent, and this in no way deprives them of their own qualities” (Irigaray 2000a: 11). Also “Only a society which guarantees civil relations between ma(e)n and woma(e)n, and which leaves the other subjective choices to the individual, can be considered secular”<sup>64</sup> (ibid: 10). Again, “Wom(e)n and ma(e)n are therefore different, more different than Black and White, Catholic and Moslem, European and Oriental. They are different in the constitution of their subjectivity, and in their way of looking at the world” (ibid: 152).<sup>65</sup> Sexual difference therefore becomes the key “to achieving civil coexistence between other forms of difference” (ibid: 12). As she puts it, “Recognizing that the other – man or woman- is different from me, and accepting that his/her right to exist and to human dignity is equivalent to mine, leads to the recognition of other forms of diversity” (ibid: 12). Irigaray elucidates here how recognition of the other in sexual difference can pave way

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<sup>64</sup> The term ‘secular’ is used, as Irigaray claims to be applying in this particular case the ideas of Enrico Berlinguer on separation of Catholic Church and political secularity (Irigaray 2000a: 10).

<sup>65</sup> Irigaray points out three important differences between masculine and feminine ways of speaking and being. One, while men prefers subject-object relations, women prefer subject-subject relations. Two, men need an instrument or mediation (e.g. heteroeroticism) in their relationship with the other, be it an object or subject, which is not required by women. Three, in place of the feminine relationship between two, man prefers a relationship between the self (masculine subject) and others “understood as *them* and not as *you*”, meaning a denial of subjecthood to the other; otherwise, men perceive others as ‘them’ because they make this perception with reference to themselves and denying the irreducible difference of the other (Irigaray 1994: 17-20; 2000b: 17).

for a model for the coexistence of other forms of differences or diversity (see Irigaray 2000a).

Irigaray also explains how the various other differences that make up the individual gets respected if we are to follow the sexual difference model. She feels that if a woman respects the other-the man or vice-versa, s/he is also respecting the race, orientations, religion and other identities the other cherishes:

Respect for sexual difference, moreover, creates a framework which throws more clearly into relief the individual differences of each man and woman. Since I respect the other as other, irreducible to myself, I see him, listen to him and perceive him better in the detail of his particularity.

(Irigaray 2000a: 114).

The primacy of rights for women over cultural rights is made clear by Irigaray when she argues that “each man and woman [should be] free to make the more ideological choices” even as civil codes must guarantee the coexistence between traditions (ibid: 10). In other words, Irigaray does accord prime importance to women’s rights as opposed to many in postmodern times who leave open-ended the conflict or competition between different rights where women very often get reduced to markers of other identities like race, religion, caste and so forth. This is also due to Irigaray’s assumption that sexual difference model or sexuate rights can be a model rather than a realm of conflict and competing rights when it comes to the issue of differences between women.

### **Sexual Difference, Female Subjectivity and Sexuate Rights: Prospects for Feminist Politics**

As evident from the discussions above, Irigaray wants to liberate women as women and not as abstract citizens. Irigaray believes that “[T]he exploitation of women is based upon sexual difference, and can only be resolved through sexual difference” (Irigaray 1991: 32). Therefore she feels that women should obtain “positive rights of citizenship as women” (Irigaray 2003: 390). Irigaray is afraid of a community that represses difference:

“...a neutral society forgets the border between life and death, life being always sexed, while death does not or cannot any longer show this difference” (ibid: 390). Such a society is vulnerable to holocausts and this is obviously something that has to be averted. Her own ‘problematic’ is that “the exploitation of woman takes place in the difference between the genders [*genres*] and therefore must be resolved within difference rather than by abolishing it” (Irigaray 1995: 10). In another piece, Irigaray says, “The human race is divided into *two genres* which ensure its production and reproduction. Trying to suppress sexual difference is to invite a genocide more radical than any destruction that has ever existed in History” (Irigaray 1991: 32, emphasis in original). Thus one can see in Irigaray’s works “the *sublation* of the egalitarian phase of feminism by a differentialist phase” (Goux 1994: 181, emphasis in original). The project of Irigaray therefore wants to affirm and assert sexual difference in the form of a feminine civil code. Irigaray says, “[But] perhaps a sexually-marked civil code is the minimal guarantee needed to protect the singularity of man, that of woman, and the relation between them” (Irigaray 2000a: 9).

Thus, in the project of Irigaray’s feminism, neutrality or sameness in public and private spheres is dangerous not only for women’s liberation but also for the society in general. She makes a radical break from the Enlightenment conception of the abstract, atomised individual: “The sharing of political responsibilities can bring about some change only if it is based on the affirmation of two different identities, identities recalling that we are living men and women and not abstract impersonal individuals, some sort of robots or phantoms who cannot be touched by death” (Irigaray 2003: 390). Sexual difference thus constitutes the “most basic human reality” (Irigaray 1994: ix). Indeed, Irigaray “rejects the gynocentric move even while recognizing that “we do not escape so easily from reversal”” (Ferguson 1993: 15). As Ferguson writes, “her critics<sup>66</sup> have pointed out that she seems to posit *woman* as a unified category in precisely the way she wants to reject” (Ferguson 1993: 15).

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<sup>66</sup> Toril Moi (1985) is one prominent critic in this regard.

Another crucial point in Irigaray's notion of sexuate rights is the centrality of body. Embodiedness of women becomes crucial in her project as she finds woman's exploitation centred on her body as well- her being seen as a 'sexualised body' (Irigaray 1991). Rights in her approach therefore are based on embodiedness which draws from both biological foundationalism and social conditioning. For example, she asks in the context of May 1968, if women demanded right to abortion on grounds of biology or social conditioning, as "[W]e were fighting a battle for civil and cultural rights appropriate to our difference and, above all, for the right to abortion, which is linked with our biological identity" (Irigaray 2000a: 30). Biological identity and social conditioning are interrelated but she argues that they cannot be reduced to each other (see Irigaray 2000a: 30-9; 2003: 389-90). This is a pertinent point in the wake of feminists moving in the direction of collapsing biology into culture (see chapter 4).

With all the prospects one might see in the new feminine reclaimed by Irigaray, one certainly wonders if it is any different from the notion of the feminine defined by patriarchy or phallogocentric language and culture. This is very evident from Irigaray's arguments regarding jobs for women different from men's (discussed earlier) for the very reason that women like jobs like interior decoration, social work and so on because these are intersubjective in nature. After all, why would women oppose arms manufacture or even war and why would men not prefer nursing, teaching or social work, if Irigaray does not want to challenge the current hierarchy that presumes that men and women like different kinds of jobs because of their distinctive genders? Or why would women prefer rights as means of intersubjectivity in place of rights to property? Irigaray therefore exalts love, relationality and intersubjectivity of women not any different from the way it has been defined by patriarchy. Irigaray's philosophy can thus be deployed to hamper the dismantling of differential gender roles as well as their extension into public employment, which is a major agenda for MacKinnon. In fact, even Butler and Cornell who differ with Irigaray's critics on her essentialism find her notion of the feminine problematic. Stephen Heath contends, in a similar fashion, that by positing a closeness between woman and the unconscious, Irigaray and other French feminists who affirm the feminine evolve positions that are no different from "the historical positions of

patriarchal society in which “woman” has been constantly identified as a locus of disorder” (Heath, in Gallop 1982: 54). Such concerns are echoed by Moi when she writes, “having shown that so far femininity has been produced exclusively in relation to the logic of the Same, she (Irigaray) falls for the temptation to produce her own positive theory of femininity. But, as we have seen, to define ‘woman’ is necessarily to essentialize her” (Moi 1985: 139). In other words, the ‘virtual feminine’<sup>67</sup> of Irigaray is hardly different from its patriarchal counterpart. Both Butler and Cornell feel that despite Irigaray’s deployment of the feminine for various utopian possibilities, her ontologisation is conservative in that she retains the traditional definitions of the masculine and the feminine (Cheah, Grosz, Butler and Cornell 1998). At another level, Ferguson critiques Irigaray for falling into the traps of patriarchy by defining women “primarily in terms of their sexuality” (Ferguson 1993: 134-5). Ferguson asks, “Where is the line between reclaiming (or claiming in the first place) our sexuality and cooperating with male power?” (ibid: 135).

Irigaray also reveals a paradox in her works when she fails to adequately challenge the roles imposed on women in the name of femininity, thereby collapsing social roles and identity. While many Anglo-American feminists like MacKinnon (discussed in the next chapter) give centrality to altering social roles based on gender, Irigaray’s exhortations to put women in ‘intersubjective’ jobs is definitely a setback. Irigaray indeed lauds the adornment of feminine roles to attain subjectivity and justifies this in the name of her strategy of mimesis or mimicry. Mimesis involves “deliberately assuming the roles historically assigned to the feminine to already convert a form of subordination into an affirmation and thus to begin to thwart it” (Irigaray 1991: 124). Braidotti gives an example of mimesis in Irigaray in her take on motherhood. Motherhood is “also the site

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<sup>67</sup> The term is used in Braidotti (2002: 169) to denote Irigaray’s and other poststructuralist attempts to find “a better, a more adequate representation of female corporeal reality, not as given but as virtual, that is as a process and project” (ibid). That is, Irigaray rejects the notion of the feminine imposed by patriarchy. Her attempt is to unravel a new notion of the feminine rooted in embodied rather than abstract or universal subjectivity. The subject of feminism in this framework is not woman as the complementary or specular other of man but a “complex and multilayered embodied subject that has taken her distance from the institution of femininity” (Braidotti 2002: 170).

of women's capture within the specular logic of the same", that makes women subordinate to men (Braidotti 2002: 171). At the same time, maternity is a "resource for women to explore carnal modes and the empathy and interconnectedness that go beyond the economy of phallogocentrism" (ibid). Mimesis or mimicry therefore becomes a kind of agency that holds hope for a woman by trying "to recover the place of her exploitation by discourse, without allowing herself to be simply reduced to it" (Irigaray 1991: 124). As Braidotti herself submits, "if it is the case that the material/maternal site is primary and constitutive of the subject, it can also be turned into a location of resistance" (Braidotti 2002: 171). Mimesis however also leaves fears of counter-effect for women's emancipation. On the one hand, it can end up in a reinforcement of the patriarchal discourse, as in the assumption of roles already dictated by patriarchy; at another level, the political context of mimicry becomes too insignificant to reveal the limitations of this strategy (see Moi 1985).<sup>68</sup>

Moreover, Irigaray leaves the subjectivity of men unchanged despite all her critique of it. In other words, men and women are bound to stay different and with different attributes. In other words, Irigaray wants to preserve the civil identity of both women and men. While women have been denied their civil identity, her project endeavours to guarantee women theirs while leaving that of men as it has been. As Cornell argues, this in a way makes it inevitable for a division of humanity into two sexes (Cornell 1998: 25). Cornell comments on Irigaray's conceptualisation of sexuate rights as rights appropriate to two universals- men and women:

I am inclined, given the way she's gone toward sexuate rights, to think that it is a problem with Irigaray's conceptualization-she universalized the two, the masculine and the feminine. For Irigaray, the need was to preserve-and there is much about this that is certainly radical in terms of Anglo-American legal theory-the actual space for civil identity, for what she calls "women and

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<sup>68</sup> Moi gives an example of mimicry of male roles by women in the case of Margaret Thatcher, to illustrate how mimicry of men by women, minus the political context can backfire. What Irigaray seems to overlook in such cases is that "sometimes a woman imitating male discourse *is* just a woman speaking like a man" rather than engaging in mimesis (Moi 1985: 143, emphasis in original).

men." "Woman" falls out and there are "men and women." What she calls for is a set of sexuate rights appropriate to these entities, these beings, these creatures, who are an ontological universal. What the law has always done by erasing the unique civil identity of women is to create "uncivil men."

(Cornell 1998: 25).

Sexuate rights therefore necessitate that "[T]he state both expresses and reinforces the truth of how we should be actualized in our sexual identities, male/female", leaving out other sexual possibilities (ibid).

Also important is the deterministic role of the libido in subjectivity. While Irigaray's theory gives an alternative notion of female sexuality<sup>69</sup>, distinct from its definition by patriarchy, Irigaray's theory "reduces women to a version of sexuality" (Weedon 1987: 65). Women's language, subjectivity, etc. all emerge from their libido distinctive from male libido. Women are no longer defined in terms of a lack. Irigaray "affirms a lesbian reexploration of the maternal continent and an active affirmation of the specificities of women's bodies" (Grosz 1994: 339). Or as Burke writes, Irigaray "omits male sex and valorizes female sexual sufficiency, in a fable that can be described as "vulval" or "vaginal" (Burke 1994: 43). Burke however attempts to rescue Irigaray from biological essentialism in her argument that what Irigaray is proposing is not a politics "that simply flow from" the body; rather, Irigaray sees the possibility of writing, politics and so on "in analogy *with* the body" (ibid: 51, emphasis in original).<sup>70</sup> In a similar vein, Butler agrees

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<sup>69</sup> Weedon points out that like Irigaray, Kristeva and Helene Cixous too put forth an alternative notion of female sexuality by referring to the pre-Oedipal stage, the time before repression, when the child is in an imaginary relationship with its mother (Weedon 1987: 64-6; 1999). Cixous emphasises the relationship between feminine libido which is plural and feminine writing (Weedon 1987). Similarly, Kristeva writes on the repression of the maternal body necessitated by women's access to the symbolic order through the Father – a process in which the feminine becomes the unconscious of the symbolic order (Weedon 1999).

<sup>70</sup> For instance, Burke argues that when Irigaray speaks about vaginal metaphors, she does not stress much on the anatomy but on the morphology of the female sex. The "lips" suggests another "mode of being" rather than another "model" (Burke 1994: 51). That is, the lips should not be reduced to an anatomical figure; their significance lies in a new mode of being – plural, multiple, 'in touch' and so on (see Burke 1994). But how this can be different from biological essentialism is the precise question. The new notion



with Gallop's thesis that the 'two lips' in Irigaray should be read as both "synecdoche" and "catachresis", "a reading which offers an interpretation of Irigaray's language of biological essentialism as rhetorical strategy" (Butler 1993: 38). Gatens too endeavours to strip 'two lips' of essentialism. In Gatens' view, what *écriture feminine* promotes is "a difference rooted not in biology but rather in discourse – including biological discourses" (Gatens 1999: 231). Irigaray's writing of the 'two lips' is hence not part of a biological foundationalist project; on the contrary, it constructs an imaginary body that challenges "traditional construction of feminine morphology where the bodies of women are seen as receptacles of masculine completeness" (ibid). However, the link between biology and identity is too profound for a transformative politics as far as "actual women" are concerned (Weedon 1999: 115). Weedon writes,

The shift of emphasis from the positionality of the Oedipus complex, organized around the phallus, the signifier of male desire, to female sexual pleasure offers a positive interpretation of their bodies....It is, however, the meanings given to the female body and to female desire which are particularly worrying for a feminism anxious to transform existing social relations rather than to live alongside them in separation from them in a social order that remains patriarchal.

(Weedon 1987: 65).

Such a concern had earlier been raised by Duchen (1986). Duchen finds the suggestion in Irigaray of the beginning of all things to bodily experience and anatomy, ignoring the social and linguistic mediation, problematic (Duchen 1986: 98-9). Duchen (1986: 99) asks, "Does this reliance on sexual pleasure not eliminate the social too insistently, ignoring the person and what the person brings, what other 'baggage', to sexual pleasure?" Similarly, Ferguson (1993) accuses Irigaray, besides many other "linguistic feminists", of a "tendency to overthematize bodies in the direction of sexuality", ignoring

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of female subjectivity is derived from a figure – the vagina – that is very much anatomical. Monique Plaza brings forth the problem of biological essentialism in Irigaray as thus: "Every mode of existence which ideology imputes to women as part of the Eternal Feminine and which for a moment Luce Irigaray seemed to be posing as the result of oppression, is from now on woman's essence, woman's being. All that 'is' woman comes to her in the last instances from her anatomical sex, which touches itself all the time" (Plaza in Moi 1985: 146-7).

everyday experience of embodiment in the form of labour (Ferguson 1993: 134). In other words, sexual organs and sexuality are privileged over other organs and aspects of body and life in general. The pre-eminence of sexual organs and sexuality in Irigaray's works is thus described by Ferguson:

Irigaray is particularly well known for her vaginal metaphors. But the focus on pleasures in bodies can narrow one's notion of embodiment to the specifically sexual, leaving out, for example, for example, the arena in which most people experience their bodies every day- labour. There is more to embodiment than sexual desire, no matter how diffuse and multiple we acknowledge it to be: there is grace, strength, relaxation, exertion, pain. Although Irigaray's goal is to multiply the vision of our body, she speaks rather relentlessly about the genitals, ignoring arms, legs, backs, shoulders, the parts of our bodies called upon most by those who do physical labor for a living.

(Ferguson 1993: 134).

The "specular and photologic economies" of Irigaray thus neglect materialist conditions of women's oppression (Moi 1985: 147; Duchon 1986: 102). As Moi writes, "the material conditions of women's oppression are spectacularly absent from her work" (Moi 1985: 147). For Irigaray, patriarchy's negativity consists in mainly denying to women the expression of their "real nature" (ibid). The other dimensions of patriarchy are marginalized or suppressed in such analysis. Moreover, the multiplicity evoked in a single woman has somehow paved way to the treatment of 'women' as a single coherent group, ignoring the historicity of patriarchal oppression (ibid: 147-9).

Also pertinent is the tension in Irigaray's position that critiques universalism and her sexual difference model which she claims can be an exemplary to arrive at coexistence of other differences like race, age or ethnicity. While the sexual difference model argues for two subjects – man and woman, the critique of universalism offers a possibility of greater and infinite plurality of subject-positions (Schor 1994). Irigaray also undermines the entangling of woman with other markers of difference like race, nationality and so forth. For instance, Irigaray's works are not receptive to the multiple bases of oppression espoused by socialist feminists, feminists of colour or Third world feminists. Liana Borghi echoes this problematic in Irigaray when she writes, "The theory of sexual

difference makes no distinction between lesbian and straight, white and black, rich and poor, so as to avoid the pitfall of categorizing oppression” (Whitford 1994: 27).

To sum up, Irigaray tries to retrieve a notion of the multiple, intersubjective female subject by falling back on the distinctive feminine libido. Distinctive subjectivity has to be wrought through sexuate rights. The reclamation of the distinctive female subjectivity however gives us a theory and politics entrenched in biological foundationalism and essentialism that can backfire in a time when women are still struggling to break out of the traditional roles imposed on them by patriarchy. Also, sexuate rights eventually become something that defines the feminine affirmatively, by collapsing civil identity of women with their traditional ‘virtues’ and roles. For example, right to abortion gets redefined as positive right to motherhood while right to work also implies the right to be engaged in ‘intersubjective jobs’ and rights per se provide to women provisions to nurture relationships rather than access and control property and goods. In other words, the affirmation of the feminine through *jouissance* and sexuate rights does not offer a new notion of the feminine; at the same time, it has the tendency to bring forth the dangers of biological essentialism.

## Chapter 4

### **Rewriting Rights through Women's View Point: The Dominance Approach of Catharine A. MacKinnon and Women's Rights**

Viewing gender as a matter of sameness and difference – as virtually all existing law and theory does is one way of covering up the reality of gender, which is a system of social hierarchy. Gender is an imposed inequality of power first, a social status based on who is permitted to do what to whom, and only derivatively a difference.  
(MacKinnon 1990: 213).

We would settle for equal protection of the laws under which one would be born, live and die, in a country where protection is not a dirty word and equality is not a special privilege”  
(MacKinnon 1987b: 45).

Feminist theorists have variously engaged to solve the equality- difference debate in feminism. The previous chapter shows how Irigaray attempted to provide a difference approach based on sexual difference of men and women in her notion of sexuate rights. Sexuate rights affirmed the feminine, but the resulting feminine was no different from the one defined by patriarchy, except for a reading which would attribute to it mimetic potential, which in turn is not any guaranteed way of challenging oppression. Irigaray therefore has her place in the difference camp, without adequately challenging the problems posed by gynocentric feminism in terms of not only essentialism but also entrenching traditional gender roles.

This chapter reflects on the works of Catharine MacKinnon, who is one of the few feminist theorists to dwell upon the desirability of difference in feminism (Pateman 1990) as distinct from sameness feminists. MacKinnon problematizes both sameness and difference as standards to address women's issues. Both sameness and difference approaches in feminism focus on sameness/difference without addressing the power structure that keeps women dominated by men. Difference is either glossed over or is

affirmed (as in Irigaray); in either case, sexual difference is treated as a given category and the subordination of women is studied with reference to these differences – differences between women and men. MacKinnon presents a third approach – the dominance approach. This approach discredits the eulogisation of difference which serves only to leave unquestioned the unequal power structure with regard to gender. Sexual difference therefore becomes not the cause of women's subordination; in contrast, the very difference is the effect of dominance of one sex by the other in the prevailing context of unequal power relations. This also leads to the discrediting of rights based on sameness and difference in MacKinnon.

### **Neither Sameness nor Difference: A Case for Dominance Approach**

As mentioned in the previous chapters, much of the efforts in the realm of rights and law assumed sameness as the core of equality. Difference was taken up as a given category that needs to be accommodated through special protection. MacKinnon joins issue with both equality and difference perspectives which in her view are blind to the gender system that has created the difference in the first place. MacKinnon therefore complicates the equality/difference debate by challenging both the mere extension of 'man's rights' to women as well as the differential rights to women by virtue of their sexual difference. For instance, MacKinnon would never appeal to citizenship rights based on women's sexual difference and the 'virtues' that accrue from it. She would also not argue for women's custodial rights for their children on grounds of their maternal and caring nature. This however does not make her a votary of sameness feminism. On the other hand, MacKinnon lays bare not only the limitations but also the counter-effects of sex equality as well as the invocation of sexual difference as used in mainstream theory, law and politics.

As said earlier, MacKinnon's critique of the sex equality model or sameness feminism as well as difference feminism centres on the correspondence of women to male standards, very similar to Irigaray's attack on man as the reference. While sameness demands maximum conformity to male standards, difference demands maximum distance from

male standards. Man as the reference point permeates both equality and difference approaches in feminism; this necessarily neglects women's experience in the formulation of laws and rights for women's emancipation.

MacKinnon's attack on sex equality model precisely shows how man as the reference scuttles women's liberation. Sex equality as a legal concept is insufficient in its traditional form as the concept has "not traditionally been theorized to encompass issues of sexual assault or reproduction because equality theory has been written out of men's experience, not women's" (MacKinnon 1996: 46). Equality as sameness implies for MacKinnon "not what happens to women" but "only getting things for women that can also be gotten for men". This is also reflected in the fact that women's rights have always been argued out in terms of "those rights that men have to lose" (MacKinnon 1989b: 221). In other words, sameness would allow women to secure such rights as right to vote, property, etc which men are also entitled to. To give an example, such an approach can secure for women their right to work in a public space, but it cannot be used to fight issues like sexual harassment of women at work place. Also, it excludes issues that are specific to women, that is, those issues which do not concern men, especially those related to women's sexuality and reproduction. In other words, this highlights the deficit in sameness feminism which falls upon a common human essence with no regard for women as embodied beings. Such a perspective can have counter-impacts on women's rights. For instance, an appeal to equality as sameness would mean the denial to women of alimony, custody of children, pregnancy leaves, etc., for either men will also be deemed to be having equal rights as in the case of child custody, or it would be unfair to have certain rights like right to maternity leave as men do not get pregnant (MacKinnon 1989b: 222). A concrete example is provided by the fathers' movement in the USA for the custody of children after separation or divorce, where men sought the custody of child on ground of equalisation of their rights with women rather than the conventional argument of paternal control over children or the more common argument of child welfare (Smart 2005 : 156).

MacKinnon is hence also challenging the notion of abstract rights and a notion of the unencumbered human in her critique of sameness feminism. The abstract rights concretely embody the experiences of men while the human is essentially male, reflective of a structure of society characterised by male dominance. To put it differently, MacKinnon lays bare the universal exalted in the unsexed human of sameness feminism as a sexed being- the masculine- who has written his experience into the universal and portrayed it as the universal truth. Thus the equal rights granted to women in the form of suffrage, property, etc. are actually specific rights constructed on the basis of male needs. MacKinnon further argues how those rights guaranteed to women in relation to their body are defined from the male vantage point. A classic case in this regard is the law against rape where rape is actually defined in terms of man's sexual access to woman rather than from the point of dignity of woman or the violation of her body. Rape laws in most countries are premised on one man's exclusive access to a woman. This becomes clear when rape gets defined only in terms of penetration by the male organ while penetration by objects as fatal as swords or knives does not qualify as rape.<sup>71</sup> Also, rape of pregnant women is held more serious than rape of non-pregnant women in the rape laws of countries like India.<sup>72</sup> Similarly, other forms of violation of woman's body like fondling, kissing, oral sex, etc without consent also fall outside the ambit of rape. That is, female sexuality in laws framed by men is treated in terms of chastity and virginity rather than as something women have ownership and control over; the ownership of women's sexuality in existing definitions, seems to be vested in men.

MacKinnon explains these gaps in laws made for women as a basic difference between liberalism applied to women and feminism. While liberalism seeks the elimination of gender difference in the ideal of equality<sup>73</sup>, feminism assumes equality as "the aspiration

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<sup>71</sup> Such a definition of rape can be seen in the Indian case. Many Indian feminists therefore prefer the term 'sexual assault' to rape (See Menon 2004).

<sup>72</sup> Indian feminists have raised questions if this reinforces the "value of women as wombs, rather than as individuals (see Menon 2004: 134-5).

<sup>73</sup> A similar view is presented by Eisenstein when she argues that the "laws of the liberal patriarchal state" do not recognize a conception of equality that moves beyond the "oppositional stance – about sameness and difference – of law itself" (Eisenstein 1988: 47).

to eradicate not gender differentiation, but gender hierarchy” (MacKinnon 1987b: 22). In other words, sameness approach has the dangerous consequence of formulating laws and rights for women from men’s perspective. However, very much like Irigaray’s position, this should not, pre-empt women from aspiring for those rights that men have. It only means that feminism does criticise exclusion of women from those areas conventionally designated as male; but feminism also “*criticize(s)* male pursuits from women’s point of view, from the standpoint of our social experience as women” (ibid, emphasis in original). Thus rape defined from women’s standpoint brings within its ambit any act detrimental to women’s dignity including verbal abuse. Similarly, right to abortion will also expose a situation where women’s refusal to have a child is not paid heed to. Prostitution will be analysed in the light of women’s sexual choice, health, dignity, etc. that demands efforts to make it illegal rather than sustain it as a vocation, as a means of pleasure for men to be legalised through the discourse of rights of sex workers.

MacKinnon’s critique of the sameness approach also stems from the perception in mainstream moral theory that equality is an equivalence and not a distinction, and gender is a distinction, not an equivalence (MacKinnon 1987b: 32; 1989: 216). Thus while the law defines equality as treatment of likes alike and unlikes unlike, the “sexes are socially defined by their mutual unlikeness” or sexual difference (ibid). In other words, in contrast to Irigaray who treats equality and sameness as synonymous, MacKinnon raises problems regarding the definition of equality as sameness and gender as a difference. Equality therefore becomes a concept that should assume everything as same and devoid of any difference, whereas gender is analysed in terms of a distinction. That is, while equality laws focus on and decide upon on the basis of sameness, issues pertaining to gender are approached from the perspective of a fundamental distinction between the sexes. For instance, issues like pregnancy have been viewed exclusively as women’s issue and thus falling under difference and not equality (MacKinnon 1987b). Pregnancy therefore becomes a special treatment for women’s difference from men and not an equality right (MacKinnon 1987b: 65). Thus, men and women are entitled to the right to public employment regardless of their sex. However, when it comes to the hiring of women, employers very often refuse to take women who are pregnant; pregnancy has been used



to fire women from their jobs while most contract jobs almost have a bond that women should not get pregnant, and in many cases, they are asked to not get married as well. Thus on the one hand, sex equality means 'same as men' while on the other, the concerns raised pertain not to women's skills or efficiency but to their sexual difference.

MacKinnon therefore finds the terminology of 'sex equality' contradictory in itself an "oxymoron". In MacKinnon's understanding, gender is "not a difference, which suggests equality, but a hierarchy" (Menon 2004: 114). As Menon puts it, in MacKinnon's view, "To construe gender merely as a difference is to obscure the power relations which impose the difference by force" (ibid). MacKinnon elaborates the 'oxymoron' in sex equality as thus:

That is, gender is socially constructed as difference epistemologically, and sex discrimination law bounds gender equality by difference doctrinally. Socially, one tells a woman from man by their difference from each other, but a woman is legally recognized to be discriminated against on the basis of sex only when she can first be said to be the same as a man. A built-in tension thus exists between this concept of equality, which presupposes sameness, and this concept of sex, which presupposes difference. Difference defines the state's approach to sex equality epistemologically and doctrinally. Sex equality becomes a contradiction in terms, something of an oxymoron. The deepest issues of sex inequality in which the sexes are most constructed as socially different, are either excluded at the threshold or precluded from coverage once in. In this way, difference is inscribed on society as the meaning of gender and written into law as the limit on sex discrimination.

(MacKinnon 1987b: 32; 1989: 216).

MacKinnon says, "Society defines women as such according to differences from men: hence the sex difference, as gender is customarily termed. Then equality law tells women that they are entitled to equal treatment mainly to the degree they are the same as men" (MacKinnon 1991: 1291).<sup>74</sup> Such an approach of assimilation causes trouble because one

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<sup>74</sup> MacKinnon, in this context, does have an answer to many theorists, including some feminists who argue that not all men are equally privileged or that some men experience conditions worse than some women, challenging the early feminist contentions that women occupy a subordinate position to men in society and family. In MacKinnon's view, such concerns are taken care of by the fewness of such cases as well as the

is expected to be masculine professionally and feminine personally at the same time (MacKinnon 1987b: 75).

MacKinnon furthers this argument by stating that such an approach holds that the sexes are, by nature, biologically different and so the differential treatment is justified (MacKinnon 1989b: 218), and the discrimination is put under cover. This implies that women's 'natural', 'biological' differences are written into the law so that discriminations are written off as mere differential treatments that are justified and claimed as even necessary, the differences in biology being assumed as natural and given. The equality approach therefore rests on the premise that "any distinction that can be accurately traced to biology or heterosexuality is not a discrimination but a difference" (MacKinnon 1989b: 218). Thus, a woman fired from her job because she is pregnant cannot take recourse to this model of sex equality, for her male colleague will never face a similar situation. As MacKinnon herself points out, in *Geduldig v. Aiello* (1974) and *General Electric Co. v. Gilbert* (1976), the Supreme Court of the USA gave verdict in favour of equal and not special protection- "that discrimination on the basis of pregnancy was not discrimination against women on the basis of sex, but rather a gender-neutral choice not to insure against all the risks that members of that third sex - "pregnant persons" - might face" (MacKinnon 1987a: 9-10). Equal protection here assumes that it is unfair not to discriminate on ground of pregnancy. In fact, the Supreme Court found that "not gender but rather a physical condition (pregnancy)" was the ground for exclusion (Eisenstein 1988: 66). Also interesting in these cases is the reference to two categories – pregnant women and non-pregnant persons – the first exclusively female and the second inclusive of men and women (see Eisenstein 1988: 66).

MacKinnon's opposition to the sameness perspective also follows from the disastrous consequences it enjoins on women by virtue of a notion of sex equality decided on the basis of 'similar situatedness of men and women'. Sex discrimination laws, in

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advantageous position men enjoy in the gender system. That is, she argues that gender is actually a hierarchy and therefore if men fail as men, they readily qualify for women's special treatment whereas few women will be capable of attaining equality with men.

mainstream liberal approach, would argue that a differential treatment is discriminatory only if it is proved so after [they] ‘reverse the sexes and compare’. That is, “[T]o see if a woman was discriminated against on the basis of sex, ask whether a similarly situated man would be or was so treated” (MacKinnon 1989b: 217). In other words, “we already have to be equal before we can complain of inequality” (MacKinnon 1987b: 74). Commenting on the ‘white man’s law’, MacKinnon further says, “Equality has come to mean a right to be treated like the white man when you can show you *are* like him” (MacKinnon 1987b: 63, emphasis in original). The comparison done after ‘reversing’ the sexes implies that women can claim that they have been discriminated only if they are equally placed with men. In her own example, MacKinnon says that if women are not given positions in estate administration when the men are no more qualified than them, sex discrimination law can handle with this “imaginary sex difference” whereas it has no teeth to tackle more ‘real’ situations where women get excluded from estate administration due to insufficient education (MacKinnon 1989b:224). To put it simpler, women are hardly allowed to become ‘similarly situated to men’ and sex discrimination laws imbued with liberal values cannot account for this (MacKinnon 1987b: 72; 1989: 224). A similar point is made by MacKinnon with regard to the theories surrounding the defeat of ERA in 1982. As a reply to Mansbridge’s argument that the defeat of ERA scuttles the goal of sex equality, MacKinnon argues that equality of sexes is not an intended goal of sex equality; rather equality of sexes in society is a precondition to guarantee sex equality by law (MacKinnon 1987a). In other words, when women are unequal in all realms of life – public and private – women will not be able to make use of the sex equality doctrine that requires them to be “similarly situated to men”<sup>75</sup>. For example, equal right to employment will not be enough for women to do night shifts for fear of sexual harassment, although they may qualify for the job and the job is open to both men and women alike.

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<sup>75</sup> Eisenstein argues that “similarly situated” in the equal protection doctrine “assumes a stance of sexual homogeneity”. There has been no clarification on what ‘similarly situated’ means. However, more often than not, the capacity to bear and bring up children has been evoked as the bottom-line for deciding if women are similarly situated to men (Eisenstein 1988: 68).

Such an impasse in the sex equality model and its equal protection clause provokes MacKinnon to endeavour towards feminist theory and jurisprudence that treats women as women and not as abstract individuals whose sex/gender does not matter. However, this is not the same as Irigaray's advocacy of a feminine civil code and sexuate rights or a notion of woman drawn from her biology. On the other hand, MacKinnon situates issues dealt with by many feminists including Irigaray as issues pertaining to sexual difference, within the system of male dominance. For example, sexual harassment at workplace is an issue of gender discrimination for MacKinnon who traces the harassment to a gender system where law does not view women as embodied beings whereas the society discriminates against them by invoking their bodily differences from men. In her debate to counter Phyllis Schlafly<sup>76</sup>, MacKinnon asserts this position: "when the right affirms women as women, it affirms woman's body as a determinant of woman's existing role, which it sees as her rightful place" (MacKinnon 1987b: 22). One can very well notice here how women are treated as embodied beings rather than as abstract persons but without falling into an essentialist trap.

The invocation of embodied being of women without resorting to essentialism and its consequent 'feminine virtues' runs through MacKinnon's works which now treat sexual difference itself as an outcome of inequality. MacKinnon clearly perceives the distinctions between men and women as fundamentally social rather than natural (MacKinnon 1987a; 1987b). She therefore finds it problematic to affirm or deny difference, for she sees difference and dominance as intertwined: "Difference is the velvet glove on the iron fist of domination" (MacKinnon 1989b: 219). MacKinnon argues that biological differences do not cause inequality, but on the contrary, the inequality

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<sup>76</sup> Phyllis Schlafly is a conservative who contended in the 1970s-80s that the ERA would erase special protections for women, force wives and mothers into the job force (Strom 2003: 5, 251). Schlafly argued that if ERA were passed, women would be deprived of alimony and custody of children after divorce. "Women would be drafted, serve in combat, and forced to use unisex bathrooms" (ibid: 251). It may be noted that the defeat of ERA could be made possible by conservative campaigns because of an either/or situation of equality/difference. That is, equal rights could be articulated as a fearful situation that might take away positive rights enjoyed by women by virtue of being the "weaker sex".

between the sexes creates these very differences. Differences are thus not the basis of inequality but rather its consequence:

The differences attributed to sex become lines that inequality draws, not any kind of basis for it. Social and political inequality begins indifferent to sameness and difference. Differences are inequality's post hoc excuse, its conclusory artifact, its outcome presented as its origin, its sentimentalization, its damage that is pointed to as the justification for doing the damage after the damage has been done, the distinction that perception is socially organized to notice because inequality gives them consequences for social power.

(MacKinnon 1989b: 218-9).

As evident from the discussion above, MacKinnon implicates equality and difference in the logic of power relations in society. The dominance approach of MacKinnon therefore approaches the equality/difference question as a question of the distribution of power (MacKinnon 1987b: 40). In MacKinnon's account, "[G]ender is also a question of power, specifically of male supremacy and female subordination" (ibid). Thus social power in the form of male dominance made first a division between men and women which later on became a difference (MacKinnon 1982; 1987b; 1989). Unfortunately, this difference has been perceived as natural in most quarters. The dominance approach however perceives gender first as an inequality and not as difference, which has been "constructed as a socially relevant differentiation in order to keep that inequality in place"; this makes it look at sex inequality questions as questions of systematic dominance - of male supremacy (MacKinnon 1987: 42).

Thus differences which are treated as causes of women's subordination in sameness feminism, and as sources of emancipation in difference feminism, become the effects of dominance in MacKinnon's analysis. To give an example, women's reproductive function is looked down upon by sameness feminists as an obstacle to women gaining subjectivity. Difference feminism, on the other hand, sees in the biological distinctiveness of women the very source of their emancipation, for instance, the ethics of care or maternal peace that emanate from women's potential to procreate and nurture. According to MacKinnon, both these perspectives are flawed. The common mistake committed by

both sameness feminism and gynocentric feminism is that they adopt an uncritical view of the differences between women and men; they do not dwell upon these differences as a result of the logic of dominance characteristic of an unequal society. Rather they tend to accept them as they are, only to see if they are a hindrance to or a facilitator of women's emancipation. Affirmation or denial of difference as feminist cause therefore becomes problematic: "The problem then is not that differences are not valued; the problem is that they are defined by power. This is as true when difference is affirmed as when it is denied, when its substance is applauded or disparaged, when women are punished or protected in its name" (MacKinnon 1989b: 219).

The recourse to sameness or difference, as mentioned earlier as well, is also problematic in that it makes man the measure of all things (MacKinnon 1987b; 1989b). Reference to the male to argue for rights becomes inevitable in both sameness and difference approaches. While sameness demands the establishment of how close women are to the male standard, difference calls upon to ascertain how distant women are from men. For example, sameness feminism would demand the maximum conformity of women to the male standards as in the case of 'emasculate' women politicians – competitive, aggressive and assertive, even favouring war; difference feminism on the other hand extols women politicians who work with the values of care, peace and so on. An example for the latter is Irigaray's plea for raising the value of "intersubjective" jobs which fulfil women's civil identity, as opposed to their entry into arms manufacture (discussed in the previous chapter). Both versions fail to expose the very nature of these differences which are affirmed or denied as creations of male dominance. The 'virtues' attributed to women are indeed the virtues men like to see in them and not natural qualities or qualities derived from women's biology, a critique that echoes the concerns raised by Butler, Weedon and others against Irigaray's notion of the feminine (discussed in the previous chapter). MacKinnon thus elaborates on the problematic of both equality and difference feminisms for women's rights:

Under the sameness rubric, women are measured according to correspondence with man, their equality judged by proximity to his measure. Under the difference rubric, women are measured according to their lack of correspondence from man, their womanhood judged by their distance

from his measure. Gender neutrality is the male standard. The special protection rule is the female standard. Masculinity or maleness is the referent for both. Approaching sex discrimination in this way, as if sex questions were difference questions and equality questions were sameness questions, merely provides two ways for the law to hold women to a male standard and to call that sex equality.

(MacKinnon 1989b: 220-1).

Furthermore, MacKinnon takes issue with the hierarchy assigned to differences, an issue raised by Irigaray as well. Men are as different from women as women are different from men. Yet this difference is hierarchically placed, giving a superior value to all that are man's and denigrating all that are women's. "Hierarchy of power produces real as well as fantasized differences, differences that are also inequalities" (MacKinnon 1987b: 37; 1989b: 225). Hence in MacKinnon's view, "The differences are equal. The inequalities, rather obviously, are not" (MacKinnon 1989b: 225). MacKinnon therefore argues that it is not the differential roles played by women that have led to their state of 'inferiority'; on the contrary, male domination has devalued women's roles and has lauded men's. MacKinnon is therefore unequivocal in attacking those feminist positions that explain inequality as a consequence of differences. She identifies gender hierarchy as the central problem that feminism has to engage with, rather than a preoccupation with sameness and difference. Biological and sexual differences ought to be equal; but their social meanings do not assign equal power to both women and men. Thus the issue of inferiority ascribed to women by the social structure that is characterised by discrimination is passed off as 'difference'. MacKinnon (1989b: 232-3) thus says:

The analytical point of departure and return of sex discrimination law is thus the liberal one of gender differences, understood rationally or irrationally to create gender inequalities. The feminist issue, by contrast, is gender hierarchy, which not only produces inequalities but shapes the social meaning, hence legal relevance, of the sex difference..... The sameness route ignores the fact that the indices or injuries of sex or sexism often ensure that simply being a woman may mean seldom being in a position sufficiently similar to a man's to have unequal treatment attributed to sex bias. The difference route incorporates and reflects rather than alters the substance of woman's inferior status, presenting a protection racket as equal protection of the laws. In this way, the legal forms available for arguing the injuries of sex inequality obscure the gender of this equality's reference point while effectively precluding complaint for women's sex-specific grievances.

As MacKinnon says, “What the sameness standard fails to notice is that men’s differences from women are equal to women’s differences from men. There is an *equality* here. Yet the sexes are not socially equal” (MacKinnon 1987b: 37, emphasis in original). On the other hand, difference approach often tantamount to imposing certain differences. For example, it may well be argued that women, unlike men, do not want better paying jobs, as was argued out in the *EEOC v. Sears, Roebuck and Co. (1979)*<sup>77</sup> – this can be used to put women into lesser paying jobs which men never prefer. MacKinnon fears that since there is no man to set the standard here, every such difference affirmed will be justified as sex difference and not adjudged from the angle of sex discrimination (MacKinnon 1989b: 223). Such a perspective can also exclude women, on the ground of special protection/benefits itself, from a variety of jobs on grounds of vulnerability of woman’s body and especially its reproductive functions to health hazards (MacKinnon 1987b: 38; 1989b: 226). For example, special protection rule can be used to prevent recruitment of women to nuclear plants on the ground that radiation might hamper their reproductive capacity.

MacKinnon is hence attacking not only the differential roles imposed on men and women but also the differential value attached to them. For example, women bear and raise children while men do not. But the lack of pregnancy and nurturing capacities on the part of men are not seen as something limiting on the men, while women’s ability for the same are denounced as inhibiting subjectivity. That is, the differences are equal, or more accurately, men are also as different from women as women are from men – women can

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<sup>77</sup> Sears had an equal employment and affirmative action policy, but men dominated the high commission selling of automobile parts, appliances and furniture. Sears justified the domination of men in higher-paying jobs on the ground of job preferences of women - that women were not interested in them (Eisenstein 1988: 110; Strom 2003: 265-8). Even the statistics presented by the EEOC that prove the low representation of women could be overruled with Sears’ argument that the few number of women should be attributed to “psychological attitudes of women” and not sex discrimination. This was accepted by a Reagan-appointed federal circuit court judge to give a ruling in favour of Sears, which was upheld in the Court of Appeals (see Strom 2003: 265-8). Interestingly, Rosalind Rosenberg, a feminist historian and a key witness to Sears testified that women and men have different career aspirations, for women consider their work outside home as secondary (Eisenstein 1988: 110-1).



bear children while men cannot. But this difference is put in a hierarchy that makes women's specific capacities as inferior. Hence the absence or inability of pregnancy is valued as superior to women's reproductive and maternal abilities. MacKinnon, in similar vein with difference feminists, exposes and condones the hierarchy attributed to differences between women and men. However, in contrast to difference feminists, she endeavours to prove that these very differences are created by a system of male dominance that puts male attributes – abilities as well as inabilities- above female attributes. For example, while Irigaray advocates a superior value to women's traditional vocations, MacKinnon feels the urge to both condemn the devaluation of women's roles but more importantly, to overcome the traditional gender roles. Hence in MacKinnon's view, women should also enter into combat and arms manufacture though their reproductive and mothering roles should not be devalued.

It becomes imperative at this juncture to find another commonality in sameness and difference feminisms detrimental to women's liberation: the neglect of sexuality issues. The sameness approach neglects sexuality while difference feminism analyses women's sexuality exactly in the same way as men have defined it. Interestingly, the dominance approach of MacKinnon grounds sexuality as the cornerstone of feminism (MacKinnon 1989a; 1989b). MacKinnon's analysis places sexuality as a universal, pervasive across cultures and economic systems, though it takes specific forms in specific cultures and societies: "Sexuality remains largely pre-cultural and universally invariant, social only in that it needs society to take socially specific forms" (MacKinnon 1989b: 132). Also dismantling the sex/gender distinction, MacKinnon removes sexuality from the trap of biological moorings. She says, "I see sexuality as fundamental to gender and as fundamentally social. Biology becomes the social meaning of biology within the system of sex inequality much as race becomes ethnicity within a system of racial inequality" (MacKinnon 1989b: xiii).<sup>78</sup> Sexuality is not natural; it has been given meaning by gender

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<sup>78</sup> The social construction of sexuality is made obvious by the following statement of MacKinnon: "The term *sexual* refers to sexuality; it is not the adjectival form of sex in the sense of gender. Sexuality is not confined to that which is done as pleasure in bed or as an ostensible reproductive act; it does not refer exclusively to genital contact or arousal or sensation, or narrowly to sex-desire or libido or eros. Sexuality

hierarchy. Sexuality and gender hierarchy in society are inextricably linked in MacKinnon's analysis:

..... sexuality appears as the interactive dynamic of gender as an inequality. Stopped as an attribute of a person, sex inequality takes the form of gender; moving as a relation between people, it takes the form of sexuality. Gender emerges as the congealed form of the sexualization of inequality between men and women.

(MacKinnon 1992: 115).

This is best exemplified in MacKinnon's debate with Brownmiller on the issue of rape. Brownmiller treats rape as an act of violence and not an act of sex or sexuality. She holds that human anatomy is such that men can rape women while women cannot rape men, which for her is the cause of women's subordination (Brownmiller 1976). Rape then becomes violence or power minus sex. Taking 'sex' out of rape was a strategy by some feminists to combat the sexism of legal system by portraying women as "victims of violent assault rather than accomplices in a consensual act" (Menon 2004: 113). Brownmiller hence relies on a framework that explains rape as located in 'woman's condition' that reflects 'man's structural capacity to rape and woman's corresponding structural vulnerability', which in MacKinnon's argument justifies the male as 'natural predator' and female as his 'natural prey', thereby falling into the trap of biological determinism (MacKinnon 1996: 49). That is, MacKinnon sees rape as violence and this violence has a sexual content. The social relations between the sexes are organized in such a way that "men may dominate and women must submit and this relation is sexual – in fact, is sex" (MacKinnon 1987b: 3).

In sum, sex equality laws fail to realise that it is male standards that pass off as gender neutrality and that women's differences from men and vice-versa are equal but they are not similarly valued. Thus women may be allowed to enter sports, business, etc. but they would not be allowed to critique the physical standards or normative standards of

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is conceived as a far broader social phenomenon, as nothing less than the dynamic of sex as social hierarchy, its pleasure the experience of power in its gendered form" (MacKinnon 1989: xiii).

competition or profitability, for these are passed off as not male standards but the universal, the standard everyone has to conform to (MacKinnon 1987b: 74). At the same time, sex equality model also glosses over the inequalities that prevent women from becoming “equal” to men. On the other hand, the difference approach only ‘reflects’ on difference without interrogating the very structure of male dominance that has created the differences. By resorting to affirmation of difference, the difference approach itself closes down certain opportunities to women. Thus MacKinnon opposes both sameness and gynocentric feminisms which deny and affirm sexual difference respectively. At the same time, she does not call upon women not to enter the “male domain” or to devalue ‘feminine’ roles. What she is really concerned is about changing the social meaning of difference imposed upon women as embodied beings, and this prevents her from envisioning a future where women dominate men. Instead, she is interested in changing the gender system and its relations of power that have perpetuated the dominance of women by men. MacKinnon therefore says, “Feminists do not seek sameness with men. We more criticize what men have made of themselves and the world that we, too, inhabit. We do not seek dominance over men. To us it is a male notion that power means someone must dominate. We seek a transformation in the terms and conditions of power itself” (MacKinnon 1987a: 23).

### **“Women’s Lives, Men’s Laws”<sup>79</sup> : The “Male Gender” of Law**

MacKinnon assesses the place of state, law and rights in feminist politics from the perspective of dominance. In this approach, the state and law are very much implicated in the power structure of society, be it the sex equality model rooted in sameness perspective or the special protection model drawing upon sexual difference feminism (MacKinnon 1987a; 1987b; 1989; 2005). In fact, she writes, “To be in prison is what it is for women to live everyday lives inside the law” (MacKinnon 2005: 152). MacKinnon gives plenty of examples for such implication of state and law in gender relations, dispelling law as ideal and innocent tool of emancipation as liberals argue. For example, state complicity in male violence is manifest in rape laws that are defined from the

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<sup>79</sup> This is actually the title of one of the books by MacKinnon herself.

perspective of rapists (e.g. the definition of consent as “I thought she wanted it”, or the right of husbands to have sex with their wives regardless of the latter’s consent, etc.), or the laws on prostitution that do not criminalise the men who have sex with prostitutes but harass the women, or in the case of domestic violence which falls in the lowest category of police concern (MacKinnon 1987a). “State power, embodied in law, exists throughout society as male power at the same time as the power of men over women throughout society is organized as the power of the state” (MacKinnon 1989b: 170). MacKinnon’s comments on custody of children can illustrate this point as much as her other examples. MacKinnon argues that the custody of children can be taken away from woman by law if the woman has sexual relationships with men other than the child’s father or if she is a lesbian (MacKinnon 2005:158). Similarly, joint custody leads to a situation where women do the major work and men take major decisions (ibid). More seriously, it hence retains the power relationship in marriage even after divorce and “women who were raped in their marriages face sharing custody of their children with their rapist” (ibid). Male dominance is thus written into laws only to perpetuate the existing relations of dominance. This pre-empts the state from having any kind of an existence autonomous from sex, and therefore we need to look at the genderedness of the state as well as its role in constructing and perpetuating these very gender relations.

Hence, departing from the liberal version of the law as a neutral tool of emancipation, MacKinnon sees law in a hierarchical society as something that acts to the advantage of the powerful rather than the powerless. Institutions, processes and the values exalted in such a society are designed by the dominant section- men in patriarchal society. She therefore approaches the law as not an autonomous entity but as something that corresponds to the hierarchies in society; law is therefore not only limited in its emancipatory potential but often detrimental to emancipation when it embodies the experience of the dominant group. Indeed, “the tools we are given embody the problem they are supposed to solve” (MacKinnon 1987a: 769). MacKinnon cites the requirement of “intent” in sex discrimination laws wherein a man may be privileged over an equally qualified woman for promotion, but this can be deemed to be treated as ‘discrimination’ only if one can prove that the “intent” of the employer was actually to discriminate

against the woman on the basis of her sex (MacKinnon 2005). In MacKinnon's view, such law "bases a finding of discrimination on the perspective of the alleged discriminator rather than the consequences of his actions for the discriminated against" (MacKinnon 2005: 153).

In the light of these, it is not an exaggeration to say that the values and norms inscribed into law have all emerged from the male point of view.<sup>80</sup> For example, MacKinnon says that no law gives men the right to rape women, but "no rape law has ever seriously undermined the terms of men's entitlement to sexual access to women" (MacKinnon 1989b: 239). Also, as mentioned earlier, issues like sexual abuse do not figure in mainstream sex equality law, because sexual abuse happens "specifically and almost exclusively to women as women" (MacKinnon 1989b: 243). MacKinnon further substantiates her view by taking into cognisance the consent to sex in rape law and the right to privacy in pornography, abortion, etc - as defined from the male vantage point.<sup>81</sup> Thus, "[J]ust as, in male law, public oppression masquerades as private freedom and coercion is guised as consent, in obscenity law, real political domination is presented as a

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<sup>80</sup> The idea in MacKinnon is not to reverse the structure of power but to displace the notion of power as dominance. This also involves studying gender as a system in itself rather than as subservient to class as in Marxism. Sexuality becomes the base of oppression whereby, women's selves are characterised by sexual subordination and men's by sexual domination. In other words, MacKinnon accords a fundamental nature to sexual subordination and other factors are marginal to her analysis. For instance, MacKinnon explains pornography as the product of male supremacy and not exclusively or primarily of capitalism. Gender issues thus attain a totality in themselves though they are also linked to several other issues like capitalism or race (MacKinnon 1989). In other words, gender occupies in feminism the centrality analogous to that class as a category occupies in Marxism, and the overthrow of the gender system is the solution to issues of domination and subordination.

<sup>81</sup> A contradictory view on the boons of privacy has been put forth by Brown (2002). Brown contends that privacy is valuable in many instances including sexual freedom, welfare rights of the poor and bodily integrity of racially subjugated people (see Brown 2002: 428). Brown cites as an example the case of *Bowers v. Hardwick* (1986) in which "the absence of a universal right to privacy was the ground for invading Hardwick's room" (ibid).

discourse in ideas about virtue and vice” (MacKinnon 1989b: 169).<sup>82</sup> This once again vindicates the marginalisation and even the absence of issues like rape, pornography, incest, battery and homosexual rights in legal jurisprudence that claims to be dealing with sex equality – for, these issues are primarily issues of sexuality and women’s condition rather than men’s (MacKinnon 1989a; 1989b).

In other words, MacKinnon sees the state as obviously male, for its approach to women’s issues reflect the way men treat women – as objects and victims. She therefore says, “The state is male in the feminist sense: the law sees and treats women the way men see and treat women. The liberal state coercively and authoritatively constitutes the social order in the interest of men as a gender – through its legitimating norms, forms, relation to society, and substantive policies” (MacKinnon 1983: 644; 1989: 161-2). Law and other institutions of the state “promote the dominance of men as a social group through privileging the form of power – the perspective on social life – which feminist consciousness reveals as socially male” (MacKinnon 1989b: 161-2). Thus the state is male – it adopts the standpoint of male power. MacKinnon therefore sees the immense necessity for feminism to see state in terms of gender hierarchy: “Feminism has descriptions of the state’s treatment of the gender difference, but no analysis of the state as gender hierarchy” (MacKinnon 1982: 643).

The critique of sameness and difference perspectives on sexual difference is applied by MacKinnon to analyse the two dominant trends in legal philosophy – the sex equality model and the special protection model. In both options, women do not exist as women in law. The law is framed by men for men. That is, in law as well as in life, the definition of

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<sup>82</sup> Rape law requires an act of sex to be called ‘rape’ only if it has been done without the consent of the woman. MacKinnon finds this as written from male point of view, as this consent necessarily has elements of coercion since the man and woman are situated in conditions of inequality where men coerce women into sex. In a similar vein, law of privacy treats the private sphere as one of freedom and one that demands no intervention. This is extremely bogus as the private realm has always been one of inequality- where men have freedom to do anything and women are unfree. Similarly, while the obscenity law has engaged in a debate of ‘moral ideas’, pornography has been a source of sexual pleasure for men while it has been a manifestation of torture, subordination and powerlessness of women (MacKinnon 1989).

a woman has been given by men and therefore it is inadequate to liberate women (MacKinnon 1987b). For example, law treats rape as sex with a woman who does not belong to the man, unless it is to make her his. Furthermore, its definition is entirely from the man's point of view- whether there was penetration without consent:

The law to protect women's sexuality from forcible violation and expropriation defines the protection in male genital terms. Women do resent forced penetration. But penile invasion of the vagina may be less pivotal to women's sexuality, pleasure or violation, than it is to male sexuality. This definitive element of rape centers upon a male-defined loss. It also centers upon one way men define loss of exclusive access. In this light, rape, as legally defined, appears more a crime against female monogamy (exclusive access by one man) than against women's sexual dignity or intimate integrity.<sup>83</sup>

(MacKinnon 1989b: 172).

MacKinnon attacks the sex equality model based on 'women's inclusion on the same terms as men': "The point was to apply existing law to women as if women were citizens – as if the doctrine was not gendered to women's disadvantage, as if the legal system had no sex, as if women were gender-neutral persons temporarily trapped by law in female bodies" (MacKinnon 1991: 1286). In MacKinnon's analysis, such inclusion and application of gender neutral laws are not enough for women to get out of their condition of inequality and subordination. The interface between law and society is therefore much more complicated than law in its liberal form assumes. The consent in rape law, for instance, is formulated from the rapist's point of view; freedom of speech allows the sale of pornography; the law of privacy 'makes home and sex presumptively consensual' (MacKinnon 1989b: 244). Indeed, "male forms of power over women are affirmatively embodied as individual rights in law" (MacKinnon 1989b: 244). Law in its liberal form therefore has no teeth to address women's condition:

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<sup>83</sup> This provokes MacKinnon to call rape not an act of violence but a matter of sex and sexuality themselves. She says, "Rape is not less sexual for being violent. To the extent that coercion has become integral to male sexuality, rape may even be sexual to the degree that, and because, it is violent" (MacKinnon 1989: 173). She goes on to say, "The convergence of sexuality with violence, long used at law to deny the reality of women's violation, is recognized by rape survivors with a difference: where the legal system has seen the intercourse in rape, victims see the rape in intercourse" (ibid: 174).

So long as power enforced by law reflects and corresponds- in form and in substance- to power enforced by men over women in society, law is objective, appears principled, becomes just the way things are. So long as men dominate women effectively enough in society without the support of positive law, nothing constitutional can be done about it.

(MacKinnon 1989b: 239).

The equality rule based on gender neutrality and abstract persons also requires that women should be like men. For instance, the law of sex equality is hardly sensitive to the issue of sexuality (MacKinnon 1989b). Maleness becomes the standard for equality; the human necessarily becomes the male in the law of sex equality. The laws on pregnancy are one example for the maleness of law, which treats pregnancy either as a disability on par with other disabilities or treat it as something unique to women that should be otherwise irrelevant.

The other option, the difference route, defines women the way men define women- women are in need of special protection, help or indulgence- women as helpless victims who need to be protected. MacKinnon contends that in this approach, the complainant woman should meet the male standard for women in the definition of femininity – meek, docile and passive. Thus “[W]e have to meet either the male standard for males or the male standard for females” (MacKinnon 1987b: 71). For example, women in military, athletics, etc., who have gone into the male domain have to be trained and socially prepared as men and not as ‘women’. In other words, they cannot bring the ‘baggage’ of being a woman with them; they have to be just like men. On the other hand, women who seek legal protection on the basis of their ‘difference’- in terms of their traditional roles - widows, wives, mothers, etc. have to present themselves as “in need of protection” (ibid: 72). For example, a divorced woman’s plea for alimony would be taken seriously only if she is chaste and meets the other norms of femininity like passivity, helplessness, etc; her plea can be undermined, for instance, if she has been raising voice against the family or society. Such an approach highlights the reality of women’s vulnerability in the current situation but does nothing to change it. MacKinnon gives the case of *Dothard v. Rawlinson* to make a point. In this case, using special protection rule, women were



excluded from guard jobs in prisons on ground of “their very womanhood”, meaning their “capacity” to be raped (MacKinnon 1987b: 73). In this instance, it becomes evident that rather than changing the situation in which women get harassed or raped, the law was used as a preventive measure which indeed acted to the detriment of women.

MacKinnon therefore treats law as necessarily gendered in both equality and difference approaches. While equality model fails to see the prevailing unequal condition between the sexes that hamper women in attaining equality and defines the subject of law as essentially male, the special protection model engenders the victim as female and thus does not challenge gender hierarchy. It is not just the sex or gender of the plaintiff or the accused that matters here; the entire system of law is gendered. For example, MacKinnon points out that a few men do occupy positions of widowers, primary parent, etc. However, their cases cannot diminish the severity of the misogynist nature of law. This is not merely because they are only few in number; more importantly, their very position as victim manifests the victimhood of women and not men. That is, these men are indeed seen as women; the position “describes what it is to be most women” (MacKinnon 1987b: 73). MacKinnon thus says, “That some men find themselves in a similar situation doesn’t mean that they occupy the status *as men*, as members of their gender. They do so as exceptions, both in norms and numbers” (ibid, emphasis in original). In other words, under conditions of gender inequality, MacKinnon argues that the victim is always engendered –female- regardless of biology.

### **Rewriting Law with Women’s Experience: Possibilities of a Feminist Use of Law**

The virulent critique of law as a tool for perpetuation of male dominance does not, however, impel MacKinnon to negate law or to deny its emancipatory potential. Indeed, MacKinnon’s scepticisms regarding the potential of law to liberate women gives way to a strong expectation from the state to formulate laws conducive to women’s liberation in her later works. In other words, law becomes a very important tool for women to counter male dominance and in fact, MacKinnon proposes legal intervention as the chief strategy of her feminism rather than resorting to mimesis (in Irigaray) or parody (in Butler). She

writes, “Those who say law cannot make change so we should not try should explain why the law should be exempt in the struggle for social transformation” (MacKinnon 2005: 164). For example, MacKinnon feels that sexual harassment could be made illegitimate socially too only when there could be a legal claim against it (MacKinnon 1987b: 104). However, legal intervention for feminist usage demands changes in the way law has been conceived. The debate is premised not on sameness and difference but on domination and subordination, and this also takes the form of liberating law from both abstractness as well as special protection for women. This in turn necessitates a new engagement with the state on feminist grounds rather than a repudiation of the state.

MacKinnon’s works therefore show the immense necessity of a feminist theory of state and a distinctively feminist jurisprudence that can address women’s issues. Implicit in this and explicit in MacKinnon’s theory is the conception of gender itself as a system “Feminism has not confronted, on its own terms, the relation between the state and society within a theory of social determination specific to sex. As a result, it lacks jurisprudence, that is, a theory of the substance of law, its relation to society, and the relationship between the two. Such a theory would comprehend how law works as a form of state power in a social context in which power is gendered” (MacKinnon 1989b: 159). The ‘oscillation’ between invocations of liberal and Marxist theories of state has not adequately addressed gender issues. Such oscillation, MacKinnon argues, has always resulted in feminism being left with two tacit alternatives- “The state, and with it the law, have been either omnipotent or impotent: everything or nothing” (MacKinnon 1989b: 160). That is, liberal state demands women to seek state intervention; this is done in the capacity of women as abstract persons with abstract rights, meaning the invisibility or insignificance of gender. Marxism, on the other hand is always on the edge of abdicating the state, MacKinnon argues, which is detrimental to those women “whom the state does not ignore or who are in no position to ignore it” (ibid). This makes it imperative to discuss the role of the state in gender hierarchy, where men have dominated women in everyday life, without ‘express state acts’, and therefore the need for feminism to engage with the question: “what is this state, from women’s point of view?” (MacKinnon 1989b: 161). MacKinnon encapsulates the project as thus:

A methodologically post-marxist feminism must confront, on our own terms, the issue of the relation between state and society, within a theory of social determination adequate to the specificity of sex. Lacking even a tacit theory of the state of its own, feminist practice has instead oscillated between a liberal theory of the state on the one hand and a left theory of the state on the other.

(MacKinnon 1982: 642).

MacKinnon therefore calls upon feminists to make interventions in law and the state by informing law with women's standpoint. She advocates an approach where women's and not men's experience shapes laws. For example, she speaks thus on the law against sexual harassment as a feminist intervention: "Sexual harassment, the event, was not invented by feminists; the perpetrators did that with no help from us. Sexual harassment, the legal claim – the idea that *the law should see it the way its victims see it* – is definitely a feminist intervention. Feminists took women's experience seriously enough to uncover this problem and conceptualize it and pursue it legally" (MacKinnon 1987b: 103, emphasis added). Hence MacKinnon perceives the law as a tool for women's liberation only if it is framed from the perspective of women's experience or standpoint. MacKinnon therefore feels it imperative to address the issue in terms of the consequences vis-à-vis dominance: "Whether statutes are sex specific or gender neutral would not be as important as whether they work to end or reinforce male supremacy, whether they are concretely grounded in women's experience of subordination or not" (MacKinnon 1989b: 248). For example, a law legitimising prostitution or pornography, in MacKinnon's view, only entrenches male dominance, as it approaches the issue from the experience of men for the pleasure of men, and neglects its consequences for women. In her views on pornography, MacKinnon makes it clear that pornography has a lot to contribute to women's subordination as objects of sex as well as to violence against women including rape (MacKinnon 1987b; 1989). However, there would be a serious difference in the law if it were informed by the view point of women rather than of men. For example, in the instance of rape law itself, incorporation of woman's point of view could have made it different- instead of arguing from the point of man's exclusive access to the woman, rape could have been argued in terms of violating the dignity of the woman through acts

unwanted by her. In other words, it is the victim's point of view and not the perpetrator's that should decide the content and purpose of law.<sup>84</sup> This implies that MacKinnon has a two-fold suggestion while framing laws for women: there should be more presence of women; and the law should be written from the standpoint of women.<sup>85</sup> The epistemology is to be formulated after women are made conscious of their reality – the condition of inequality between the sexes and the dominance by men over women.

Thus MacKinnon is clearly in support of state intervention and state support, though she wants to formulate the state and its laws from the point of view of women. Despite her strong conviction of the male nature of the state, she seeks state intervention even in those realms reserved for individual choice and freedom in liberalism. MacKinnon therefore challenges the private/public divide, explicit in her views on abortion<sup>86</sup>, pornography<sup>87</sup> and rape<sup>88</sup>. This state which MacKinnon looks forward to for the cause of

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<sup>84</sup> MacKinnon has been critical of feminists who have been critical of the treatment of women as victims, which patriarchy also does. She makes a distinction between the 'victim' of sexism and that of feminism. In a sexist discourse, victim is a tautology; women are victims forever. Feminism uses 'victim' to highlight the condition of women in a sexist society with the aim of changing it; it therefore uses 'victim' as a contingent term and status (MacKinnon 1982: 720). However, the very same critique of the victim subject is more rampant today especially in the light of cultural essentialism in western academia including feminism that treats the non-western woman as a victim only. Ratna Kapur (2005), for example, evolves the concept of a multi-dimensional subject in the sexual subaltern subject of postcolonial world. Kapur, for to give an instance, does not see women in sex work as victims; on the contrary, she attempts to bring out the disruptive potential of the sex worker to disrupt the dominant familial and social norms.

<sup>85</sup> MacKinnon feels that women's presence is necessary for a feminist project on law. She does not seem to believe that conscientising men on gender issues will give the same effect of incorporating women's interests. However, a mere presence of women is also not a guarantee (MacKinnon 2005).

<sup>86</sup> On the right to abortion, MacKinnon says, "Women were granted the abortion right as a private privilege, not as a public right" (MacKinnon 1989b: 192). MacKinnon therefore debunks the entire notion of the private as an arena of freedom of choice for women.

<sup>87</sup> MacKinnon attacks the permissibility of pornography in private realm. In her view pornography perpetrates the "erotic" sex which is forceful, aggressive and violent.

<sup>88</sup> MacKinnon's arguments attacking the earlier and still widespread notion that rape cannot happen when the parties know each other, and particularly in marital relations, testify to the vulnerability of the public/private divide. In MacKinnon's view, most intercourses and sexual acts in a society ridden with

liberating women is however not built on the values 'cherished' by women or on the foundation of neutrality. It is rather constituted with a vision to ending the inequality and gender hierarchy in society, where differences have been institutionalised by virtue of dominance. MacKinnon herself outlines this approach in the preface of her book:

It [the book] does not advance a critique of "rights" per se but of their form and content as male, hence exclusionary and limited and limiting. It is one thing for upper-class white men to repudiate rights as intrinsically individualistic and useless and alienating; they have them in fact even as they purport to relinquish them in theory. It is another to reformulate the relation between life and law on the basis of the experience of the subordinated, the disadvantaged, the dispossessed, the silenced – in other words, to create a jurisprudence of change.

(MacKinnon 1989b: xiii-xiv).

The reference point therefore moves away from men to women in this approach to law. As MacKinnon puts it, the approach from the "standpoint of the subordination of women to men" (ibid: 244) speaks with its reference points as "the specific situation of women's enforced inferiority and devaluation" (ibid: 242).

MacKinnon hence sees better possibilities with a shift in the perspective from gender as difference to gender as dominance (MacKinnon 1982; 1987; 1989a; 1989b; 1991). She therefore lays the foundation of feminist jurisprudence – one which is conceptualised and implemented from the point of women rather than of men. This obviously is biased in favour of women in the conventional sense; but this privileging is premised not only on the acceptance of the very reality of inequality between the sexes in society but also on the conviction that gender neutrality has always acted to the detriment of women, for it reflects the man's point of view and has been written for his purpose. This view therefore suggests that only a woman's standpoint can end male dominance.

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gender inequality do not allow consent and freedom of choice to women. Thus MacKinnon seems to argue that given the unequal society where women are dominated by men, even the consent in consensual relationships is a myth – women do not exercise free choice in reality.

Hence MacKinnon's theory and politics evidently have at their centre stage the role of women's experience in making any significant change as far as male dominance is concerned. This however does not prompt her to accept the experiences of women without scrutiny. This becomes vital at a time when women of variegated identities have been arguing for establishing a multitude of experiences, very often contradicting each others', as authentic experience. Such a trend has become all the more dangerous in a scenario where cultural politics has tried to recuperate communities as source of emancipation instead of state-led politics. Many a time, communities are projected as innocent entities where inequalities and dominance are alien. For example, some Dalit scholars in India argue that there is no patriarchy in the dalit community; patriarchy is prevalent only among the upper castes.<sup>89</sup> At another level, as discussed in an earlier chapter, black feminist, working class women, third world women and others have challenged the hegemony of a feminist discourse that addresses women's condition only from the perspective of sexual difference and male dominance, ignoring the situatedness of women in other identities like race, religion, class and so on.

MacKinnon however qualifies as to whose experience constitutes experience for developing a feminist standpoint. She makes it clear in her writings that the experiences of women, in an empirical sense, do not constitute standpoint. Rather, experience can be made into a standpoint only after what she calls 'consciousness raising', a method by which women get to know the reality of their situation. This is also an answer to those women who do not feel that they are subordinated even if they are subject to battery and violence. That is, there is a singular reality- that women are oppressed by men; and they can not be diluted by other form of opposition. For example, such a view shatters those arguments that defend genital mutilation of women as part of cultural practice. In other words, experiences of women who feel that they are not oppressed by gender but by race or any other identity, in MacKinnon's view, is not experience of the reality; these women have to be made conscious of the reality of male dominance by consciousness-raising. Thus MacKinnon broadly accepts the definition of standpoint adhered to by other

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<sup>89</sup> Such an argument has been put forth by Kancha Illiah in *Why I am Not a Hindu: A Sudra Critique of Hindutva, Philosophy, Culture, and Political Economy*, Samya Publishers, Calcutta. 1996.

standpoint feminists not as mere beliefs, feelings and attitudes of women but as something that has to be *discovered and revealed* from women's specific experiences (see Harding 2004, emphasis added).<sup>90</sup>

Also, in MacKinnon's feminism, the standpoint of women is different from that of men; but women do not speak "differently". Though MacKinnon argues out the need for a women's view point to formulate laws on equality, she is opposed to the supposition that women speak "in a different voice", an "ethic of care" rather than a morality of rights.<sup>91</sup> That is, MacKinnon attacks the essentialism in difference feminism that attributes different virtues or qualities to women and men. In MacKinnon's account, Gilligan's "moral reasoning" and "ethics of care" can be explained in terms of male dominance. Women are caring and are better caregivers because men and the male dominated society have always valued women for their caring nature (MacKinnon 1987b: 39). Indeed, the definition of women by male standards incorporates care as one of the main components. Similarly, her theorisation of a different standpoint does not emanate from women's biology and reproduction, unlike others like Sara Ruddick who theorises a feminist standpoint drawing upon "maternal thinking" (Ruddick 2004). These apply to the essentialist and gynocentric view in Irigaray as well (see the previous chapter).

Nonetheless, MacKinnon argues that there is a qualitative difference in the use of power by women and men. In fact, the differential use of law by women is the keystone to women's liberation as well. In other words, MacKinnon does not believe that we transform power first to attain equality. She argues that women need power, law, etc to transform power relations. That is, we must first have power to transform it, and this is

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<sup>90</sup> MacKinnon's position is an attack on feminist empiricism as she wants to expose the pervasiveness of male dominance which empiricism is unable to uncover.

<sup>91</sup> This is clearly demonstrated by MacKinnon in her debate with Carol Gilligan's work that argued that women speak in an ethical voice different from men's. MacKinnon repudiates this saying that this different voice is a justification of women's subordination. In MacKinnon's account, the different voice can be judged as different as distinct from a voice of subordination only in an equal society. In today's society where sex equality is a myth, the difference in voice manifests only what men, the dominant sex, would like women to be.

premised on her contention that “putting power in the hands of the powerless can change power as well as the powerless” (MacKinnon 2005: 164). She writes, “To wonder whether women will ever become full citizens is partly to ask whether law in women’s hands can mean what law in men’s hands has meant. For better and worse, probably not” (MacKinnon 2005: 161).<sup>92</sup> An instance is provided by MacKinnon with respect to law against pornography.<sup>93</sup> MacKinnon argues that laws made by the state (read male state) to criminalise pornography are replete with provisions to deny the obscenity and anti-women undertones in porn movies, etc. The masculinist state may protect pornography as a right to free speech under the First Amendment. For example, the definition of obscenity requires the materials to be “taken as a whole”, making room for legitimising scenes of abuse if they are surrounded by non-obscene material (MacKinnon 1987b). The formulation of rights against pornography from a feminist point of view will however drive the point that pornography is not a matter of speech at all but a matter of the “systematic silencing” of women (Cornell 1993; 118).

In other words, it is not just the law that matters; how it is used is also as important. That is, MacKinnon is not complacent with engendering the criminal laws on rape, pornography, etc through women’s standpoint; on the contrary, she prefers making civil laws informed by women’s experience on these issues. And this is because MacKinnon

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<sup>92</sup> The ‘worse’ aspect, MacKinnon argues, comes when even women lawyers are unable to escape “the female body” when she they are in court. MacKinnon cites that sexual harassment cases have been better done on paper rather than in court trials (MacKinnon 2005: 161). MacKinnon seems to be suggesting that unless the gender system is overhauled, women’s liberation, even when they break stereotypes, is limited.

<sup>93</sup> This impels MacKinnon to also look at the difference that women can create if they take up the responsibility to prove the anti-women undertones of a film, magazine, etc. rather than entrusting the state with the same. She lauds the civil rights law against pornography drafted by Andrea Dworkin and herself, which “puts the legal power to oppose the pornographers in the hands of women” (MacKinnon 2005: 162). Pornography and other issues related to women’s sexuality should therefore be moved to the realm of civil law. MacKinnon prefers civil laws to criminal laws for addressing issues pertinent to women, for in the case of criminal laws, the state takes up responsibility of prosecution. In its male form and content, the state can do more harm than good to the woman plaintiff. On the contrary, civil law permits women to act without police discretion or the prosecutor’s involvement. As she argues, “Making it possible for women to stand against the pornographers in court would be a change in itself” (ibid: 163).



feels that it is better to have women argue these cases rather than the representatives of a state that is male. This however needs to be distinguished from an essentialist point of view. MacKinnon's contention is based on how the powerless can change law; it is not an affirmation on the basis of sexual difference.

### **Rights Embodying Women's View Point: A New Notion of Rights?**

The views of MacKinnon on law, sexuality and primacy of gender can be used to gauge and problematise her take on rights for women. MacKinnon makes it clear that women need rights; but at the same time, these rights have to be rewritten and they should also have a transformative role. MacKinnon's negation of equality as sameness and difference as given clarifies that she is arguing neither for gender-blind rights nor for gender-specific rights; yet the advantages of both strands should be incorporated in rights. For instance, MacKinnon will favour equal rights to public office for both women and men; these rights however will not preclude women's right to get pregnancy leave. The vital point for MacKinnon is to frame rights from women's view point. This also requires the presence of feminist women in institutions and processes that evolve rights.

It should be noted that MacKinnon does not foster special rights for women and men. Her idea is not to affirm, unlike in Irigaray, the existence of two subjects; feminism should move towards overcoming the differences inscribed on men and women. This prompts MacKinnon not to give us a notion of sexuate rights but to frame rights from the point of view of women. The difference now will be that the rights will be written from women's standpoint and not men's. That is, same rights for women and men but the rights essentially embody feminist interests. To clarify, the rights related to pregnancy, will not be exceptions but rather the norm. Any right to employment will include right to maternity benefits, etc for women as a norm. That is, rights related to pregnancy at workplace will not be add-ons or exceptions but the cornerstone of the right to work itself. Nonetheless, does this lead to a new notion of rights different from that argued by liberals like Phillips to the effect that issues related to women's bodily specificities like pregnancy should be taken care of as matters of policy - policies that help women enjoy

rights? (see Phillips 1991). MacKinnon makes a difference here by raising women-specific issues to the pedestal of general norms rather than as particularities which were treated as exceptions. Also she articulates them in the language of rights rather than policies, for the very reason that she dismisses the notion of abstract rights as friendly to the women's cause. The net effect of such a project is more in terms of changing the centrality of men and masculine ideas, which MacKinnon claims to be the actual content of gender-neutral rights. Thus maternity leave, pregnancy benefits, etc. are not to be exceptions; they are not to be specific or unique features of women which need attention. Rather, any notion of rights should treat women's bodily uniqueness as part and parcel of the right instead of their exceptionality.

This creates another milestone in legal theory as it brings women's sexuality to the centre stage of law and rights. Women's autonomy is to be decided not merely on the basis of whether women have right to vote or property or work; most importantly, it is determined by how far women have control over their sexuality. MacKinnon therefore also brings to light how personal relationships in terms of sexuality need to be made public issues to work out a feminist agenda. For example, women will have the right to refuse sex rather than the right to free sex written from male point of view. The right to refuse sex is more feminist because it is framed in the language of woman's control of sexuality – she can have or not have sex- rather than sexual freedom the language of which lacks control of women over their own sexuality but mere submission to the terms of men in sexual acts.<sup>94</sup>

MacKinnon's notion of rights derived from women's experience to be applied to both women and men is transformative in the sense that it privileges the point of view of the oppressed and seeks in it the source for holistic transformation. The problem however is

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<sup>94</sup> One may very well argue here that sexual freedom also includes the right to refuse unwanted sex. MacKinnon however is of the uncompromising view that in the present system of male dominance, what is termed as 'free sex' is also rape, for it is dictated by the interests of men. That is, acts of sex claimed to be freely chosen by women cannot be free in the true sense because they are necessarily decided by the terms and conditions of patriarchy.

what makes rights embodying women's standpoint distinctively emancipatory. In MacKinnon's theory, this distinctiveness obviously does not emerge from women's biology or mothering and nurturing processes. The privileged position of women's experience emanates from the oppression and more particularly the sexual subordination women face in a male dominated society. Critics pose a question if the experience of women can be devoid of sexual difference (Cornell 1993). For example, the right to abortion cannot be adequately articulated "without confronting sexual difference and how it has been symbolized or erased in law" (Cornell 2002: 358). In Cornell's view, the problem with cases such as *Geduldig* that closed opportunities to women due to difference is not with the purported difference but with its valuation – the devaluation of the feminine (ibid: 359-60). MacKinnon recognises the devaluation of the feminine but her solution lies not in Cornell's alternative of equal valuation or the equivalence of the feminine in sexual difference (see Cornell 1993). On the contrary MacKinnon assumes that all women after consciousness-raising will favour a rights framework that may mitigate hierarchy that has produced the difference.

### **The Seamlessness of Male Dominance: A Partial Reality?**

The systemic nature of male dominance attributes to MacKinnon's theory a primary contradiction in terms of gender that subsumes all other contradictions. The totalisation attributed by MacKinnon to the masculine viewpoint leaves many questions unanswered. This not only precludes *jouissance* within the prevalent system but also has the danger of reversing rather than transforming power relations (Cornell 1993: 134). This presents two distinct conundrums for feminist politics. First, how are we to explain and take ahead multiple axes of oppression? Second, is the primacy accorded to sexual subordination overdone considering the currency of many feminist theories that offer not only pleasure, but also agency and subjectivity to women in the exercise of their sexuality? In other words, is not there even an iota of agency when women engage in sexual acts?

First, MacKinnon does not favour mellowing down women's experience in patriarchy by virtue of an "intersectionality" or "interlocking of oppressions" propounded by feminists

of colour in terms of race, gender and class (see Collins 2004). She does not challenge the authenticity of black, working class or third world women. But she does not dilute the universal experience of women oppressed in the gender system across race, class and other identities. For instance, MacKinnon argues that she is concerned about the concrete experiences of black women rather than the issue of race as an identity (MacKinnon 1989b; 1996). She however does not clarify how this can be distinguished from the interlocking of oppressions put forth by feminists of colour, socialist feminists and more recently by postmodern feminists. MacKinnon therefore makes clear her aversion to the idea of diverse feminisms, and sees more commonality between coloured women and white women rather than the commonality each of them perceive today with their male counterparts (MacKinnon 1996).

This becomes obvious from the primary contradiction between men and women that permeates MacKinnon's works, and hence focuses more on commonalities rather than differences between women (Kapur 2005: 103). What and whose experiences count are also matters of concern. Do the standpoints of all oppressed categories offer the same kind of transformation or is there a special place for women's standpoint over all the others? MacKinnon does not offer an explanation for this dilemma. Her opposition to divisions in feminism reinforces the privileging of women's experience rather than an interlocking or multiplicity of oppressions. That is, the victim subject furnishes a "unitary subject that enables women to continue to make claims based on commonality of experience" by virtue of the common experience of sexual subordination (Kapur 2005: 99). MacKinnon thus devalues and negates fractured or multiple subjectivities and diverse experiences of women, thereby reinforcing gender essentialism (ibid: 101-6). As Kapur puts it, "The fact that women do not come from a shared social position (and hence may not prioritise issues of sexuality or sexual violence) is not addressed in MacKinnon's work. For MacKinnon, the centrality of sexuality is inherent regardless of whether women consciously consider it as such" (Kapur 2005: 102).

As far as the second point of the totalising tendency of male dominance is concerned, MacKinnon staunchly adheres to a position that treats gender differences as

consequences of male dominance in society. Interestingly, she has been critiqued by some feminists as implicitly erasing sexual differences and privileging “male” values:

A real danger inherent in MacKinnon’s brilliant transposition of the Marxist paradigm to gender is that it must reject as distortion any re-figuration of the feminine and, therefore, leaves us only with the struggle for power within the pre-given hierarchy. But another subtle danger is the implicit privileging of masculine values, such as freedom, as more important than love and intimacy, and the masculine concept of the self.

(Cornell 1993: 100).

Cornell agrees with MacKinnon that in patriarchy, gender is not just a matter of difference but of domination (ibid: 104). She is therefore in agreement with MacKinnon in condoning the denial of equal value to feminine and masculine. However, while MacKinnon wants to study these differences and differential values accorded to men and women in terms of gender hierarchy without extolling either masculine or feminine, Cornell sees the source of emancipation in that feminine which has been repressed by male dominance for an equivalent value of the feminine within sexual difference (Cornell 1993; 2002).<sup>95</sup> However, Cornell disagrees with MacKinnon that femininity or feminine desire is necessarily a male construction (Cornell 1993: 105). In Cornell’s view, MacKinnon’s analysis of femininity as a male construction flows from her own notions of self, body, values, etc. which are intertwined with masculine notions. For instance, MacKinnon holds the feminine self as one “who gets fucked”, which in Cornell’s view, becomes a terrible proposition only if one fosters a masculine view of the self where “to fuck” is privileged over “getting fucked” (ibid: 102-4). It should not be overlooked here that Cornell herself is falling into the trap of essentialism by her characterisation of freedom as a masculine value and love and intimacy as female values, which MacKinnon wants to do away with. MacKinnon does value freedom, autonomy, etc; but her very endeavour is to conceptualise them not as values of the masculine but as values possible

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<sup>95</sup> In this view, Cornell is almost entirely arguing on same lines as Irigaray does. This work of Cornell in fact has a significant chunk critiquing MacKinnon and lauding Irigaray. However, later on, Cornell openly admits that Irigaray’s feminine at best can be lauded as a mimesis; otherwise it is essentialist (see Cornell 1998).

and promising for both the sexes if the current social order based on male supremacy is broken down. However, MacKinnon's feminist agenda does not envisage making women masculine. In fact, this is precisely her problem with a mere application of liberalism to women - the equation of sex equality with 'sameness to men'. On the other hand, MacKinnon also finds it problematic to merely revalue the feminine to liberate women. Thus her feminism exhorts women to fight for valuing what they have been traditionally doing as well as to find place in what has traditionally excluded them (MacKinnon 1987b: 22, 34). A woman performing the role of a mother is not to be treated with contempt; but feminism should make it possible for such women as well to enter into the 'masculine' domains of education, politics, sports and so on. The latter is not to be confused with special protection, for MacKinnon intends to change the norms of femininity constructed by male standpoint. This cannot be attained unless there is an overhaul of the current gender system characterised by male dominance. The idea therefore is not the assimilation of sameness feminism or the reversal of power relations in difference feminism but the transformation of power relations themselves. MacKinnon puts this agenda as thus: "Feminism seeks to empower women on our own terms. To value what women have always done as well as to allow us to do everything else. We seek not only to be valued as who we are, but to have access to the process of the definition of value itself. In this way, our demand to access becomes also a demand for change" (MacKinnon 1987: 22). In sum, MacKinnon strikes at the roots of norms that have defined masculinity and femininity.

A critique of MacKinnon from the point of view of sexual agency of women is posed by Menon when she writes, "If violence is sexuality and sexuality is male, there is a daunting seamlessness to male dominance. Where does MacKinnon see the space for feminists to refigure received notions of pleasure, pain or fulfilment?" (Menon 2004: 115).<sup>96</sup> On the contrary, feminists like Irigaray have attempted to produce agency and

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<sup>96</sup> The treatment of all sex as rape makes it problematic to distinguish between rape and intercourse, which in turn hampers prosecution of rape (Menon 2004: 115). Menon however argues that if we discount MacKinnon's position that all sex is violence and male-directed, the legal discourse once gain falls into the trap of deciding rape on the basis of 'patriarchal norms of marriage and female sexuality' (ibid: 124-5).

distinctive subjectivity for women through their distinctive sexuality and sexual pleasure or *jouissance*. The same concern is echoed by Halley when she point out how it is difficult in MacKinnon to know what 'good sex' is (Halley 2002: 88). In fact, MacKinnon dismisses such a proposition by asking if a good fuck is better than a bad fuck (MacKinnon 1989b). The dominance perspective also has the problem of essentialising women into a natural category "whose relations with men are fixed into static patterns of domination and power" (Menon 2004: 115). Cornell argues that the absolute construction of women's sexuality from the perspective of male gaze makes the social category of gender as irrevocable as if it were biological (Cornell, in Menon 2004: 116).<sup>97</sup> In short, MacKinnon opposes efforts by feminists like Irigaray to derive female subjectivity from sexual pleasure. Pleasure for MacKinnon is a myth in sexual relations under male dominance. This is further manifest in MacKinnon's articulation of right to refuse sex in lieu of right to free sex. As Cornell, Halley and Menon rightly argue, this makes it impossible to affirm sexual difference outside victimisation. The female subject becomes what Kapur calls the victim subject (Kapur 2005). At the same time what MacKinnon commendably does is to study the power relations within a couple who are in a relationship. Thus MacKinnon analyses right to reproduction, abortion, etc and even the act of sexual intercourse in the light of male dominance which is overarching, whereas Irigaray hesitated to point fingers at the man who is in 'love' with the woman or who has fathered the child (Irigaray 2000a: 44). MacKinnon therefore clearly points out a big fallacy in Irigaray - that invoking the feminine notion of love and sexuality may not be enough to study the power dynamics between the genders; it may even overlook such power dynamics.

The "sexual subordination feminism" or the "structural male/female model"<sup>98</sup> of MacKinnon has been attacked from other quarters as well, especially by feminists sceptical of law and those who want to challenge the gender norms. In their view,

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<sup>97</sup> In contrast to this, Cornell argues that equivalence demands the female body to be appreciated for its openness to the other by virtue of its receptivity of 'getting fucked' rather than the notion of body as an erected barrier which is actually the notion of male body (Cornell 1993: 104).

<sup>98</sup> These terms have been used by Halley (2002).

MacKinnon's analysis "merely seeks to provide ways in which to include women within the discourse of equality without disrupting or challenging the metaphysical foundations and ontological limitations of rights discourse to women's empowerment struggles" (Kapur 2005: 105). For instance, Kapur fears that the sexual harassment law amounts to policing of sexuality and the law has to be studied in terms of its denial of sexual rights to women of sexual, racial and religious minorities (Kapur 2005). Halley argues in a similar vein that sexual harassment has become "sexuality harassment" (Halley 2002: 82). In this context, the most prominent critique of MacKinnon has been provided by Katherine Franke who attacks the identification of "the wrong of sexual harassment to lie in the sexual nature of the conduct" (Franke 2002: 291). Instead, Franke argues that sexual harassment must be understood as "a technology of sexism, that is, as a tool or instrument of gender regulation which feminizes women as sexual objects and masculinizes men as sexual subjects" (ibid: 292). One may very well argue here that Franke is not proposing anything very different from MacKinnon in this statement. Franke's contribution however comes when she breaks out of a male/female structure to expose how the sexual nature of assault elides "important insights about the way sex is used as an instrument of gender – and race – based humiliation and injury" (ibid: 293). Franke's explanation hence helps explain the use of rape and sexual violence on both men and women as tools of genocide, in wars, etc. In other words, while MacKinnon emphasises on sexual assault as primarily sexual, Franke shows how sex can be used as a tool for other forms of oppression, what she puts forth as "how sex gets put to work in the service of myriad power relations" (ibid: 293). For instance, Franke cites the case of Abner Louima, a black man, who in August 1997, was assaulted by white policemen by beating him up, stripping him in front of other policemen and forcing the wooden handle of a toilet plunger into his rectum and then the soiled handle into his mouth. Instead of using MacKinnon's model that would see this case in terms of the feminisation of a man, Franke uses this to demonstrate how anal assault was one powerful tool for whites to assault black masculinity (ibid: 304-6). This kind of analysis becomes pertinent when sexual violence is used not just for sex as an end in itself or to perpetuate male dominance but rather to shame and humiliate communities, nations, etc.<sup>99</sup> Thus if the

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<sup>99</sup> In many cases, men of the rival community are also assaulted in extreme ways of sexual assault (see



rape of Muslim women by Serbs or the assault on Louima will be explained by MacKinnon within the sexual subordination model, Franke sees the sexual violence involved in the service of religious and racial persecution without denying the gender-based violence. MacKinnon's study of sexual atrocities on Bosnian and Croatian women provide useful insights into her notion of sexual violence in conflicts, where she strongly vouches for the primacy of sexual subordination and sexual violence as end in itself. MacKinnon argues that "men do in war what they do in peace, only more so" (MacKinnon, in Kapur 2005: 103). The only difference is that in war time, these acts enjoy official sanction: "It does help that men did these acts in declared military groups, instead of one on one everywhere at once and all the time, or in small packs, murdering, raping, pimping, and breeding, but not recognised as an army of occupation" (ibid).

Also, MacKinnon challenges gender hierarchy but not its normative structure (Butler 1999). Kapur cites examples where transsexuals, sex workers and others challenge the dominant norms decisive of heterosexual, familial and legal institutions. Instead of seeing these in their subversive and disruptive potential, MacKinnon subsumes all of them under the hegemony of gender subordination and its victim subject (Kapur: 2005). This view of sexual subordination also lets go discriminations other than sexual harassments at workplace; it also makes it impossible to demarcate sexual harassment and discrimination from other valid causes of retrenchment like malpractice, treachery, etc. (Halley 2002). MacKinnon offers no reason why the female gender should be the primary criterion to decide discrimination. What are her views on those cases where the female gender is not the primary marker of a decision that might have hampered a woman?

On the other hand, the shift from abstract rights to rights embodying women's view point also suggests the possibilities of the appropriation of such a model by other groups. For example, blacks can expose the racism in the rights guaranteed to them by a racist state; dalits in India can show that the rights are brahmanical; minorities can expose the majoritarianism inherent in minority rights; homosexuals can argue that rights are

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Franke 2002).

necessarily the embodiments of heterosexual norms. One classic case is the argument raised by Halley that “sexual subordination feminism makes policy choices that pit gay and queer constituencies in the line of regulatory fire, and that it depends on feminist models of gender and sexuality from which pro-gay and queer thought diverge” (Halley 2002: 82). What makes women’s standpoint superior to these? Or why is the oppression of women by men more fundamental than all other oppressions? Though MacKinnon’s work point to the latter, it becomes untenable in the wake of increasing divisions amongst women on account of class, race, language, religion and so forth.

Another problem arising from MacKinnon’s male/female model is the issue of same-sex harassment and same sex in general. Halley argues that MacKinnon’s male/female model should incorporate three new elements of sex harassment: men’s subordination of a man, male/male sex, and sexuality “reconstructed as the social dimension” not of male/female sex but of sex more generally (Halley 2002: 90). The lacuna was best brought out by the *Oncale v. Sundowner Offshore Services, Inc.* in which the Supreme Court of the USA held that same sex harassment may be sex discrimination within the ambit of Title VII. The MacKinnon brief on the case holds that men like Oncale suffer male sexual aggression because they are “victimized through their masculinity, violated in their minds and bodies as individual members of their gender” (MacKinnon, in Halley 2002: 90).<sup>100</sup> They are feminised by placing them in a woman’s role. At the same time, the defendant is a male homosexual; he is a sexual dominator (Halley 2002: 92). “Adopting the perspective of male victims of male sexual violence requires us to recognize that they are persecuted by other men because they fail to represent dominant masculinity seamlessly” (Halley 2002: 90). Such a view has been offered by MacKinnon on male pornography as well, where she argues that the male who is violated and subordinated should be actually perceived as the female gender (Halley 2002: 90). Halley finds it problematic in

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<sup>100</sup> For Halley, Oncale’s case does have indications of homophobia which cannot be dealt in MacKinnon’s theory of sexual harassment. On the contrary, MacKinnon’s model may encourage a stricter policing of homoeroticism (Halley 2002). However, though she establishes the greater degree of surveillance one can expect on homosexuality, Halley is not able to put it as to how heterosexual sexual harassment at workplace should be then treated as not heterosexual desire.

MacKinnon when she offers a “monolithic association of male bodies with male gender with superordination, and of female bodies with female gender and subordination” (ibid: 92). That is, there is no place to sexual orientation or desire in this approach; the entire focus is rather on gender (Halley 2002). Or, as Brown puts it, “sexuality and gender have been folded together in the rights designed to protect women from injuries sustained on the basis of heterosexually defined gender” (Brown 2002: 426). MacKinnon therefore subsumes homoeroticism and homosexuality into her male/female model; the former have no independent terms (Halley 2002: 91). The question of homosexuality is “both irrelevant to the question of sex discrimination and fundamentally the same as it” (ibid). The victims of sexual harassment are victims regardless of their sexual orientations and homosexuality harasser is acting just like a heterosexual harassing member of the opposite sex (ibid). In other words, male-male harassment is homologous to male-female case. Or, in other words, the rights of homosexuals and not only their sexual harassment but also their being discriminated on account of their sexuality<sup>101</sup> hardly have room in MacKinnon’s theory.

It also becomes a contradiction in MacKinnon’s theory on rights when the abstract rights which could have been opened up to the particularities not only of sex but also of race, culture, etc. are given up in favour of a concept of rights that particularly embody the experience of just one group or more correctly one axis of oppression – women/gender. The universality of women’s oppression is true, but it becomes imperative at this juncture to acknowledge that the politics to fight oppression has become pluralistic. Cornell, for example, argues that sexuality is not constructed by gender hierarchy alone; it is as much constructed by race (Cornell 1993). Feminists of colour like bell hooks expose the genderedness of race as well as the colouring of gender. hooks analyses the way in which “black liberation has been identified with sexual, masculine domination”, where black resistance is metaphorically equated with “freedom with manhood” and white domination of blacks is equated with the “castration of blacks” (hooks, cited in Cornell 1993: 131). As hooks argues, the black men and the white male oppressors “shared the patriarchal belief that revolutionary struggle was really about the erect phallus, the ability of men to

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<sup>101</sup> This point is discussed by Judith Butler (see next chapter).

establish political dominance that could correspond to the sexual dominance” (ibid). Racial subjugation liberation therefore is as ‘contemptuous’ as castration and liberation implies true manhood. In this sense, race also constructs sexuality and desire (Cornell 1993: 132). MacKinnon can no longer critique women of colour for their alliance with black men against racism including that of white women. Neither can she condemn proletariat women who refuse to join hands with bourgeois women in the wake of neo-liberalism.

To sum up, in her analysis of state, law and gender, MacKinnon sees in law the embodiment of the all pervasive male power; at the same time, this power of the state is manifested in the everyday control of men over women. In doing so, MacKinnon constructs a vision of the state “that theorizes sexuality at its base: state power emerges as male power” (Eisenstein 1990: 636). However, MacKinnon is not in favour of keeping this male state away from the lives of women. She seems to be looking for ways to demasculinise the state; this is not a feminine state, unlike the vision of difference feminists. It is rather a state that addresses issues from the standpoint of women, their ideas and experiences. MacKinnon hence does take cognisance of women’s experience in feminist epistemology and law, but this is not a mere reflection of the particular experiences of women celebrated in most postmodern and postcolonial feminist scholarship. The repudiation of unqualified experience as source of emancipation makes MacKinnon’s arguments different from many postmodern feminists who celebrate the particular experiences of persons- gays, lesbians, transvestites, women of colour, women of the developing world, women of eastern cultures, and so forth. For MacKinnon, there is one singular ‘Truth’ to the women’s condition, and this is their definition by and subordination in the system of gender dominance. She therefore points out the danger in challenging the category of women and their universal experience of oppression, a serious challenge faced by feminism since the 80s regarding how to arrive at a theory with the goal of ending women’s oppression when the category of women and even the coherence of ‘woman’ herself have been torn asunder by the multitude of contingent identities that are increasingly appreciated as constitutive of the self.

## Chapter 5

### Obliterating Sexual Difference through Abject Bodies: The Interface of Sex, Norms and Rights in Judith Butler

What other foundational categories of identity – the binary of sex, gender, and the body – can be shown as productions that create the effect of the natural, the original, and the inevitable. (Butler 1999: xxix).

There is [thus] a difference between sexist and feminist views on the relation between gender and sexuality: the sexist claims that a woman only exhibits her womanness in the act of heterosexual coitus in which her subordination becomes her pleasure (an essence emanates and is confirmed in the sexualized subordination of women); a feminist view argues that gender should be overthrown, eliminated or rendered fatally ambiguous precisely because it is always a sign of subordination for women. The latter accepts the power of the former's orthodox description, accepts that the former's description already operates as a powerful ideology, but seeks to oppose it. (Butler 1999: xiii).

The previous chapters dealt with two prominent feminist writers who have dealt with the issue of sexual difference and rights. While Irigaray draws her theory from a fundamental binary of sexual difference, of the man and the woman, and provides a blueprint to resolve other differences on the model of sexual difference that should facilitate the coexistence of the two sexes, MacKinnon critiques the gender inequality and hierarchy that has produced these differences. While both Irigaray and MacKinnon argue a case for the distinctiveness of the female self and make a case for a notion of female sexuality outside the parameters of male definitions, Irigaray bases her alternative on female sexuality and *jouissance*, whereas MacKinnon interprets female sexuality or any pleasure for women in patriarchy as not pleasure but as dominance, thereby envisaging a total transformation of a system based on the sexual domination of women. MacKinnon's theory therefore primarily takes women as victims whereas Irigaray proposes agency in terms of mimesis as well as *jouissance*. Their notion of rights are also claimed from their take on sexual difference - sexuate rights for Irigaray and rights defined from women's point of view in the case of MacKinnon.

In this chapter, I discuss the theory and politics put forth by Judith Butler, who is without contestation a proponent of postmodern feminism. Akin to Irigaray and MacKinnon, the importance of sexuality in emancipatory politics becomes pertinent in Butler too. However, Butler makes a turning point by questioning the fundamental nature of sexual difference in Irigaray or the primacy of contradiction between man and woman in MacKinnon; the differences or contradiction between man and woman is but one of the very many differences or contradictions in Butler. Indeed, she questions the fixity as well as essentiality of categories like woman/man and the naturalness of biology. Butler hence preoccupies with interrogating normative sexual practices which legitimise heterosexuality. Butler asks in the preface to *Gender Trouble*: “How do certain sexual practices compel the question: what is a woman, what is a man? If gender is no longer to be understood as consolidated through normative sexuality, then is there a crisis of gender that is specific to queer contexts?” (Butler 1999: xi). Butler therefore challenges the very justification of a feminist politics that ends up reifying categories of sex, gender, body, difference and even women in its endeavour to unsettle the very reification of masculine power. This has implications for Butler’s view of rights as well. Indeed, many have argued as to how Butler’s first seminal work *Gender Trouble* “has been allied more with queer – lesbian, gay, bisexual, and transgendered - popular liberation than with feminism *per se*, in part because of Butler’s critique of the heteronormativity inherent in feminist theory” (Roden 2005: 30). The plenitude of differences between women and the terror of norms makes rights a paradox in Butler. Similarly, the social construction of not just sexuality but sex itself offers affirmation for those who ‘deviate’ from the norm of a ‘pure body’ – the ‘abject bodies’, as Butler calls them; however, at other times, especially in the context of bodily rights for women – a central issue in Irigaray and MacKinnon – the constructed nature of body becomes problematic.

### **The Fluidity of Body and the Myth of Heteronormativity: Challenge to Sexual Difference Feminism**

Butler's works are beyond doubt premised on the uncompromising celebration of differences. Any attempt to resolve or reconcile these differences is antithetical to democratic practice. In other words, all differences are equal and they are devoid of essence. Thus the inclusiveness of any category is questionable; the category should not be foreclosed; it should be open without any conditions or prerequisites (Butler 1997a; 2004). In fact, the notion of equality gets defined in terms of the conditions required for the flourishing of the multitude of differences. Equality does not mean sameness or the elimination of differences but rather the chance of equal existence of all differences with the only condition that its inclusiveness is open for ever (Butler 1997a). Equality therefore becomes a concept that has to deal with the contingency of categories and identities rather than with a set of norms that may decide the limits of its applicability. Butler therefore says,

Equality would not be the equalization of given differences. That formulation suggests that differences are to be understood as tantamount to specificities or particularities. And the point of a futural re-elaboration of the notion of equality would be to hold out the possibility that we do not yet know who or what might make a claim to equality, where and when the doctrine of equality might apply, and that the field of its operation is neither given nor closed.

(Butler 1997a: 5).

Butler is therefore alluding to the difficulty with the notion of equality if we claim to know in advance where it can be applied, who can make use of it and what kinds of issues come within its purview (ibid). She gives an example in her critique of MacKinnon's position on pornography. MacKinnon claims that pornography obstructs women from exercising their rights of equal participation and treatment (ibid). Butler, however, wonders what can prevent women audiences of pornography from rights to equal treatment and participation. What Butler attacks here is clearly the totalising view of patriarchy in MacKinnon's analysis that views women's subordination in pornography as hampering women's participation in employment, political processes and other arenas of life. That is, Butler, very much in her post-structural analysis, sees the various dimensions of women's subordination as discrete entities that should not affect each other.

Butler starkly departs from sameness feminism and its project of transcendence of gender. Embodiedness becomes a crucial issue for Butler in the realization of one's freedom. Butler (1986) points out how feminists like Beauvoir find gender, especially for women, as that which hampers autonomy and the capacity for transcendence. Akin to difference feminists as well as other postmodern feminists, Butler hence associates transcendence with a model of freedom "currently embodied by the masculine gender" (Butler 1986: 43). Thus for Butler, the emphasis of feminists like Beauvoir on overcoming gender to attain subjectivity and freedom is defeating (Butler 1986; 1999).

In fact, the denial of the body becomes a crucial issue in Butler as much as in Irigaray. While Irigaray's critique of Beauvoir emerges from the latter's call to transcend sexual difference of the bodies, Butler approaches Beauvoir's project from a different angle. Butler points out how Beauvoir's discussion of the "Other" alludes also to a critique of the "masculine project of disembodiment" (Butler 1986: 43). Beauvoir here emphasises the disembodiment of the masculine self - its alienation from the body. The masculine self therefore becomes a "noncorporeal phenomenon" (ibid: 44), wherein "the body itself becomes the other of masculine subject" which results in its viewing of Others as essentially corporeal beings or body (ibid). In other words, in Butler's view, Beauvoir's project stresses how the body becomes the other to the masculine self rather than constitutive of the self itself. The denial of the body by the masculine subject becomes "the condition for its reemergence in alien form, which in this case is the woman" (ibid). That is, men do not see body as something that is part of themselves. It is other to their selves, the other which re-emerges as the woman, who gets identified as the body. That is, while women have been seen as the other, Butler notes how Beauvoir's analysis holds that the body itself is other to men; the 'other' -the body re-emerges in the form of woman.

Butler is however equally critical of a feminism rooted in sexual difference. She raises the question if sexual difference can be any more fundamental than other differences (Butler 2004). As she herself asks, is the sexual difference emanating from a fusion of



sperm and egg more crucial in constituting the self? – “Is there very much that follows from the fact of an originating sexual difference?” (Butler 2004: 10). Evidently, sexual difference theories like that of Irigaray come into conflict with theories and movements that challenge the idea of a perfect body in terms of genitals that divide humanity into two sexes – male and female, and also the norm of heterosexuality. MacKinnon, though not a votary of difference feminism, also does not formulate a theory based on the changeability of biology. The sex/gender distinction MacKinnon claims to dismantle has more to do with, for example, denouncing men as having any natural capacity to rape and instead placing rape in a framework of power relations. In other words, MacKinnon does not engage so radically with body as Butler does in terms of challenging the idea of body itself. Butler on the other hand challenges the biological division of humans into men and women as well as the primacy of difference emerging from a differentiation in the sexual organs of the human body. Sexual difference theories, as Butler contends, come into conflict with anti-homophobic, intersex and transgender movements which attempt to challenge the inevitability of the normative dimorphism contained in feminist theories that accord primacy to sexual difference. For example, Butler argues that sexual difference theories come into conflict with the right to have technologies that facilitate sex reassignment, as these theories are founded on an unchallengeable difference between the sexes in a binary- man and woman (ibid). Sex reassignment, for example, for a transsexual person would involve a compulsion for the person to conform either to the male or the female body, and very often the behavioural patterns associated with the concerned body.<sup>102</sup>

Butler therefore looks at sexual difference differently from Irigaray and MacKinnon. All three theorise on the body and the embodied subject but the fixity of sex is not challenged in Irigaray and MacKinnon. That is, though they claim not to be making a sex/gender distinction, Irigaray and MacKinnon do not challenge sexual difference as part of the materiality of sex as radically as Butler. Though MacKinnon argues that sexual difference is a consequence of sexual dominance of one sex by the other, and

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<sup>102</sup> An example is provided by Butler in her study of Alexina/Herculin Barbin and the David/Brenda case discussed later in this chapter.

Irigaray focuses on the repression of the feminine in sexual difference including the distinctiveness of the female genitalia, the challenge to the fixity of body itself and the norms that construct the body do not figure in Irigaray and MacKinnon the way it does in Butler. Indeed, Irigaray and MacKinnon are more interested in challenging the values and social practices associated with bodily difference rather than the difference itself. Butler, on the other hand, embarks on the task of denaturalising the materiality of the body itself along with challenging cultural meanings. Butler therefore falls in place along with others like Gatens who views the body as “the ground of human action”, with Young’s idea of the “lived body” and Grosz’s notion of the body as “social and discursive object” – all challenging the givenness of body despite its importance in theorizing women’s experience (Birke 1999). In other words, sexual difference based on biological facts does not figure as a fulcrum for feminist politics in Butler’s works. As Gatens writes, “The female body cannot provide the ontological foundation required by those who assert an essential sexual difference. On the contrary, it is the construction of biological discourse as being able to provide their status that is in need of analysis” (Gatens 1999: 231).

The challenge to the fixity of sexual difference takes us to the issue of discursivity/materiality in Butler’s theorisation of the body. Butler says in this regard, “Sexual difference, however, is never simply a function of material differences which are not in some way both marked and formed by discursive practices” (Butler 1993: 1). Butler however says that this does not mean that discourse causes sexual difference (ibid). However, discursive practices do have their role in the construction of the body in that it is the power structures imbued with norms of heterosexuality that demarcate bodies into the binary of man/woman; sexual difference is therefore constructed here not by male dominance as MacKinnon would argue but by the very norms of heterosexuality. In fact, Butler interrogates the very heterosexism which in her view is the “core of sexual difference fundamentalism” (Butler 1999: viii). Thus the sexed materiality of the body is not a fixed identity; it is rather an effect of power, a cultural construction.

Butler explains the problem of materiality/discursivity of body through the concept of “constitutive outside” by removing the body from the outside of discourse as a pre-social entity. On the contrary, the matter is internally constitutive of the social (Butler 1993). As Mann argues, despite efforts of Butler to show the materiality of the body, she collapses body into language. How bodies come to materialise is what Butler attaches prime importance to (Butler 1993; Mann 2003). The body therefore gets reduced to a “function of discourse” (Mann 2003: 152). Mann gives the example given by Butler in *Bodies That Matter*, of the “intelligibility” of bodies as male or female in an example of the intersex infant subject to surgery. Mann argues that the denial of the materiality of the body before its subjection to surgery causes us to believe that Butler treats the body as a discursive site and not as matter (ibid). Butler however does concede that the bodies are material; what she contends is that the body can not be understood except through discourse. The gendered meanings of body are not natural; the sex of the body is assigned through discourse. Such a notion of body is certainly helpful to repudiate the idea of a pure body, but how this can be helpful for addressing some issues relating to biology, for example, how pregnant woman should find their place in a ‘neutral’ workplace, remains a difficult question.

Such a reformulation provokes Butler to arrive at sex not as a given identity on which gender is imposed; rather sex becomes a cultural norm. Hence Butler uses the term “sexed position” instead of a sexed identity in terms of man or woman (see Butler 1993). As Butler says, “the construal of “sex” [is] no longer as a bodily given on which the construct of gender is artificially imposed, but as a cultural norm which governs the materialization of bodies” (Butler 1993: 2-3). In other words, meanings are not imposed on a natural body; on the contrary, the cultural meanings define what a body is. Moira Gatens (1999: 230) explains this as part of her own notion of sex and gender:

....the sexed body can no longer be conceived as the unproblematic biological and factual base upon which gender is inscribed, but must itself be recognized as constructed by discourses and practices that take the body both as their target and as their vehicle of expression. Power is not then reducible to what is imposed, from above, on naturally differentiated male and female bodies, but is also constitutive of those bodies, in so far as they are constituted as male and female.

This also challenges the heterosexual framework, where one is forced to identify as male or female despite 'inconsistencies'. For instance, the David/Brenda and Alexina/Herculine Barbin cases prove that male/female based on sex organs and behaviour need not correspond to each other. In fact, it is the desire for a girl that impels others to 'force' Alexina who has been until then a girl brought up in a convent, to live as a male. Similarly, behavioural patterns including the kind of toys liked by the child were decisive for the doctor to decide what sex should be 'assigned' and 'reassigned' to David/Brenda (see Butler 1993). Thus Butler evidently has a problem with the way feminism has over the years considered the body as sexed; feminism's preoccupation has been with the "sexed specificity of the female body" (ibid: 28). Indeed, sexual difference as a concern of feminism therefore poses trouble for postmodern feminists like Butler who challenges the irreducible materiality of body, for sexual difference has always been premised on the notion of a pure body that is divided into two - male and female - on the basis of reproductive organs and therefore in turn entrenching the norms of heterosexuality. As said earlier, Butler would indeed argue that it is the very norms of heterosexuality that have created such version of sex of bodies that produces the binary of man and woman; evidently, such a proposition reverses the earlier versions of feminisms that began their theory from a premise of the givenness of sexual difference emanating from the notion of a pure material body that is universally demarcated by two different sets of sex organs.

At another level, in an instance of a critique against the privileging of masculine norms, Butler also argues that the irreducible materiality of body exalted in some strands of feminism<sup>103</sup> are often constituted through an "exclusion and degradation of the feminine" which is problematic for feminism itself (ibid: 30). Butler says:

The classical association of femininity with materiality can be traced to a set of etymologies which link matter with *mater* and *matrix* (or the womb) and, hence, with a problematic of reproduction.

The classical configuration of matter as a site of generation or origination becomes especially

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<sup>103</sup> This must be a reference to sameness feminists who believe in overcoming the body and the early radical feminists like Shulamith Firestone who attributed the oppression of women to their biology.

significant when the account of what an object is and means requires recourse to its originating principle. When not explicitly associated with reproduction, matter is generalized as a principle of origination and causality.

(Butler 1993: 31).

That is, very much in line with Monique Wittig's argument that the body has always been marked feminine and her own assessment of Beauvoir's critique of masculine disembodiment, Butler seeks attention towards the entanglement of the female and the feminine with body. Thus Butler argues that what she engages with is not the materiality of sex but "the sex of materiality" (Butler 1993: 49).<sup>104</sup> That is, the body is certainly material and not linguistic, but the sexed nature or the inscription of a sex on the body is problematic. The sex of the body is not a natural phenomenon as has been in vogue in androcentric and most feminist theories. In fact, the body is assigned a sex by the social practices that are largely located within the discourse of heterosexuality. In other words, for Butler sex has always been constructed; it has always been gender. Butler elaborates it further when she discusses on the sexual difference theory of Irigaray:

In other words, it [the analysis of Irigaray presented by Butler] has traced materiality as the site at which a certain drama of sexual difference plays itself out. The point of such an exposition is not only to warn against an easy return to the materiality of the body or the materiality of sex, but to show that to invoke matter is to invoke a sedimented history of sexual hierarchy and sexual erasures which should surely be an *object* of feminist inquiry, but which would be quite problematic as a *ground* of feminist theory. To return to matter requires that we return to matter as a sign which in its redoublings and contradictions enacts an inchoate drama of sexual difference.

(Butler 1993: 49, emphasis in original).

In other words, feminist theory should certainly engage with how body and its sex organs have produced or perpetuated hierarchy based on biology or has accounted for the obliteration or erasure of one kind of body. However, that difference based on biology and more precisely the genitalia should form the foundation of feminism is unacceptable

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<sup>104</sup> This is also a defence by Butler against her critics of *Gender Trouble*, where she has been accused of denying the materiality of body and reducing it to "linguistic stuff" (Butler 1993: 30).

for Butler, as the biological sex itself has been culturally constructed. The primacy of sexual difference based on sex organs of the man or woman or transsexual also grounds strongly the notion of a 'pure' body or the 'normal' body versus 'abject' bodies. That is, in Butler's account, sex which is attributed to a fixed biology is not an irreducible material. On the other hand, the materiality or body itself is sexed but not in the way of a mere inscription of sexual difference. Rather, the body becomes a site where sexual difference plays out. Thus feminist inquiry can and should study the hierarchy and erasure of sexes, but this cannot be a ground or a premise for feminist theory; feminist theory should transform the norms that have gone into the production of these categories and present alternatives for a liveable life.

Butler's views on sexual difference are encapsulated in her essay "The End of Sexual Difference?" in *Undoing Gender* (2004). She looks at difference as something that can disrupt the coherence of any identity (Butler 2004: 203). This would imply the disruption of the coherent identity of being man or woman or the fundamental nature of sexual difference that has been the starting point of many versions of feminism. Butler argues that the most viable option is to leave the issue of sexual difference open-ended rather than resolving it (ibid: 192). In fact, in her critique of Braidotti who opposes transformations that seek to overcome bodily life and sexual difference, Butler argues that this is nothing but a return to the very phallogocentrism that feminists like Braidotti herself endeavour to oppose. Indeed, Butler seeks the movement of the framework for sexual difference from "binarism" to "multiplicity" (ibid: 196-7). But she wonders why it has been the case that a binary of sexual difference has been necessary for a "feminine multiplicity" to emerge as in the case of Braidotti.<sup>105</sup>

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<sup>105</sup> The same can be Butler's critique of Irigaray as well, for the multiplicity of the female subject and even lesbianism emerges from dimorphism in Irigaray's biological essentialism. In fact, Butler herself reads Braidotti's work *Metamorphoses* as "not only a sustained defense of Irigaray, but a pedagogical effort to get readers of Irigaray to read her otherwise" (Butler 2004: 192). Braidotti gives a view on sexual difference and the body very similar to Irigaray, where she even critiques technologies that can potentially "overcome bodily life or exceed the parameters of bodily difference" (ibid: 193).

Butler further boosts her argument on the constructed nature of body by drawing on a thesis that various kinds of sexual desires can coexist in the same body; also, differently sexed bodies are not necessary for embodying different desires and drives (Butler 2004). Butler elucidates this when she alludes to the problems faced by Alexina/Herculine Barbin when s/he was brought under juridical law to effect a gender conversion from female to male. Butler argues thus:

In other words, the law is not simply a cultural imposition on an otherwise natural heterogeneity; the law requires conformity to its own notion of “nature” and gains its legitimacy through the binary and asymmetrical naturalization of bodies in which the Phallus, though clearly not identical with the penis, nevertheless deploys the penis as its naturalized instrument and sign.

(Butler 1999: 135).

Thus the law not only produces cultural meanings but also the ideal body to which these meanings should conform. In other words, it is not possible to give the cultural meanings of a male or female to a body that does not conform to these standards. This is obvious from the cases of transsexuals like Herculine Barbin or intersex surgeries like the David/Brenda case discussed by Butler wherein the bodies of Alexina/Herculine and David/Brenda which were “lacking” sexual organs to fit within the binary of gender could not take upon the roles and identity of either male or female which the law required them to. Butler argues that these bodies that fail to comply with the division of sex into two as well as the established physical and cultural norms “gives us a way of understanding the taken-for-granted world of sexual categorization as a constructed one, indeed, as one that might well be constructed differently” (ibid: 140). The body therefore is not a “being”, but a “variable boundary, a surface whose permeability is politically regulated, a signifying practice within a cultural field of gender hierarchy and compulsory heterosexuality” (ibid: 177).

The perception that different bodies are required to embody different gender characteristics is also challenged by Butler when she argues that butch desire which stands for masculinity in women and femme which denotes femininity in men prove that feminine and masculine need not belong to differently sexed bodies (ibid: 197). In

Butler's own words, "But if there is masculinity at work in butch desire, that is, if that is the name through which that desire comes to make sense, then why shy away from the fact that *there may be ways that masculinity emerges in women, and that feminine and masculine do not belong to differently sexed bodies?*" (ibid, emphasis added). One is impelled to take note at this juncture that Butler here offers nothing new as far as gender and body are concerned. On the contrary, she is retrieving the sex/gender distinction that she has discounted. Sex/gender distinction also implies that the body might be male or female, but masculinity and femininity are socially constructed – a man can be feminine and woman can be masculine. What she seems to be offering anew is the coexistence of masculinity and femininity in the same body, which will not be anathema for social constructionists as well. The point of sex/gender distinction is to challenge the association of behaviour patterns with the sex of a person, and this can in no way preempt how traces of masculinity and femininity coexist in the same person.

The primacy of sexual difference in feminism is also challenged by Butler in her study of race in *Bodies That Matter* (1993). Butler argues that sexual difference is no more fundamental than or prior to racial difference, a view which she asserts in her analysis of the documentary *Paris is Burning*, which shows how class, gender and race cannot be prioritised to explain the drag ball culture in New York (Butler 1999). However race is also rearticulated in reproduction and other sexual practices; both racial and heterosexual imperatives are at work in reproductive and sexing practices. In her view, a compulsory heterosexuality "works in the service of maintaining hegemonic forms of racial purity" and in this case homosexuality offers a complex threat- a threat not only to sexual difference but also to racism (Butler 1993: 18). However, Butler does not explain how homosexuality between persons of the same race can challenge racism; neither does she explain how heterosexual relations between persons of different races retain or add to racial purity. Neither does she explain how her notion of performativity can be applied to race. Also important at this juncture is Butler's negation of the stability of the category of women through the intervention of race. Who can fully represent women has been a pressing question for some time considering the plenitude of diversities that have been emerging within the category of women. While MacKinnon took cognisance of race not



as an identity or an autonomous category in itself but in terms of its impact on women—the notion of the concrete experience of coloured women rather than race itself (MacKinnon 1989b; 1996), Butler uses categories like race not to sharpen women’s experience but to show the fragmented nature of women’s experience and the limitations of representational politics itself in a fragmented milieu:

The very subject of women is no longer understood in stable or abiding terms. There is a great deal of material that not only questions the viability of “the subject” as the ultimate candidate for representation or, indeed, liberation, but there is very little agreement after all on what it is that constitutes, or ought to constitute, the category of women.

(Butler 1999: 4).

In fact, Butler’s opposition to MacKinnon stems from the latter’s overemphasis on the decisive role of sexuality in determining male and female selves – the male self as dominating and female self as dominated by virtue of power relations that decide female sexuality according to men’s sexual needs and desires (See MacKinnon 1987b; 1989a; 1989b). Butler observes,

In theories such as Catharine MacKinnon’s, sexual relations of subordination are understood to establish differential gender categories, such that “men” are those defined in a sexually dominating social position and “women” are those defined in subordination. Her highly deterministic account leaves no room for relations of sexuality to be theorized apart from the rigid framework of gender difference or for kinds of sexual regulation that do not take gender as their primary objects (i.e., the prohibition of sodomy, public sex, consensual homosexuality).

(Butler 1993: 238-9).

In other words, MacKinnon fails to see the regulation of homosexuality and other non-heterosexual practices in their own right. That is, Butler underscores a link between sexuality and gender different from MacKinnon’s. While MacKinnon sees the emergence of gender in sexual inequality or hierarchy between men and women, Butler vehemently opposes the normative dimensions of the production of gender: “I do not mean to claim that forms of sexual practice produce certain genders, but only that under conditions of normative heterosexuality, policing gender is sometimes used as a way of securing

heterosexuality” (Butler 1999: xii). Following Katherine Franke, Butler argues that while MacKinnon offers a powerful critique of sexual harassment, “she institutes a regulation of another kind: to have a gender means to have entered already into a heterosexual relationship of subordination” (ibid: xiii; Butler 2004: 54); “sexual harassment codes become themselves the instrument by which gender is thus produced” (Butler 2004: 54), implying the enforcement of certain norms of sexuality and its production of a particular gender. Butler rightly critiques the pervasiveness of male dominance in a heterosexual framework in MacKinnon, evident in the latter’s take on homosexuality as replicating the power dynamics of heterosexuality, or in the idea that men subordinated in pornography actually tend to take the place of women or her brief on the *Oncale* case of same sex harassment (discussed in Chapter 3). Butler intends to show that same sex relations and harassments have their own power dynamics; transposing the power dynamics of male dominance in heterosexuality on such cases fails to question the regulatory norms underlying the heterosexual model. That is, “The act of harassment may be one in which a person is “made” into a certain gender. But there are other ways of enforcing gender as well” (ibid: xiii). Butler gives an example in the discrimination of gay persons in employment by virtue of their non-compliance to accepted gender norms. As Butler says, “the sexual harassment of gay people may well take place not in the service of shoring up gender hierarchy, but in promoting gender normativity” (ibid). However, Butler’s critique of sexual harassment codes misses out an important fact. Same sex harassments should be treated in their own right, but dismissing sexual harassment laws as instruments of regulation can be damaging to both women and men who get harassed. Moreover, harassment, it is accepted, is one form of discrimination and not the only one. In fact, a close reading of MacKinnon’s works does reveal critiques of a formal notion of equality or equal opportunities for women that prove detrimental to women’s access to jobs, etc. when employers refuse to hire women due to matters relating to pregnancy, etc (see MacKinnon 1987b; 1989b). Moreover, while Butler critiques MacKinnon for giving priority to gender hierarchy over norms, Butler does the reverse mistake. Butler hardly engages with gender hierarchy and reduces all power relations to normativity.

## **The “Sex of Materiality” and Fear of Norms: Implications for Women’s Rights**

While Irigaray argues for the need of ‘sexuate’ rights, and MacKinnon points out the necessity to formulate rights from the standpoint of women’s experience after the process of consciousness- raising, both are refuting a mere applicability or extension of ‘neutral’, ‘abstract’ rights to women. Both Irigaray and MacKinnon want to reconceptualise the notion of rights by taking rights out of the abstract, universal domain that has traditionally been a male sphere. Neutrality, they argue, is a synonym for the masculine. Law, rights, state, etc. have been designed by men to the exclusion and oppression of women. While for Irigaray, the conventional notions of law and rights have thrived on the exclusion of the feminine, for MacKinnon, laws and rights designed from the male point of view only perpetuate the dominance of women by men. However, both Irigaray and MacKinnon propose to make use of law and rights by making them more gender-specific in such a way that they take into cognisance the point of view and sex-specific needs of women as norm or at least part of the norm rather than as exceptions to the norm.

Butler presents a similar case as far as the neutrality of law and rights are concerned. Butler’s repudiation of the fundamental nature of sexual difference for feminism however marks her difference from Irigaray and MacKinnon. The attack on abstractness therefore does not translate into a woman’s standpoint or sexuate rights in Butler; very much on the contrary, Butler dwells upon the need of rights to be open-ended as far as their inclusiveness is concerned. Butler’s take on rights is also linked to her take on the larger issues of foreclosure of categories<sup>106</sup>, anti-foundationalism, danger of norms and the

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<sup>106</sup> Butler opposes any foreclosure of a category. The category should be open-ended and there can be no solidarity forged well in advance; there can be no essentialism in this coalition politics devoid of exclusionary norms and foundations (Butler 1992; 2003). The very contingency of the terms should be accepted to denote the condition where they do not fully describe those they purport to represent (Butler 1998: 230). That is, Butler does admit that to render visibility to groups that suffer from “public erasure”, identity seems inevitable; she is however concerned with “the future uses of the sign” to make it another foreclosed identity characterised by exclusions (Butler 2003). For example, women, gay/lesbian, etc can be formed into an identity for their assertion in public sphere. However these identities themselves get ossified, excluding some others in the future. This becomes the concern of Butler in affirmative action

dismantling of the sex/gender distinction so far central to feminist arguments on rights pertaining to bodies and hence the rights of women as embodied subjects. The fragmented nature of the subject also adds to the difficulties in Butler's view of rights, for rights in Irigaray are guaranteed to women as subjects whose sex gains primacy over other identities, and MacKinnon's theory talks about rights for women as a group having a commonality in their oppression by the gender system across cultures. Butler however refuses to give primacy to any identity not even in the sense of a strategy for her coalitional politics.

Butler finds the foundationalist category of women extremely problematic.<sup>107</sup> She observes that women as a category excludes some women while women themselves do not figure in the category of human (Butler 2004: 37). That is, Butler questions the inclusiveness of even a category like woman that became central in feminist theory, in response to the very exclusion of women from 'human'. No category therefore is all-inclusive; they necessarily come into being through exclusion. The exclusive nature of categories is often overlooked when a particular set of rights are claimed by persons on the basis of their belongingness to the category. For instance, women as a group might claim right to custody of the child, failing to realise that such a right has a different meaning or more correctly, poses problems for lesbian women unless the right is claimed beyond the heterosexual framework. In other words, right to custody of child vis-à-vis a male partner has chances of forcing lesbians into articulating the same right whose norms are oppressive to their sexuality and life itself.

More importantly, Butler finds the link between rights and norms deeply problematic for the cause of any emancipatory politics. That is, rights are conceived in terms of social norms; they institutionalise the very norms that have been oppressive of persons who do not conform to social norms. For example, with reference to marriages – homosexual or

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programmes in universities that reduce students to an identity rather than using affirmative action to articulate diversity (Butler 1996).

<sup>107</sup> Butler's works point out the inevitability of categories like women as categories for analysis. She is however averse to the idea of reposing any essence to any category.

heterosexual- Butler argues that marriages set norms and rights that flow from compliance to these norms (Butler 2004: 5). Thus the rights of a lesbian beaten up in a relationship can be argued only within the framework of marriage whereas this relationship need not be a relationship of marriage. Butler therefore poses a question as far as rights are concerned in terms of sexual norms:

What reorganization of sexual norms would be necessary for those who live sexually and affectively outside the marriage bond or in kin relations to the side of marriage either to be legally and culturally recognized for the endurance and importance of their intimate ties or, equally important, to be free of the need for recognition of this kind?

(Butler 2004: 5).

Hence right to adoption, child custody, etc can be worked out only within the framework of marriage and very often in terms of heterosexual relations. For example, a transsexual will be denied right to adoption; right to adoption in this case institutionalises norms related to body and gender.

This concern of Butler regarding the oppression of norms also prompts her to be suspicious of the state even when the language used is that of rights.<sup>108</sup> Butler takes into account the problematic of law and rights that can enhance the disciplinary power of the state. Hence while Irigaray and MacKinnon propose an alternative to the neutral law by making it sex-specific, Butler does not resort to a similar method. On the other hand, Butler resorts to subversive politics. Indeed, where Irigaray and MacKinnon argue for state censorship of pornography, Butler resorts to “insurrectionary speech” as a form of subversive politics (Zivi 2008). In fact, she argues that such a move can have a counter-effect, as it “tend[s] to enhance state regulation over the issues in question, potentially empowering the state to invoke state precedents against the very social movements that pushed for their acceptance as legal doctrine” (Butler, in *ibid*: 159). As mentioned

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<sup>108</sup> Rights are, in most theoretical frameworks, claims made against the state. In liberal discourse, rights are treated as entitlements or claims of the individuals against the state. The theories of Locke, Mill and many others follow this notion of rights. Though moving away from liberalism, new social movements also rely on rights of individuals or communities against the state.

earlier, she raises similar concerns in her opposition to same sex marriage rights where legalisation of such marriages gives power to the state to regulate sexuality - the law will make all forms of sexuality outside the recognised model of same sex marriage illegitimate (Butler 2004). For instance, gay marriage makes homosexuality legitimate, but it does not challenge the kinship structure that is heterosexual and monogamous (ibid). Right to adoption, for example, does not apply to gay marriage in many countries. Butler gives an example from the French debates on the Pacts of Civil Solidarity (PACS), that constitute “an alternative to marriage for any two individuals unrelated by blood, regardless of sexual orientation” (ibid: 110). The bill on PACS was passed only after rights to reproductive technologies and adoption of children were proscribed to homosexuals (ibid).<sup>109</sup> Butler writes,

The petition for marriage rights seeks to solicit state recognition for nonheterosexual unions, and so configures the state as withholding an entitlement that it really should distribute in a nondiscriminatory way regardless of sexual orientation.... In some contexts, the symbolic allocation of marriage, or marriagelike arrangements, is preferable to altering the requirements for kinship and for individual or plural rights to bear or adopt children or, legally, to co-parent. Variations on kinship that depart from normative, dyadic heterosexuality based family forms secured through the marriage vow are figured not only as dangerous for the child but perilous to the putative natural and cultural laws said to sustain human intelligibility.

(Butler 2004: 104).

Butler therefore sees the state as regulatory, where “the state is sought for the recognition it might confer on same-sex couples and countered for the regulatory control on normative kinship that it continues to exercise” (ibid: 104-5). Butler also underlines that the state is not the same state in these two dimensions. As she argues, “we ask for an intervention by the state in one domain (marriage) only to suffer excessive regulation in another (kinship)” (ibid: 105). As she says, “Those who seek marriage identify not only with those who have gained the blessing of the state, but with the state itself. Thus the

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<sup>109</sup> In France, the right to adoption was withheld to married homosexuals on the ground that the child’s social development and growth as well as French culture will be upset outside the heterosexual family (Butler 2004).

petition not only augments state power, but accepts the state as the necessary venue for democratization itself' (Butler, in Zivi 2008: 159). One can see here a non-discriminatory treatment of laws made by the state, which can hamper emancipatory politics by an absence of distinguishing oppressive laws from emancipatory ones in an overarching manner. The emphasis of Butler lies not in pinpointing the limitations of law but in an overarching judgement that all laws add to subjection; they are more subjugating than emancipating. Legitimation is certainly a double-edged issue for Butler; she, however, is more critical of state and its regulation of norms than appreciative of possibilities from the state for a politics of emancipation. This can be contrasted with Irigaray who also speaks on mimesis as a strategy but gives concrete suggestions as to what rights should be guaranteed to women by the state.

Butler's scepticism of the state also takes a backward journey as far as the public/private divide is concerned. Butler in fact views the "private" as a realm of possibilities for the proliferation of multiple sexualities as well as the disruption of norms (Butler 2004). This also owes to her notion of the state as a regulator of norms rather than an institution with at least some potential for emancipation and empowerment: "Indeed, in making the bid to the state for recognition, we effectively restrict the domain of what will become recognizable as legitimate sexual arrangements, thus fortifying the state as the source for norms of recognition and eclipsing other possibilities in civil society and cultural life" (Butler 2004: 115). Butler writes,

The state becomes the means by which a fantasy becomes literalized: desire and sexuality are ratified, justified, known, publicly instated, imagined as permanent, durable. And, at that very moment, desire and sexuality are dispossessed and displaced, so that what one "is," and what one's relationship "is," are no longer private matters. Indeed, ironically, one might say that through marriage, personal desire acquires a certain anonymity and interchangeability, becomes, as it were, publicly mediated and, in that sense, a kind of legitimated public sex.

(Butler 2004: 111).

Butler hence positions herself in sharp contrast to Irigaray and MacKinnon as well as most other feminists who have been struggling to bring issues of sexuality and other

“private” affairs to the public. The onus in Butler’s politics to disrupt norms takes a defeating turn when it almost entirely dismisses issues of hierarchy, inequality and oppression in relationships – homosexual or heterosexual. Marital rape, lesbian violence and a host of other issues detrimental to a person’s dignity, rights as well as justice may escape scrutiny if the state retreats from the private.

The dictation by norms and their regulatory effects applies to the notion of body as well, and this has consequences for feminist conception of rights. As discussed earlier, Butler discounts the sex/gender distinction and argues that biology is also culturally constructed. In fact, she explores how the very materiality of bodies is controlled by various “normalizing practices” (Wilson 2005: 165) in such a way that certain bodies tend to matter more than others; they form the norm while the others are condemned as abject bodies (Butler 1993). Butler writes, “[H]ow does that materialization of the norm in bodily formation produce a domain of abjected bodies, a field of deformation, which in failing to qualify as fully human fortifies those regulatory norms?” (ibid: 16).<sup>110</sup> The breaking down of sex/gender dichotomy has certainly opened up the possibilities for the recognition of abject bodies. It however does undermine women’s rights pertaining to the body. Wilson also gives a similar argument: “...the risk often avoided (or minimized) in Butler’s text is a consideration of the *actual matter* of bodies and how this matter affects identity” (Wilson 2005: 162, emphasis in original). In Nussbaum’s view, “Butler’s

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<sup>110</sup> Abject bodies are bodies that “fail to matter”, that “do not conform to the regulatory norms of society” (Wilson 2005: 165). Abject bodies serve as the “constitutive outside to the domain of the subject” (Butler 1993: 3). They are the “constitutive outside” as they are not constructed as culturally viable bodies that matter in society; on the contrary they are the abject bodies, bodies that do not conform to cultural norms. These bodies offer greater possibilities for the expansion of the ambit of what bodies matter in society (Butler 1993: 21-3). Wilson points out a kind of paradox in Butler when she argues of the discursive constitution of the body but attributes agency to the body itself. Butler’s theories of abjection emphasise “an enabling disruption” (Butler 1993: 23) of norms by those very bodies – deformed, diseased, homosexual, transsexual, etc. by virtue of their distinctive materiality, a materiality different from that of ‘normal’ bodies. As Wilson writes, “while Butler often explores the body as discursively constituted, her theories on abjection insist on a *material* body that, through its very materiality, can serve as politically subversive” (Wilson 2005: 166).



minimization of corporeal reality fails to give feminism what it needs: an awareness of and an agenda for the improvement of the material conditions and physical health of ‘real’ women” (Roden 2005: 33). This concern regarding the absence of corporeality is echoed in Mann’s words:

Any notion of bodily violation is immediately subject to accusations of essentialism, depending, as it seems to, on an implicit “original” body that has been violated. If the subject is produced in the very act of violation, then the violation becomes more enabling than egregious. This effectively disables feminist claims of harm in discussions of pornography, rape, or domestic violence, as it becomes impossible to identify *who* is being harmed.

(Mann 2003: 155, emphasis in original).

Butler thus certainly presents a difficult case for women’s rights when she grounds her arguments on an embodied subject, yet strongly makes a case for the fluidity and constructed nature of bodies. The body as a simulacrum, a copy for which there is no original, is detrimental for the cause of such rights inextricably related to the body – right against forced sex, right to abortion and so on. In Butler’s works, on the other hand, the body becomes “a discursively constructed cultural product” (Wilson 2005: 161). As Wilson explains, “Butler repeatedly refutes any sort of a prediscursive body, and argues instead for a textualized body rendered in and through discourse. The materiality of body therefore becomes “a process of materialization that stabilizes over time to produce the effect of boundary, fixity, and surface we call matter” (Butler 1993: 9) rather than a “site or surface” (ibid). Hence though Butler does concede to certain bodily facts, overall, the body in her work is a discursive site” (Wilson 2005: 162).

Butler’s adherence to a poststructuralist notion of the fluid body poses issues for feminist concept of rights, especially with respect to women’s sexuality. Mann rightly problematises the postmodern account of the body – “that the gendered body today is not only cultural rather than biological, constructed rather than natural, but textual rather than material, or in some accounts virtual rather than real” (Mann 2003: 146). The body in these accounts become a text rather than “flesh and blood sites of oppression and liberation” (ibid: 143). Most feminists, including Irigaray and MacKinnon, ground their

claims for rights pertaining to women's sexuality and reproduction on the physicality of the body though their larger endeavour has been to alter the social meanings attached to female biology and biological functions that have made a case for subordination of women. As Bray and Colebrook argue, "The body is a negotiation with images, but it is also a negotiation with pleasures, pains, other bodies, space, visibility, and medical practice; no single event in this field can act as a general ground for determining the status of body" (Bray and Colebrook 1998: 43). Butler however places the body in the realm of the social, subject to political regulation. Its boundaries are therefore not fixed materially, but are secured through discourse and performativity. The body, in Butler is therefore extremely "pliable", "malleable" and "fluid" (Wilson 2005: 164); it is "contingent" and "performative" (Mann 2003: 146). The body "is contextualized only as a place marker in quasi-linguistic systems of signifiers. It is so fluid it can take on almost limitless embodiments. It has no real terrestrial *weight*" (Bigwood 1991: 59, emphasis in original). What Butler misses out in this context is the oppression by factors other than heteronormativity even on persons with non-heterosexual preferences. For instance, how will she explain rape or sexual harassment in a framework that is centred entirely on disrupting norms and silent on unequal power relations?

Furthermore, the performative notion of gender in turn presents problems for conceptualizing women's rights. Gender, in Butler's account is not a "set of free-floating attributes" (Butler 2004: 33). Gender is a performative, a verb and not a noun as the case used to be, for it is engaged in "constituting the identity it is purported to be" (ibid). That is, gender here is not an identity as many feminists earlier purported it to be; on the other hand, gender is a doing which is engaged in constituting the seeming identity of man and woman. Butler's critique is directed against all normative categories. As said earlier as Butler herself likes to claim, while MacKinnon is preoccupied with an analysis of sexual hierarchy as producing gender, she is interested in exposing the gender normativeness of discrimination (Butler 1999: xxi).<sup>111</sup> Thus while many feminists like Wittig<sup>112</sup> or the early

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<sup>111</sup> Butler does make a distinction between gender as a descriptive category and gender as a normative category. While the former only gives an account of the intelligibility of gender, the latter accounts for

Irigaray would extol lesbianism as an exemplar of emancipation, Butler invokes lesbianism as one of the sexual practices that can destabilise gender and not *the* sexual practice that can challenge women's oppression, for there is an inherent danger in making lesbianism a normative category (Butler 1993; 1999; 2004). Butler's politics therefore does not favour any prescriptions on sexuality (Butler 1999: x-xi). She is interested only in denaturalising all categories and exposing the unnatural state of everything projected as natural. Thus, unlike in Irigaray and MacKinnon, Butler is not proposing that sexuality determines the distinctive selves of different genders. Sexuality does not produce genders; however, normative heterosexuality can facilitate heterosexual practices and propagate them as the norm: "under conditions of normative heterosexuality, policing gender is sometimes used as a way of securing heterosexuality" (ibid: xii).

Gender, in other words, becomes an effect where certain expressions seem to be real while they are actually not. In Butler's own words, "Gender is the repeated stylization of the body, a set of repeated acts within a highly rigid regulatory frame that congeal over time to produce the appearance of substance, of a natural sort of being" (Butler 2004: 43-4). Butler therefore perceives gender as a deed without a doer: "In this sense, gender is always a doing, though not a doing by a subject who might be said to preexist the deed.....There is no gender identity behind the expressions of gender; that identity is performatively constituted by the very "expressions" that are said to be its results" (ibid: 33). Gender therefore becomes a performance; it is a series of acts that gives expression to gender; there is no gender without these acts (Butler 1993; 1999). Butler elaborates this notion of gender in her words:

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what forms of gender are acceptable. However, Butler argues that the descriptive account can also not be devoid of normativity (Butler 1999: xxi).

<sup>112</sup> Butler does make a distinction between gender as a descriptive category and gender as a normative category. While the former only gives an account of the intelligibility of gender, the latter accounts for what forms of gender are acceptable. However, Butler argues that the descriptive account can also not be devoid of normativity (Butler 1999: xxi).

Gender ought not to be construed as a stable identity or locus of agency from which various acts follow; rather gender is an identity tenuously constituted in time, instituted in an exterior space through a stylized repetition of acts. The effect of gender is produced through the stylization of the body and, hence, must be understood as the mundane way in which bodily gestures, movements, and styles of various kinds constitute the illusion of an abiding gendered self.

(Butler 1999: 179).

Evidently, the performative notion of gender deprives gender of its existence as an identity, which is crucial in feminist theories explaining gender as difference or dominance. On the other hand, Butler attributes fluidity and instability to sex/gender as it gets constituted again and again through deeds rather than its attribute as a fixed entity having some kind of essence. Man, woman, masculine, feminine – all are constituted and reconstituted; there are no fixed meanings or attributes to any of these. How can we formulate a notion of rights based on a performative category, which gets continuously reconstituted? – this is a big question as far as Butler's postmodern feminism is concerned.

The complication in Butler's notion of rights becomes clearer once we compare Butler's idea of gender with that of Irigaray and MacKinnon. For Irigaray as well as MacKinnon, sex and gender have definite meanings; they are not fluid categories. Irigaray and MacKinnon therefore have clear definitions for man/woman and masculine/feminine. MacKinnon clearly sees gender as something that is constraining a woman, for the gender identity of woman entails her subordination (MacKinnon 1987b; 1989). For Irigaray, the subjectivity of men and women emerge from their distinctive sexual anatomy. In other words, there is some fixity and stability to the categories studied by Irigaray and MacKinnon in their analysis of women's oppression. As evident from the earlier chapters, rights pertaining to women's sexuality are proposed by Irigaray and MacKinnon with regard to women's bodily necessities and characteristics. The body as an entity with certain stable features therefore becomes crucial in both Irigaray and MacKinnon. Examples can be cited in terms of Irigaray's right to motherhood or MacKinnon's advocacy of right to abortion – both are inextricably linked to women's sexuality and bodily identity. These rights become complex and often confusing in Butler, for Butler

critiques the linking of sexuality to a pre-discursive notion of a gender-specific body whose parts correspond to gender norms. As Butler herself puts it, “some parts of the body become conceivable foci of pleasure precisely because they correspond to a normative ideal of a gender-specific body” (Butler 1999: 90). Or as Butler writes, ““becoming” a gender is a laborious process of becoming *naturalized*, which requires a differentiation of bodily pleasures and parts on the basis of gendered meanings” (ibid: 89, emphasis in original). Pleasures in the body, it is claimed, are located in specific parts or organs like penis, vagina or breasts. Butler argues that “such descriptions correspond to a body which has already been constructed or naturalized as gender-specific” (ibid: 89-90). Thus even those who do not possess these organs from which pleasure is derived or those who do not have the expected physicality imagine the normative body and its parts to get pleasure in their sexual acts. Butler shows the case of transsexuals who enjoy sexual acts probably by an imagination of the body parts they lack in terms of the ideal body (ibid: 90).<sup>113</sup> In other words, the very necessity of certain bodily parts, their size, etc. believed to be necessary for desire and pleasure, and therefore as natural, are nothing but a mere belief projected as “real” by the norms of heterosexuality. It therefore becomes difficult in Butler’s account to formulate rights for women, men or transsexuals on grounds of biology. For instance, it might become just too difficult to define who a transsexual, man or woman is, if we are to follow Butler’s de-linking of body from sexuality. Butler also does not specify on what grounds rights should be guaranteed to persons, if their biological identity should be rendered irrelevant or fluid.

Interestingly, as discussed earlier, Butler’s preoccupation is however not to debunk rights and law but to rethink their roles in ‘subjectivation’ or the constitution of the subject by

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<sup>113</sup> Butler cites the case of transsexuals to demonstrate a discontinuity between sexual pleasures and parts of the body (Butler 1999: 90). For example, a transsexual would not be having the ‘standard’ vagina, breasts or penis. Yet they get pleasure from their sexual acts. That is, Butler wants to say that the physical standards set by normative heterosexuality are deceptive as many others like transsexuals seek sexual pleasure with bodies that do not correspond to the normative body created by heterosexuality.

law and rights (Butler 1993).<sup>114</sup> That is, Butler does recognise that one becomes a “lawful” subject only through law which also has disciplinary powers. The very law that is punitive gives recognition to the subject. Butler therefore ponders if there are ways for recognition through law without reprimand: “Are there are other ways of being addressed and constituted by the law, ways of being occupied and occupying the law, that disarticulate the power of punishment from the power of recognition?” (Butler 1993: 122). Similar concerns have been raised by feminists prior to Butler as well. Smart argues, “The claim of rights has [therefore] generated more centralized knowledge about sexual relationships, marriage relationships, child care organization, and so on” (Smart 2005: 142). Smart gives a few examples where claiming a right also means women’s subjection to “more refined notions of qualification” (ibid). For example, women have to prove that they are legally married to claim maintenance; paternity has to be proved in cases of illegitimacy; and in cases of child custody, women must prove that “they meet the best interests of children” (ibid). Eisenstein argues that divorce does not end the institution of marriage but “puts closure on a specific marriage” and permits the individual to enter into another (Eisenstein 1988: 70). Similarly, Kiss contends that right against marital rape “profoundly alters marriage” by giving women more power and challenging their status as performers of sexual duties; however, it “does not deny or destroy the relationship of marriage” except redefining it (Kiss 2005: 29). Hence feminists have more often than not cautioned against the incompleteness of rights as far as their potential to disrupt norms are concerned. Butler merely takes it forward to condemn rights in the strongest possible words.

Butler seems to be giving an alternative to a politics centred on rights in her notion of the possibility of a liveable life for all with no constraint from norms (see Butler 2004). The possibility of a ‘livable life’ however becomes a utopia for which Butler’s politics of performativity and fluidity of categories foreclose the options of positive rights or

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<sup>114</sup> Butler here draws upon Althusser’s notion of interpellation in which the subject is at once socially constituted and recognised by law when the policeman calls out for the subject, and also subjected to a unilateral act of law – to evoke fear, which Butler describes as “the power and force of the law to compel fear at the same time that it offers recognition at an expense” (Butler 1993: 121).

affirmative action.<sup>115</sup> ‘Livable life’ would then be also a backward journey to a most basic right to life, which may get clouded by the very condition of freedom from norms – a state of anarchy. To put it differently, Butler is right when she argues that rights establish certain norms that are exclusionary of certain persons. However, instead of expanding the scope of differential rights to challenge these states of oppression, Butler resorts to drag and parody – subversive politics – that views rights with utmost scepticism. A few instances of Butler’s parodic politics include the notions of butch and femme (Butler 1999), the gay kinship in the drag ball culture of New York (Butler 1993) and the lesbian phallus (Butler 1999). All these indicate the hollowness in the claim that a sexed body necessarily implies one form of sexuality, that kinship is necessarily heterosexual and that the very norm and institution of heterosexuality is natural. Butch/femme and lesbian phallus also destabilise feminine and masculine morphologies (see Butler 1999). In short, Butler remarkably exposes the hollowness of any claim of the natural. However, she greatly undermines how some kind of fixity and materiality are necessary to perceive certain rights related to the body.

### **Rights as instruments of subversion**

Butler uses an approach of subversion rather than rejection of law. She relies on the Foucauldian notion of power as eliciting its own resistance. Guided by drag and parodic politics, Butler proposes a rearticulation of the same oppressive law against the authority that made it. Butler therefore has provoked many to describe her position on law as “agonistic” (see Loizidou 2008). This kind of ambivalence or agnosticism towards rights emerges in Butler also due to an overarching or permeating thesis in her works – the self is constituted but not determined by society and discourse, constraints offer possibilities of agency, and her notion of performativity which supposes that a ritualized repetition can cause disruption of the very norms and situations one wants to challenge. It follows that rights and laws which institutionalise certain norms should be rearticulated in such a way that the same rights and laws can disrupt the very norms they cherish (Butler 2004).

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<sup>115</sup> Butler however does not discount positive rights or affirmative action. The lacuna is hence the inconsistency which Butler fails to resolve.

Performativity can be applied also to the obedience of laws and claiming of rights that otherwise, in the view of Butler, either perpetuates or produces norms. She argues in the context of rights framed within the model of marriage, “A critical relation to this norm involves disarticulating those rights and obligations currently attendant upon marriage so that marriage might remain a symbolic exercise for those who choose to engage in it, but the rights and obligations of kinship may take any number of other forms” (Butler 2004: 5).

In other words, Butler does not see law or rights as neutral in any respect; law and rights are very much embedded in the power relations that have created them. However, she also does not reject law and rights. Butler’s objections to state-guaranteed laws and rights stem from the power vested in the state to produce oppressive norms or, in her view, to transform exceptions into norms. In fact, Butler seems to be more worried with the implication of law and rights in the disciplinary powers of the state. This also suggests that Butler is not against the rule of law per se but with the appropriation of the law by a state or sovereign in such a way that the latter is above law. She believes that not only disciplining power but also the power of the sovereign to appropriate and manipulate law is very much current in discourses and practices of law. Butler writes, “the law is not that to which the state is subject nor that which distinguishes between lawful state action and unlawful, but is now expressly understood as an instrument, an instrumentality of power, one that can be applied and suspended at will” (Butler, in Loizidou 2008: 149-50). Butler says this in the light of military tribunals where officials have been quoted as saying that the detainees even after acquittal may not be released unless the state is satisfied that they are not ‘dangerous’ (ibid). The use of law as a technique of sovereign power therefore transforms something like a special tribunal (an exception) into the norm itself (ibid: 150). Butler here seems to be making a case for law to be made completely immune to the power of the state to appropriate the law in any instance.

Another interesting aspect of Butler’s take on laws is her emphasis on the separation of law and norms. That is norms cannot be reduced to the law. In other words, norms are produced not merely in the legal realm. Therefore one’s performative engagement outside



law is pertinent to achieving a livable life. Butler argues that when law and norms become one, then the chances of being a viable human are limited, for there is very less space for resistance, and more importantly, law becomes the only instrument for resistance as well (Loizidou 2008). For example, the prisoners of Abu Ghraib can only express their dissent and resistance in their trial before law; no other domain is open to them.

Butler however cites the same example of the ability of the head of a state to convert an exception into a norm to make a case for the reworking of norms. For example, Butler gives the example of the head of a state, also a subject produced through law, to establish special tribunals and even overrule its acquittals even as the norm is an equal application of laws, to show how norms can be turned around (Loizidou 2008). Butler extends this agency of the head of the state to transform norms to all subjects who have been created by these very norms - even to a criminal who resists the interpellation when the police call for him (Butler 1993; Loizidou 2008). The lacuna however lies in Butler's unqualified equation of the transformative capacity of the President of the United States and an ordinary criminal, which makes insignificant the differential powers of different individuals or groups to transform norms. This can be applied even to the differentials based on gender, race, etc that may impede or empower subjects differently in changing norms. For example, the endeavour of women to subvert established norms would not be as effective as men's in a society ridden with gender hierarchy; the subversion of norms hence could be easier in gays than in lesbians. This could also be an area where institutional and structural changes seem crucial for transformation. For example, it is more feasible to challenge domestic violence through law rather than a ritualized repetition of getting beaten by a man or anyone else. It is also easier for sexual minorities to secure justice through legal means instead of drag politics where the real life remains unchanged as the case of Venus Xtravaganza in *Paris is Burning* proves. Also, drag politics remains at the level of the individual; repetition of norms is not a collective affair and has least potential for collective politics. Furthermore, subversive politics always remains wary of legalisation or social acceptance for fear of norms, as Butler endorses in her opposition to legalisation of gay marriage. Thus "it may be that the potential of

gay/lesbian marriage to subvert marriage as an institution is highest when such marriage is *not* legal” (Menon 2007: 38, emphasis in original).

The absence of a positive engagement with state can hamper the prospects of liberation of women who are already constrained not only by gender, but also by other markers like race, class, caste, religion and so on. Even if they are averse to state protectionism, support from the state and articulation of rights is invaluable for most women. Martha Nussbaum brings out the limitations of drag and parody very clearly<sup>116</sup>:

Well, parodic performance is not so bad when you are a powerful tenured academic in a liberal university. ....For women who are hungry, illiterate, disenfranchised, beaten, raped, it is not sexy or liberating to reenact, however parodically, the conditions of hunger, illiteracy, disenfranchisement, beating and rape. Such women prefer food, schools, votes, and the integrity of their bodies. I see no reason to believe that they long sado-masochistically for a return to the bad taste.

(Nussbaum, in Barvosa-Carter 2005: 181).

To put it differently, drag politics exposes that what is passed off as natural and original are not so; it however lacks potential to put what is condemned as unnatural and deviances on the pedestal of justice. That is, it shows the hollowness of heterosexuality but does not give any trajectory to the non-heterosexuals as to what they should do to address their marginalisation and misrecognition. Also, it ends up more in reinforcing norms rather than subverting them. This is testified by transsexual Octavia Saint Laurent’s plight in *Paris is Burning* where her desire is to be a “full-fledged woman in the United States”, a legendary model on par with other women in the field, but is unable to do so. Octavia has exposed how a vagina is immaterial to be a woman but the recognition she craves for is again for being recognised according to the dominant norms that follow what it means to be a woman biologically.

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<sup>116</sup> This quote has been taken from an article in Margaret Sonser Breen and Warren J. Blumenfeld (eds.) *Butler Matters: Judith Butler’s Impact on Feminist and Queer Studies*, Hampshire/Burlington: Ashgate.

However, interestingly, Butler links parody and drag to rights. The challenge to norms posed by parodic politics, Butler argues, can of course negotiate the meaning of rights themselves. Rights therefore become something that constantly rework upon norms rather than instituting experience as in the case of MacKinnon or affirming the otherwise repressed feminine of sexual difference in Irigaray. Claiming rights therefore becomes a performative practice for Butler, which implies two things: invocation and critique (Zivi 2008: 165). Zivi also calls this a 'double-movement'- rights - claiming is "never simply a citation of liberal norms, but it is also their transformation" (ibid: 167). Rights therefore are not simply to be invoked as liberals ask for; they also have to be critiqued to expose the very power interests that have created them. Butler gives an example for the various ways in which rights can be used for sexual minorities. In this sense, Butler is also referring to the negative effect of taking recourse to rights. That is, she argues that lesbian and gay politics arguing for rights of sexual minorities are premised on the ground that homosexual lives are also a reality and they ought to be "protected in their specificity and commonality". However, she argues, it is quite different to argue that the assertion of homosexuality in public questions what is real and what is human. Thus a transformative politics is pitched in the latter where homosexuality is asserted not as a sexual practice or an inner truth but "as one of the defining features of the social world in its very intelligibility" (Butler 2004: 29). The politics of sexual minorities is not to affirm their humanness by citing their conformity or near conformity to the norms of human; it should rather stress upon the fact that sexual minorities do not get recognition because the norms of recognition are unfavourable to and exclusionary of them (ibid: 30). Butler therefore argues that her performative politics "is not simply to insist on a right to produce a pleasurable and subversive spectacle but to allegorize the spectacular and consequential ways in which reality is both reproduced and contested" (Butler 2004: 30). Karen Zivi (2008: 167) puts Butler's performative notion of rights as thus:

If the 'human' of human rights traditionally excludes lesbians, gays and women, if the 'human' is defined through the very exclusion of these groups, then, when using the language of rights, such groups are not simply suggesting that they are human in the way we usually conceive of the human. They are, instead, challenging us to rethink the meaning of the human, 'expos[ing] the conventional limitations of the human' (2000e: 39) while challenging its universality.

Zivi calls Butler's espousal and critique of rights as "perverse reiteration" which exposes the exclusive nature of a category presented as the universal; it also shows how this supposedly universal category can be understood in more exclusive ways (ibid). Claiming rights for transsexuals, for example, highlights how the 'human' in 'human rights' excludes transsexuals; it also shows at least one more possibility of a conception of the human, which in this case could be a human whose sex organs are not neatly differentiated as male or female. However, this is also the point made by Irigaray, MacKinnon and many other feminists arguing from an anti-sameness platform when they critique the notion of the human as essentially masculine and when they propose an alternative project to redefine the human from a feminist perspective. What Butler does is just adding on to the existing critique of the 'human' by making case for sexual behaviours and bodies that do not fall within the parameters of heterosexuality and the male/female binary based on sexual division of the human world into two. In other words, she makes sexed identity insignificant for emancipatory politics, while Irigaray and MacKinnon invoke the sexed nature of the body in their own distinctive ways to articulate a notion of politics that challenges male dominance.

It is worth mention at this stage that Butler's account of rights is also grounded in the socially constituted nature of the self which also denies it the voluntarism and autonomy attributed by liberals. This also implies the inescapability of the self from the social outside including other selves. Rights therefore become an impossibility if they are to be entitled to individuals who can stand alone, separated from the social outside. In other words, Butler refers to the impossibility of rights as instruments of individuation and separation (Butler 2004: 33-4). Butler explains the problem with liberal notion of autonomy of subject as such:

In a sense, the subject is constituted through an exclusion and differentiation, perhaps a repression, that is subsequently concealed, covered over, by the effect of autonomy. In this sense, autonomy is the logical consequence of a disavowed dependency, which is to say that the autonomous subject can maintain the illusion of its autonomy insofar as it covers over the break out of which it is constituted. This dependency and this break are already social relations, ones which precede and condition the formation of the subject. As a result, this is not a relation in which the subject finds

itself, as one of the relations that forms its situation. The subject is constructed through acts of differentiation that distinguish the subject from its constitutive outside, a domain of abjected alterity conventionally associated with the feminine, but clearly not exclusively.

(Butler 1992: 12).

Butler asserts this once again in *Undoing Gender*. She expounds that the self is not only mediated but also constituted by social norms, for these norms precede the ego to form a social outside (Butler 2004: 32). She calls this as “constitutive constraint” (Butler 1993: xi). Butler therefore perceives sexual rights as not something that enhance individual autonomy. On the contrary, rights of sexual minorities indicate a double dependence- a dependence on others which is characteristic of all rights, and a second dependence on law for protection against violence, etc. For example, Butler points out the problematic of transsexuality where one has to be either a man or woman and not a transsexual to be entitled to state funds and other opportunities (Butler 2004). Butler argues,

Thus, when we speak about sexual rights, we are not merely talking about rights that pertain to our individual desires but to the norms on which our very individuality depends. That means that the discourse of rights avows our dependency, the mode of our being in the hands of others, a mode of being with and for others without which we cannot be.

(Butler 2004: 33-4).

Butler elaborates her view on rights and the relationship between rights and transformation as thus:

To assert sexual rights, then, takes on a specific meaning against this background. It means, for instance, that when we struggle for rights, we are not simply struggling for rights that attach to my person, but we are struggling *to be conceived as persons*. And there is difference between the former and the latter. If we are struggling for rights that attach, or should attach, to my personhood, then we assume personhood as already constituted. But if we are struggling not only to be conceived as persons, but to create a social transformation of the very meaning of personhood, then the assertion of rights becomes a way of intervening into the social and political process by which the human is articulated.

(Butler 2004:32-3, emphasis in original).

Hence Butler articulates a notion of rights that is not flowing from personhood; rather, the struggle for rights should transform the meaning of personhood itself. Thus women's rights should not be demanded on the basis of an already defined personhood (e.g. human beings with vagina, or human beings who can reproduce). On the other hand, the articulation of rights of women should reconceptualise the notion of human itself. Such a critique of rights is in tandem with Butler's rejection of any pre-discursive notions of subject, person, body and so on. Regulations, laws, etc. produce parameters of personhood; they make persons according to norms (Butler 2004: 56). That is, when we assert sexual rights to demand that we also be treated as persons, it is only meaning that there is a certain definition of a person and we want to be acknowledged as persons by virtue of our efforts to convince others of our conformity to it. On the other hand, a meaningful politics, in Butler's opinion, would consist in not only an assertion to be conceived as a person but also to change the meaning of what a person is. For example, women, sexual minorities, etc. would struggle to be acknowledged as human but also to change the notion of human that excludes them.

Such notion of politics is expounded by Irigaray and MacKinnon as well when they negotiate for making human more inclusive not by attaching an exceptionality to those excluded but by making their specificities part of the norm itself. The difference however comes when Irigaray and MacKinnon ground their arguments in a coherent self marked primarily by sex/gender whereas Butler decentres and fragments the self, bringing down sexual difference from the pedestal to an equivalent significance with other differences and markers of discrimination like race, ethnicity, religion, class, etc. In other words, Butler tears down the idea of a fundamental difference and primary contradiction which can be traced to sexual/gender difference in both Irigaray and MacKinnon. Also, while Irigaray and MacKinnon direct their theory towards autonomy for women, steered clear of its masculine definition, Butler projects rights as signifying our inescapable and essential dependence on others and the norms that have created us rather than projecting rights as a mode for individual autonomy.

Butler's view of rights as tools of normativism and her dismissal of autonomy further poses problems for women's rights. For example, she problematises women's struggle for reproductive rights, etc grounded in a language of bodily autonomy. Butler finds an inevitable tension between social and political conditions of embodiment and bodily autonomy that neglects my being in a community with others and my body being not my own as it is "constituted as a social phenomenon in the public sphere" (Butler 2004: 21).<sup>117</sup> Butler also finds in the struggle for autonomy a struggle for normative aspirations (ibid: 25). The implications for such notion of autonomy can have serious implications. While Irigaray and MacKinnon were propounding a notion of bodily autonomy in right to virginity and right to refuse sex respectively, Butler negates this notion of autonomy as detrimental to our very existence. It may well be argued that Butler's notion of the irretrievability of bodily autonomy from the social outside can be appropriated to counter pro-abortion debates and movements that are based on the notion of women's choice and most often only the choice of the woman to decide on abortions. In a similar vein, Butler would see in prostitution a "symbolic meaning of power and resistance"<sup>118</sup> in contrast to Irigaray and MacKinnon.

Butler hence seeks a framework where a lesbian or a transsexual who has been tortured in a relationship can seek redressal outside the existing frameworks of marriage, heterosexuality, etc. To put it even simpler, Butler's notion of rights can be pinned down to the simplest form of humanism, where any person, regardless of adherence to established patterns of social behaviour, can claim rights against violence, right to adoption, custody of child and so on. The position is certainly an advance over a notion of rights that makes it mandatory to conform to normative heterosexuality within or without marriage. The question however remains how Butler can resolve the issue of

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<sup>117</sup> Butler argues that we have to make concrete claims of bodily autonomy but does not say how to reconcile it with her argument refuting rights for the cause of individuation and separation.

<sup>118</sup> This phrase is borrowed from Rajeswari Sunder Rajan (2003: 131) who discusses the debates on prostitution in India. Sunder Rajan argues that while organized sex workers are vocal about the legitimacy of their work, they really do not laud their work as liberating, while some non-sex worker feminists see subversive potential in commercial sex work.

bodily rights – right to maternity leave and benefits, right to abortion, etc. where women's body is evoked in terms of its biological differences so as to ensure equality. In other words, how can Butler's notion of rights minus norms and fixity of biology ensure equality for women whose dominance, erasure and homologisation have been linked in one or the other way with the debasement or effacement of female biology?

Similarly, Butler's repudiation of laws and rights pertaining to homosexual relationships pose a similar problem. While Butler fears that rights and laws permitting homosexual marriages establish models which might render impossible other practices or forms of behaviour in homosexuality, Butler fails to see how these rights are also crucial for bringing homosexuality into the socially accepted domain. Butler seems to be thinking of far-fetched consequences without realising the immanence of rights for certain persons who are "abject" in society. Lesbian and gay rights therefore have potential to disrupt heterosexuality; but Butler is afraid that these rights might end up with another set of oppressive norms.

To sum up, Butler provokes us to ponder over the implications for feminist politics by what Menon calls "the world-view provided by counter-heteronormativity" (Menon 2007: 8). As Menon affirms, "The recognition of several genders and of multiple and shifting ways of being constituted as political entities, may be able to help generate new ways of thinking about representative institutions in a democracy" (Menon 2007: 27). However a few issues regarding her take on equality, difference and rights need to be highlighted. Butler's postmodernism does not see equality and difference as antithetical to each other for the very reason that these concepts are also open to contestation and change. At the same time, she does not fetishise difference into identity politics. Thus as far as women's politics is concerned, as a feminist postmodernist, she questions the very exclusion that is created by the category "women", a debate that has been on for some time from women of colour, etc. Butler therefore asks:

Through what exclusions has the feminist subject been constructed, and how do those excluded domains return to haunt the "integrity" and "unity" of the feminist "we"? And how is it that the very category, the subject, the "we," that is supposed to be presumed for the purpose of solidarity,



produces the very factionalization it is supposed to quell? Do women want to become subjects on the model which requires and produces an anterior region of abjection, or must feminism become a process which is self-critical about the processes that produce and destabilize identity categories?

(Butler 1992: 14-5).

The unity of the category or groups is not to be attained by the elimination of differences but by their very sustenance. In Butler's own words,

The problem of unity or, more modestly, of solidarity cannot be resolved through the transcendence or obliteration of this field, and certainly not through the vain promise of retrieving a unity wrought through exclusions, one that reinstates subordination as the condition of its own possibility. The only possible unity will not be the synthesis of a set of conflicts, but will *be a mode of sustaining conflict in politically productive ways*, a practice of contestation that demands that these movements articulate their goals under the pressure of each other without therefore exactly becoming each other.

(Butler 1997a: 268-9, emphasis in original).

At this juncture, Butler also clarifies that “difference is not simply the external differences between movements, understood as that which differentiates them from one another, but, rather, *the self-difference of movement itself*, a constitutive rupture that makes movements possible on non-identitarian grounds, that installs a certain mobilizing conflict as the basis of politicization” (Butler 1997a: 269, emphasis in original). Difference therefore becomes the very condition of possibility of identity or its “constitutive limit” (ibid). It may be noted here that Butler directs this critique against what she calls “orthodox Left” which subordinates categories other than class to the latter. More particularly, she takes issue with socialist feminists like Nancy Fraser, who in *Justice Interrupts* (1997) has discussed issues of sexuality as “merely cultural”, having nothing to do with political economy (Butler 1997b).<sup>119</sup>

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<sup>119</sup> In this article, Butler cites paragraphs from Marx's *German Ideology* (1846) and Engels' *The Origin of the Family, Private Property, and the State* (1884) to show how Fraser is going against the Marxist tenets that have argued on the necessary link between man-woman relations and mode of production. Butler also refers to socialist feminist scholarship of 1970s and 1980s that sought to establish the sphere of sexual reproduction as part of material conditions of life.

Also relevant to our discussion is the sex/gender blurring in Butler that has evoked mixed responses from feminists. While Butler challenges the givenness and stability of biological sex as well, many feminists have critiqued the instability of categories in Butler as disabling for feminist movement (Webster 2000: 2). This has precipitated what Webster calls “trouble” or “crisis” in feminism (ibid). For example, Benhabib argues that Butler’s critique of identity categories has paved way for an “identity crisis” for feminism that “may eliminate not only the specificity of feminist theory but place in question the very emancipatory ideals of the women’s movement altogether” (Benhabib, cited in Webster 2000: 3). Benhabib is particularly convinced about the disempowering potential of a fractured subject that undermines choice, autonomy and self-determination; in fact, Benhabib finds such a subject entirely deterministic. On the other hand, Butler presents the fracture itself as the very condition of agency rather than a unitary subject capable of “giving an account of oneself”.<sup>120</sup> Furthermore, Benhabib rightly points out that though Butler’s performative gender gives some account of “how meaning is constructed and how significance comes to be attached to our gendered identities, it nevertheless fails to give an explanation of the structural and developmental processes which are in fact involved in individual socialisation (and hence in the construction of our gendered identities). It also fails to give an account of the capacities individuals possess for some degree of self-determination” (Webster 2000: 6). Thus while Butler speaks of the contingency of the very norms that constitute the subject, Benhabib claims the necessity of norms for emancipatory politics (ibid: 9). Similarly, Nussbaum argues that Butler’s theory of performativity positively undermines emancipatory politics, threatening the theoretical and strategic resources essential to responding to and transforming relations of inequality and injustice (Zivi 2008: 157). Hence, though Butler presents the possibility of a coalition politics based on free-floating differences and an ambivalent view of rights as empowering and status quoist, larger issues concerning bodily autonomy, structural change and how to decide what forms of livable life are to be encouraged/discouraged

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<sup>120</sup> This is the title of one of Butler’s books. Butler also has an article under this title published in *Diacritics*, Winter 2001.

and how, and how to address issues of injustice and inequality through parody that can be both status quoist and subversive remain unanswered.

## Chapter 6

### Conclusion

Feminist theory and politics stands today at crossroads, unable to take a position on the emancipatory scope of the rights framework. The language of rights which was central to feminist politics is now being questioned on various grounds ranging from its individuating nature to implication in norms. An underlying theme of all these critiques is the argument that rights represent the dominant interests, they represent the masculine and the heterosexual. Thus atomism and competition regarded by many feminists as characteristic of masculine get privileged over relationship, as rights-bearers get separated from each other (Hirschmann in Kiss 2005: 28). Such a view can be seen in Irigaray who critiques the abstract rights framework as centered on property rather than persons; in other words, sexuate rights takes away the focus of rights from the person's relation to property and purports to cherish relations between persons. At the same time, there have been efforts on the part of feminists to redefine the notion of rights from the view point of women. MacKinnon presents such a scenario as she also departs from others like Ruddick and Chodorow whose standpoint theories take some cues from women's reproductive biology and mothering.

Thus rights are no longer "a simple matter of extending an existing entitlement to a group to which it has been denied" (Rhode and Sanger 2005: xix), as in the case of right to vote. Gender-based rights are articulated now more as "the result of imaginative (and empirically informed) reassessment of some social fact, a political goal or a legal doctrine" (ibid). Since the 1980s, the inadequacy of rights to represent women's experience has been a grave concern (see Harding 2004). The advent of post-structuralism gave a new twist by focusing on the exclusionary nature of rights and their institutionalization of norms that have been oppressive for persons and groups who do not conform to established and socially accepted forms of behaviour including sexual orientation. Butler's works pointing to the dilemmas in accepting homosexual marriages make a point here. As Elizabeth Kiss argues, "Some feminist "post-structuralist"

characterizes rights language as inextricably bound up with hierarchies of gender and with the outdated and patriarchal fiction of a unitary self. To focus on rights, they all say, are to abandon an effective commitment to women's emancipation" (Kiss 2005: 27).

Yet all feminists including radical postmodernists do not dismiss rights entirely. Carol Smart gives a valid warning when she points out the injustice in a project "to visit a late twentieth-century disillusionment with legal rights, upon a nineteenth-century feminism which faced a very different set of circumstances" (Smart 2005: 139). Smart argues that first wave feminists were not trying to "use the concept of rights as a legal tool to remove discrimination in all aspects of life" (ibid). Equal rights were rather instruments "to fight against legally imposed impediments" that prevented women from voting, employment, holding property and so on (ibid). The bottom-line is a 'paradox' where feminists and many other groups are sceptical of the emancipatory nature of rights especially with reference to the powers of the state and the institutionalization of norms at a time when subordinated groups tend to be more anxious to fight norms. Wendy Brown gives an interesting presentation of the paradox as far as women's rights are concerned. Brown argues that rights are indispensable for women: "Given the still precarious and fraught conditions of women's existence in a world ordered by a relentless construction and exploitation of sexual difference as subordination, certainly rights *appear* as that which we cannot not want" (Brown 2002: 421, emphasis in original). At the same time, she warns us that "rights almost always serve as a mitigation – but not a resolution – of subordinating powers" (ibid: 422). Brown draws the analogy of rights as drawing a fence around women at the site of subordination rather than challenging or eliminating the site of oppression itself (ibid). Brown (ibid: 423) points out the dilemma as follows:

The point is that even as rights that are gender-specific entrench the regulation of women through the regulative norms of femininity, rights that are neutral and universal potentially entrench the subordinated status of women by augmenting the power of the already powerful. The paradox, then, is that rights that entail some specification of our suffering, injury, or inequality lock us into the identity defined by our subordination, and rights that eschew this specificity not only sustain the invisibility of our subordination but potentially even enhance it.

It is to this very paradox that the works of Irigaray, MacKinnon and Butler point to. All of them begin with pessimism regarding the abstract notion of rights that is premised on the standard of sameness. For Irigaray and MacKinnon, abstract rights concretely embody the masculine whereas for Butler who dismisses the grounding of feminist politics in sexual difference, rights are double-headed instruments of legitimation used by oppressed groups to seek protection while at the same time entrenching norms that in turn are oppressive. Butler therefore seeks a redressal mainly through drag politics than rights, though she also makes a case for the subversive potential of rights in their very rearticulation to rework norms. On the other hand, for Irigaray and MacKinnon, rights become the chief instruments to articulate their ideas on sexual difference – the affirmation of the feminine and the overcoming of the differences that are results of inequality respectively.

The larger question remains – whether any of these feminists formulate a new notion of rights or are they just add-ons to existing rights? Is there a new content in the rights they propose? As a beginning, one can say without doubt that Irigaray, MacKinnon and Butler employ rights differently from the strategy of liberals and liberal feminists. Rights are primarily addressed in terms of women's bodily specificities, of which not only reproduction but other aspects of sexuality form the cornerstone. In fact, liberal feminists like Anne Phillips argue for maternity leave and other benefits so that women can easily access the 'gender-neutral' rights in terms of employment, public office, etc (see Phillips 1991). Women's sexuality therefore becomes in this approach something that has to be taken care of so that they are not deprived of rights and benefits which otherwise all are entitled to regardless of their sex/gender. Irigaray, MacKinnon and Butler however move away from this policy kind of approach. They evoke women's sexuality as an issue in itself rather than as a factor that needs to be addressed for the sake of rights available to all, and hence their preoccupation with the ebbs and flows of situating sexuality in the language of rights and not as affirmative action or policy matter. All three feminists discussed in this work accord prime significance to sexuality; the constitution of the self is almost entirely determined by women's position in sexual hierarchy in the case of MacKinnon and in the idea of *jouissance* in Irigaray. Butler being a proponent of "queer"

politics also dwells upon how sexuality is crucial not to explain gender hierarchy or the effacement of the feminine but rather in posing a challenge to the norms of the otherwise natural heterosexuality itself. Nevertheless, sexuality has a prominent place in the politics she envisages for LGBT (lesbians, gays, bisexuals and transgenders). Thus marginalization of sexuality can seriously affect subjectivity - this takes the form of repression of feminine in Irigaray, passing off of discrimination as gender difference in MacKinnon and the reification of sexed identities in Butler. Hence though there are differences between these three feminists, discussed in earlier chapters, sexuality as a doing, that decides notions of subjectivity threads all of them together, almost entirely to the neglect of other issues including the material conditions of women's existence.

Furthermore, all three feminists discussed in this work redefine the relation between sex and gender. The body becomes a central issue in their feminist theory. The central question raised by all three feminists discussed in this dissertation has been summed up by Whitford, though in a different context: "If the sexed specificity of the female body is no longer unproblematically available as an unquestioned experiential ground, what happens to feminism?" (Whitford 1994: 19). While MacKinnon views the body as very much situated in the framework of male dominance, Irigaray tries to produce a differential agency from women's sexed body. Butler moves ahead by trying to give agency to body itself through the notion of abject bodies that form the "constitutive outside" and disrupt norms of ideal body. This also brings out a crucial distinction between Irigaray and MacKinnon on the one hand and Butler on the other. While MacKinnon discounts the distinction between sex and gender (see MacKinnon 1989b), one can continuously see throughout her work how she has retained some distinction. As discussed earlier, both Irigaray and MacKinnon challenge the social meanings assigned to biology rather than biology itself. Such a perspective gives room for articulating rights and laws specific to women's biology as in the case of reproduction. Butler however reduces everything to cultural construction. Biological sex also becomes entirely cultural in this view. Butler's view certainly has potential to challenge the norms inscribed on to body as to decide what normal and abject bodies are. However, when it comes to articulating rights, Butler fails to realize that rights specific to sex are very much a

precondition to challenging oppressive norms. For instance, right to abortion disrupts the norm that women have to be mothers, or that sexual activity should necessarily culminate in procreation. Ritualized repetition of norms falls way behind in challenging these norms, as Martha Nussbaum points out (see Chapter 5). Moreover, one should also realize how biological identity becomes pertinent for the securing of certain rights. Zillah Eisenstein makes a valid case here when she argues on the interrelation between sex and gender:

Just as biology is never devoid of its cultural definition and interpretation, so sex itself, as a biological entity, is partly defined in and through culture. And just as biological constitution is never irrelevant to the definition of individual identity, so gender is never completely distanced from biology. Biology is, in part, gendered – which is, in part, biological – which is also, in part, cultural.

(Eisenstein 1988: 2).

The intricacies exposed by MacKinnon, Irigaray and Butler provoke us to think once again on the issue of equality and difference. All three want to make hollow what Emmanuelle de Lesseps condemns as “man is the reference, woman is the difference” (Lesseps in Eisenstein 1988: 89). While Irigaray’s recourse to recover the repressed feminine in the unconscious takes us back to the very notion of feminine defined under patriarchy, Butler gives the idea of reducing sexual difference as not only one of the very many differences but as one that is untenable considering the performative nature of sex/gender in place of its givenness. Hence while Irigaray’s politics fails to challenge the social roles differentially imposed on women as a result of inequality, Butler seeks a notion of transformative potential in her notion of performativity, the very enactment of these norms in a ritualized repetitive mode so as to hopefully subvert and disrupt them at some point. As Butler herself claims, performativity may actually end up enforcing rather than subverting the norms. MacKinnon gives a more satisfactory answer to the sameness-difference dilemma when she argues that “biologically different people are to be treated the same except when their biological differences are relevant” (MacKinnon in Eisenstein 1988: 78). Pregnancy should not be a disability but something specific to the



body of the woman. Women should be entitled to everything when they are not pregnant, but when they are, this should not be used to keep them from jobs. This stands in contrast to Irigaray who wants women to do “intersubjective” and not “masculine” jobs. However, when differences should be treated as relevant or irrelevant is a perplexing question (Eisenstein 1988). MacKinnon also stands in contrast to the mimesis in Irigaray and Butler, who feel that assumption and enactment of traditional gender roles has subversive potential in the form of mimetic agency.

Another area of concern which provokes our thinking after engaging with the works of Irigaray, MacKinnon and Butler is the materiality/discursivity of body as far as women’s rights are concerned. MacKinnon and Irigaray assume that there is fixity to the body in terms of its materiality as different from the cultural meanings inscribed on it. Hence a woman should not be prevented from entering jobs like combat, manufacturing, etc. but she should be entitled to pregnancy leaves and other benefits without retrenchment from the job. At the same time, one needs to take cognizance of the normative implications of such moves pointed out by Butler. Pregnancy leave to women is a biological imperative; but this should not end up in a cultural meaning that absolves men of their responsibilities. That is, this takes us to the issue of whether men should also be given pregnancy leave in the light of breaking existing role divisions and norms that put the entire responsibility on the woman. Yet in contrast to Butler, one still needs the preservation of a position that takes into account the particularity of reproductive biology without articulating its cultural meanings, a view espoused by feminists like Sylvia Law and Betty Friedan (see Eisenstein 1988: 105). For discrimination related to pregnancy, abortion, rape, etc do reflect the unequal power relations between men and women as MacKinnon has to say; at the same time the sexed materiality of the body is indispensable to deal with issues of pregnancy discrimination and abortion. Rape presents a different case as the thesis of natural ability of men to rape women has lost its ground in feminist theory in favour of the more recent explanations that violation of women’s body should be explained as sexual assault which includes any unwanted touch, penetration of vagina by any object and so on; this challenges the earlier definition of rape as penetration by penis alone. Yet, even in rape, the materiality of women’s body is

crucial. The difference lies in the shift in what 'sexual' organs are and if they are different from other forms of assault. The sex/gender distinction however becomes pertinent in instances of pregnancy, abortion, etc. when the bodily changes can mean a lot to or add to the gender equations in a hierarchical society. For instance, for women choosing to be pregnant or to abort foetus, the concrete body has to be distinguished from its cultural meanings if we are to challenge norms that treat pregnant bodies as a third gender or as a disability.

A question now emerges whether the arguments built up by Irigaray, MacKinnon and Butler for a feminist politics with respect to rights offer a new notion of rights. In other words, what do sexuate rights, rights defined from women's point of view, and rights bereft of norms have in store for a transformative politics? A thorough analysis shows that these new notions of rights are not so commendable alternatives to the liberal notion of rights. Sexuate rights and women's view point-informed rights do challenge an abstract notion of rights. They however have their own problems. Sexuate rights, in their gynocentric fashion, positively affirm the feminine; but this does not make any marked change. For example, Irigaray proposes a positive right to motherhood instead of right to abortion. However, right to motherhood also implies that one claims this right from the state, while right to abortion too affirms a new notion of female body and sexuality grounded in the non-reductivism of female sexuality to motherhood. Similarly, right to virginity and right to affirm feminine civil identity at workplace do not really give a new notion of rights. Right to virginity can just be another phrase for sexual choice of women – when, with whom and how they want to have sex. Similarly, rights to equal wages and working hours at workplace have long been in demand by liberal and socialist feminists. Irigaray just devises positive terms to articulate already existing rights. On the other hand, the affirmation of feminine through sexuate rights eventually takes us back to rights based on premises which feminists long wanted to dismantle for their essentialist underpinnings. Irigaray's emphasis on 'intersubjective' jobs and feminine rights as privileging relations instead of property testifies to this. The eulogisation of intersubjectivity in rights and vocations only reinforces the existing gender roles in society; more importantly it forecloses several opportunities to women in the

conventionally 'male' domain. For example, women will have no opportunity to not only take part in combat but also to sit in decision-making processes pertaining to war. Rights favouring relations also reinforce the relational self of women which in turn denies to them their existence as independent and autonomous individuals. A notion of rights that critiques the emphasis on property can have a counter-impact in societies where women are still denied the right to property in terms of ownership, exchange or inheritance.

What has MacKinnon to offer through her notion of rights informed by women's experience and view point? If Irigaray uses an affirmative language, MacKinnon seems to be doing the opposite. This is however a consequence of her viewing of every sexual act as dictated by the terms and conditions of male dominance. Thus there is no *jouissance* but only sexual subordination of women in patriarchy. In contrast to Irigaray, MacKinnon therefore uses a negative language when she places her theory of rights. Thus MacKinnon is a staunch votary of right against sexual harassment, right to abortion and her unique right to refuse sex. What MacKinnon highlights is therefore an approach of rights confrontationist rather than affirmative in nature. Right to abortion and laws against sexual harassment however also enable women to establish a subjecthood that is not defined by their sexually subordinated selves. In a sense, MacKinnon is here filling in the abstract rights with the view point of women once they have realized their sexual subordination. That is, the standpoint in MacKinnon does not emerge from biology or reproductive functions; it is rather produced by uncovering the reality of sexual subordination. Hence the rights that result from such content filling embody the concerns of women with respect to their sexuality under conditions of male dominance. For example, right to refuse sex as opposed to right to free sex. The problem however lies in MacKinnon's inability to see male dominance even in the absence of right to free sex, especially in societies where women's sexuality is highly controlled. This is also a result of MacKinnon's neglect of differential experiences of women in different societies, along different axes of oppression.

Butler presents an interesting case of a fear of rights for their implication in norms. At the same time, Butler does not offer us a method or mechanism to arrive at rights bereft of

the norms she is wary of. Instead she demands persons to demand rights not on the basis of their conformity to personhood but to be conceived as person, meaning the reworking of the notion of human, person, etc. This however is nothing new, for Irigaray's and MacKinnon's, as many others' projects, too endeavour to reconceptualise existing notions of personhood which exclude women, homosexuals and others. At another level, Butler's idea of a liveable life with no norms takes us back to methodological individualism and a situation where right to life seems to be the only right that may be articulated without normative requirements. It also has the seeds of anarchy in that norms are viewed with utmost suspicion, which may pave way for a condition where anyone is free to live according to the way the person wants. Butler also pre-empts the possibility of providing rights related to women's body and sexuality, for there is no fixity to body or sexuality and in that Butler clearly points out the lack of ownership of the self over body as the latter is socially constituted – an argument that can gravely hamper the right to abortion in particular.

In short, Irigaray, MacKinnon and Butler do not conceptualise rights as mere add-ons. At the same time, they do not offer a radically new notion of rights. In fact, Butler's position, as discussed in the previous chapter, may also end up with reactionary consequences. Irigaray and MacKinnon do a content filling of abstract rights by filling them with the feminine and women's view on sexuality issues, whereas Butler laments the inability to drain out norms from rights. Nevertheless, all of them point fingers towards the inevitability of rights but also their limitations in challenging norms, which has to be done outside the legal realm. The legal realm, one should admit, is nevertheless indispensable to provide the ground to challenge norms. For example, right of women to maternity benefits is important to enable women to break the cultural codes that confine women to the domestic sphere. Though based on biology, right to pregnancy breaks the masculine cultural code that denies women a place in the public on the ground that they might get pregnant. Thus sex-based rights are crucial for challenging gender codes.

This also points toward a direction where one has to admit that sexual difference is not just biology; it is much more than biology for culture has acted upon biology to define

what women are. The capacity to procreate is important, but this should not be the all in all of female sexual selves. Irigaray, MacKinnon and Butler would agree on a common point which I borrow from Eisenstein (1988: 90): “A theory of sexuality should not be reduced to the pregnant body or its engendered form, the mother’s body. It is the capacity partially to shape and define our sexual selves, as opposed to being wholly determined by them, that makes women creative and interesting”. This capacity to shape and define our sexual selves is however almost nil in MacKinnon when she pitches herself on the seamlessness of male dominance while it is maximum in Irigaray and Butler, when they exalt mimesis and parody besides Irigaray’s *jouissance*. MacKinnon however formulates her theory of rights so as to enable women to define their sexual selves on their own terms and hence gives a better analysis of the constraints imposed on women by the gender system that defines them sexually in terms of male interests. In other words, agency in MacKinnon comes through rights written from the view point of women and not from mimesis. The reclamation of the feminine in Irigaray and the suspicion of norms in Butler do not offer adequate explanations for women’s sexual subordination and the emphasis on mimetic strategy fails to take cognizance of unequal relations of power. Yet they realize the importance of rights, openly acknowledging the oppressive nature of social relations, and this is where rights are articulated despite all scepticisms and suspicions.

Rights therefore offer a paradox; but one has to realize that rights do provide grounds for emancipation in the prevailing social order. Changing the conditions of oppression however has to be supplemented by other means as well. Yet rights are indispensable. For example, right against sexual harassment is crucial for adequately challenging social conditions and order that both confine women to the private and treat them as objects of pleasure. At the same time, the normative underpinnings in this right in the form of heterosexuality should be challenged at a different level, including the right against homosexual harassment. However, the bunking of such a right as normative and as policing sexuality will only make conditions worse, for all, regardless of their sexuality. It will certainly feed upon and legitimate the oppressor’s viewpoint in that there will be no criterion to decide the free exercise of sexuality from sexual harassment.

Last but not the least, the changes to content of rights made by Irigaray, MacKinnon and Butler have the net effect of putting the excluded as the reference point of rights. Thus the concrete practical implication of sexuate rights or right to maternity leave or the right to be conceived as persons as the core of rights may not be very different from putting women specific concerns as part of affirmative policy action; yet the language of rights to articulate women's sexuality and that too as part of the norm rather than as exceptions represents woman's elevation as the reference point. Butler moves a step ahead to discount the primacy of sexual difference thereby not making women as the reference; however, the fulcrum of politics in Irigaray, MacKinnon and Butler is to rewrite notions of laws, rights, etc by taking the excluded and the abject as the point of reference. In other words, issues of sexuality, normativity, etc are not to be dealt at the level of providing positive conditions to exercise the general rights available to all; rights need to be rearticulated to unravel their particularity defined by interests of dominant groups as well as the norms produced by power relations. However, the new notions of rights articulated by all these feminists fail to see the reactionary undertones that permeate them. Sexuate rights can enforce the conventional gender roles in the name of intersubjectivity and positive affirmation of motherhood; viewing sexual relations as entirely sexual subordination in MacKinnon deprives women not only of sexual agency but also fails to see how sexual choice is also part of liberation; while Butler fails to see how sex-based rights are crucial to challenge norms related to gender and how the denial of ownership of body would curtail women's choice to abortion, etc., especially in unequal societies.

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