

Feminist Jurisprudence

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ABSTRACT

Feminist Jurisprudence is a philosophy of law based on the political, economic and social equality of the sexes. Feminists are supporter of equal rights for women. Feminist Jurisprudence is the result of feminist movements aim to examining women's social roles and live experience. They asserted that man and woman should be treated same. They challenge traditional legal norms that are reflecting male perspectives and power structures. They recommend legal reforms that reflect women's experiences and needs.

This humanity is male and man defines women not in herself but as relative to him. She is not regarded as an autonomous being. She is defined and differentiated with reference to man and not he with reference to her. She is incidental the essential as opposed to the essential. He is the subject, he is absolute, and she is other.

INTRODUCTION

Feminist jurisprudence is the study of the construction and working of the law from prospective which foreground the implications of the law for women and women's lives. It paid attention on the ways in which the laws have been structured that deny the experiences and needs of women. Scholars, activists and theorists from around the world have helped in building feminism into what we Equation 1 know it as today within the movement the word "Feminism". But yes, it may have different meaning to different people. In the feminist women equality does not mean applauding women over men or ignoring other marginalized group's experiences the women. Present feminism is a struggle for the achievement of women's equality, dignity and freedom of choice for their lives within and outside the home.¹

WHAT IS FEMINISM -

Feminist movements are a worldwide phenomenon that began in the last 1800s. Feminism is the belief in social, economic and political rights and freedoms. For examples employment equality, fair wages, property ownership, education legal, marital and parental rights are all issues considered under this topic. It recognizes that all individuals must be treated with equal respect Feminism is an awareness of women's oppression and exploitation in society at work and within the family and conscious action by women and men to change this situation². Feminist jurisprudence observed the working of law by political and moral judgments about the merits of women and how she should be treated. It revolves around a number of questions. Two characteristics are central to it.

1. Feminist jurisprudence tends to respond to liberalism in some way because the Anglo-American legal tradition is built on it.

¹ Prof. Nomita Aggarwal, 'jurisprudence' 330(Central Law Publication, Allahabad, 2001).

² Katherine Bartlett, *feminist Legal Methods*, 837 *Hair Law Review* 1990).

2. The constructed law does not admit the needs of women and it must be changed.
Thus, in current feminist jurisprudence these two features are debatable which questions the problem of law and its practices.³

HISTORICAL BACKGROUND OF FEMINISM

During the 1800s, the women's movement emerged. It was a time of geographic expansion, growth of social reform movements, industrial developments, the right of man, universal education and individual freedom. In the field of education, some efforts have been made to extend the opportunities to women. One of the first women Orators, Frances's wright observed women as an oppressed group and argued, 'Until women assume the place in society which good sense and good feeling alike assign to them, human improvement must advance but feebly.'⁴

In the 1830s, the abolition movement about the women 's rights had its political origin. They learned that they could not function as political equal to man. They started working for abolition of women slavery. The slavery Abolition Movement continued to expand. A world Anti- Slavery Convention was held in London in 1840. Later on, July 1848, a small notice about the "women's Rights Convention" was placed in New York which later on approved. This convention can be considered as the official beginning of the women's suffrage movement. The desire of the women to gain control over their property, earnings, guardianship of the children and right to divorce etc. The western education enlightened many Indians and many social workers to purify the Hindu society.

APPROACHES TO FEMINIST PHILOSOPHY OF LAW – FEMINISM IN M ODERN JURISPRUDENCE

1. **Liberal Theory** - Liberal Feminism goes back to the 18th century. It was the age of reason. It is an individual form of feminist theory. Its constraint on women's capability to maintain their equality through their own possibilities. Mary Wollstonecraft is a popular liberal feminist who support causes of women. Her book name 'A Vindication of the Rights of women published in 1792. The fundamental idea of the work was that women are first and foremost human being. She is not only the reason of sex⁵. Liberal Feminism argue that society hold the wrong belief that women are less intellectual and physical capable then man. She is not only mean to superintends the domestic expenditure. The conservative thinking that if she out to work then will not be able to manage the children and home so she has to contribute her labor in home only. The sex role differences are accepted but with a proviso that both are considered equal.⁶ In 1960s, the Liberal Feminism flourished. They enlarged the concept of equality in civil and political spheres, the rights of poor women and women's control over their reproductive life. According to them, society will be transformed by reforms.
2. **Radical Feminism** – The second phase radical feminism started in 1970s. Kate Millett, Shalamith Firestone, Germaine Greer and Ellen Franck fort were known name of radical feminists. These feminists had replaced the struggle for civil and political spheres with the demand for destruction of patriarchy. The Propounders of radical feminism contended that the roots of subordination lie in the

³ Dr. Ajay meets Singh, Simplified Approach to jurisprudence '219(Shree Ram Law House, Chandigarh, 2019)

⁴ Quoted in Eleanor Flexner, Century of struggle; The women's Rights Movement in the United States 27(The Belknap Press of Harvard University, Cambridge Mass, 1959).

⁵ Suresh Kaushik (Ed.), Women's Oppression: Patterns and Perspectives 52(Shakti Book, New Delhi, 1985).

⁶ . John Charret, Feminism 34(Debt and Sons Ltd. London, 1982)

biological family like hierarchal sexual division of society and their roles themselves. The result of this biological differences is the male dominating power over women. Patriarchy expression of male domination and control over women in all sphere of life is wholly responsible for women's oppression. The psychological pleasure of power, desire for supremacy, fear of female sexual and reproductive capacity is the basic factor of patriarchy. Thus, patriarchy is due to the attitudes and values of males. Men oppress women because they control sexuality and productivity of women.⁷

3. **Social feminism** -Social feminism is based on female values.⁸ Its purpose is to expand the role of women beyond the private sphere and to transform the society fundamentally. According to the socialist perspective, women's law status is deep rooted in private to understand the operation of hierarchical sexual ordering of society within the class structure.⁹ Only overthrowing of the capitalist system by itself will not mean that there will be transformation of patriarchal ideology. Women is powerless due to four basic reasons – production, reproduction, sexuality and socialization of children. Family and economy should not be considered as separate system but it is essentially a interacting systems. In family and economy this unequal and hierarchical sex role operates. Hence, women's groups have to be independently organized but they cannot ignore the other struggles for oppression.
4. **Post modern** – Post Modern Feminism is a type of feminism that emerged in the late 20th century. Helen Cixous, Luce Irigaray and Julia Kristeva are the most prominent writers of the theory. It is distinctive to the other theories feminism. It offered a new mode of thinking for the development of feminism. The basic idea of this theory is that sex and gender are socially constructed identities and they have been constructed in ways that favors patriarchal power. This theory tells us that both sex and gender are socially constructed through language. It also highlights how we create a restrictive gender binary with our language. This theory believe that women can speak in a unified voice and she can be addressed universally.¹⁰
5. **Cyber Feminism** – In the late 1980s and early 1990s, the term “Cyber Feminism” arose which combine the gender and information technology. Cyber feminism simple refers to women who are using internet technology or browsing the world internet technology or browsing the world – wide web but other than for shopping purpose. Cyber feminist stressed that women all over the world have to learn how to use computers to get connected with the world but also women must be able to define the content and shape of cyberspace. This feminism generally foregrounds the relationship between cyberspace, the internet and technology. It refers to a philosophy, methodology and community. However, the emerging era of cyber feminism can benefit from different types of feminism.¹¹
6. **Cultural Feminism** – Cultural feminism has very positive and ever lasting impact on the society. It gave a fresh look on the experiences of women which were ignored in previous theories like arts, law or medicine. It emphasized to redefine the value of women in society. Cultural feminism split from radical feminism in the mid to late 1970s in response to efforts radical feminist to minimize gender different

This theory refers to a philosophy that men and women have different approaches to the world even in some cases, women's way of looking at the world is superior then men. Another approach of this theory

⁷ Ibid

12. Neera Desai and Maithreyi Krishna Raj, Women and society in India 92(Ajanta Publications, New Delhi, 1987).

⁹ . Michele Barrett, Women's Oppression Today: The Marxist / Feminist Encounter 44 (Vigor Publication London).

¹⁰ Jana Matson Everett, Women and social change in India 5 (Heritage publisher, New Delhi, 1981).

¹¹ V.K Devan , Law Relating to Offences Against Women 33 (Orient Law House, 2000).

is to debunk the ideology that women's moral development is inferior to a man. In multiple cases, the women's approach is different from man's approach. Many times, man may not appreciate her ways while judging this even though her approach proves to be better solution. Practically this is the problem with men about judging the women's ability

INDIAN PERSPECTIVE OVER FEMINISM

Feminist legal theory is concerned with 'how the law affects women'. One of the important aspects for feminists was to understand the various causes for women's subordination. Feminist theory is the extension of feminism into theoretical or philosophical grounds. The aim of the theory is to understand the nature rights and morals of inequality and focuses on gender politics. In Indian Hindu society women's status is non-controversial. There have been variations on the status of women diverging according to cultural milieu, family structure, class, caste, property rights and morals¹². Veena Dass says that in shakti form, the goddess usually stands alone and she is not surrounded with a higher male principle. The principal of power finds expression in the goddess who represent 'shakti' who in actual came to the help of man and the gods in periods of cosmic darkness by killing the demon who threatens the cosmic order.¹³

During the Vedic period, freedom and equality are enjoyed by women. The real fame glory can be seen only in this period. Women and men practiced same in all sphere of life. They studied in gurukuls and enjoyed equality in learning the Vedas. Even in higher societies girls were allowed to undergo upanayana rite. Great women like Gargi, Apala, Lopamudra, Visvara, Indrani, and Yami were accomplished in art, music, dance and war. In the Rigveda, the wife had been blessed to live as a queen in the house of her husband. In the Mahabharata, the wife had been rooted of dharma, prosperity and enjoyment. No man was allowed to perform religious functions without his wife. A widow can remarry or could undertake recourse to leverage. The dowry system was prevalent only in rich and royal families. There was no distinction between a boy and a girl.

In the post vedic period, Manu put on restrictions on women's rights and privileges which suffered a setback in her status. This decline dates back to the period of the Manu smriti and increasing the authority of man. The birth of a daughter was not a source of anxiety but it became the source of disaster for the father. Education which was accepted norm for women, was neglected and later on girls were totally denied access to education. The marriageable age of girls was lowered to 9 or 10 years. However, girls in ruling class did receive some training in military, administration and fine arts. But these were exceptions. Despite the overall social and cultural subordination of women, it is surprising to find that law recognized the right to property which was known as stridhana. Manu defined stridhana as that which was given to her at the time of marriage from her brother, mother, father or husband.

In Medieval period, the position of women was further degraded. Sudden halt was seen in their training and education. Because of illiteracy and lower of status, they were treated as chattels. Social evils like sati, child marriage, female infanticide arose. The evil of dowry had become deep rooted, especially in Rajasthan. Women suffered great disabilities like polygamy and devadasi.¹⁴

¹² Romila Thapar, 'Looking Back in History' in Devika Jain, Indian Woman (publication Division, Ministry of Information and Broadcasting, Government of India, 1975) 6.

⁸ Law relating to women and children

¹⁴ V.K. Dewan, Law Relating to Offences Against Women 33(Orient Law House, 2000).

During the British Period, the Hindu society changed drastically due to education and western impact on the socio-cultural life of India. Raja Ram Mohan Rai, Ishwar Chandra Vidyasagar, Lokhitwadi, Aurobindo and others from all parts of the country raised their voice against the unjust practices. Gandhiji also criticized the customs of child marriage, widow remarriage and temple prostitution. The National movement generated strength and confidence among women which helped them to organize and fight for their cause. In 1927, the formation of the All-India Women's Conference was a crucial event in women's march towards equality.¹⁵

After independence, the most important event was the drafting of the constitution of this country which enshrined the principles of equality, liberty and social justice. The framers of the constitution were aware of the sociological problem of the country. They realized that equality was important for the development of the country. In order to eliminate inequality and to provide opportunities for the exercise of human rights, it was need to promote education and economic interest of women. It was the object of the state to protect women from all types of exploitation and provide social justice. All these ideals were enshrined in the preamble of the constitution. The preamble of the constitution guaranteed to secure to all its citizens justice – social, economic and political; liberty of thought, expression, belief, faith and worship; equality of status and of opportunity; promote fraternity among all individual and the unity and integrity of the nation. To attain these objects, the constitution guarantees certain fundamental rights and freedom; freedom of speech and expression, protection of life and personal liberty. Indian women are beneficiary of these rights in the same manner as men.

Article 14 of the constitution of India must be interpreted in the light of gender equality states that all person is equal in the eyes of law and they are also entitled to enjoy special protection of laws within the territorial jurisdiction of India. Men and women should be treated equally in similar circumstances. Article 15 also protect the women from any kind of discrimination. Article 15 clause 3 gives the power to the state to make provision for women and children. The core ideology behind the provision is to provide women a platform of equality. However special provision for women means that no less favorable treatment is to be given to women on gender-based criterion. The society in which always favor was given to men over women these Articles proved as boon. In Govt. of **A. P v.s P.B.Vijayakumar** ¹⁶ the court gave a new dimension to Article 15 (3) was broad enough to cover any special provision for women including reservation in jobs. Historically and otherwise women are weaker section of our society for whose upliftment Article 15(3) is made. So it should be interpreted liberally.

In **Indra Sawhney v.s Union of India** ¹⁷ the court upheld an order of Orissa government reserving 30 % quota for women in the allotment of 24 hrs. medical stores as part of self-employment scheme. Similarly, reservation of 50 % seats for women teachers in the selection of primary school teachers in u.p was upheld. In **Joseph Shine v. Union of India**, a Constitutional bench of the supreme court declared section 498 of IPC as unconstitutional on the ground that it violates Article 21 of the Constitution of India. The court held that Section 497 is violation of a women's right to dignity which is a part of the right to life. Section 497 violate women's right to dignity which is a part of the right to life. Section 497 made adultery a criminal offence. The court observed that any provision of law affecting individual dignity and equality of women invites wrath of the constitution. It's time to say that husband is not the master of his wife and wife is not the property of her husband.

¹⁵ Neera Desai and Maithreyi Krishna Raj, Women and society in India 38-40 (Ajanta Publications, New Delhi, 1987).

¹⁶ AIR(1995) 4 SCC 520.

¹⁷ AIR(1993) SC 477.

DIRECTIVE PRINCIPLES OF STATE POLICY

The Directive Principles contained in part IV shall not be enforceable by any court but the principles therein laid down are nevertheless fundamental in the governance in making law. It is the duty of the state to apply these principles in making laws.

Article 39 (a) and 39(d) of the directive principles of state policy also takes about the gender equality. Article 39(a) states that equal right to men and women for an adequate means of livelihood. Article 39(d) support equal pay for equal work for both men and women. Generally, it has been applied to enforce equality of pay.

In **Randhir Singh v.s Union of India**¹⁸ invalidating the difference of pay scales of drivers in Delhi police force and Delhi Administration and Central Government, the court relied on Article 39(d). Not only this it has also relied on it to invalidate the difference of permanent employees and temporary employees or even regular employees or casual employees.

In **Supreme Court Employees Welfare Assn. v.s Union of India**, held that Article 39(d) draws its support from Article 14 and 16 and whatever may be justified as reasonable classification under those provisions can not be shot down under Article 39(d).

Article 42 of the constitution of India requires that the state to make provisions of work and for maternity relief. Article 46 requires the state to promote with special care the education and economic interest of the weaker sections of the citizens. The basic object is to strive towards a gender just society. Although, these principles are not strictly justifiable, the supreme court of India through its judicial activism and issued directions to the state to implement them.

FUNDAMENTAL DUTIES

Part 4th A of the constitution was inserted by 42nd Amendment Act, 1976 which imposed a duty on everyone to renounce practices which are derogatory to the dignity of women has been elevated to the status of fundamental duty by Article 51- A. There are some enactments which owe their existence from the part 4th A. Legislature enacted the large volume of enactments and many of the legislations were enacted in colonial period as well as post-independence period which are as follow –

The Abolition of Sati Act, 1829.

The Special Marriage Act, 1954.

The Hindu Marriage Act, 1955.

The Suppression of Immoral Traffic in Women and Girls Act, 1956.

The Dowry Prohibition Act, 1961.

The Equal Remuneration Act, 1961.

The Maternity Benefit Act, 1961.

The Parental Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994.

The Immoral Traffic Prevention Act, 1956.

The Immoral Traffic Prevention Act, 1956

The Maternity Benefit Act, 1961.

The Medical Termination of Pregnancy Act, 1971.

The Pre Conception and Pre Natal Diagnostic Techniques Act, 1994.

The Sexual Harassment of Women at Workplaces Act, 2013.

¹⁸ AIR (1982) 1 SCC 618.

CONCLUSION

In every society from ages women have been ill-treated and India is not an exception. She is treated as second class citizens. Women are deprived of economic resources and dependent on men for their living. Women's work is always confined to domestic sphere. She is a full-time household worker with no holiday and no pay. In Modern times, those women who are working outside they have to shoulder the double responsibility. Throughout the history, men and women have been regarded not only as distinct but also unequal in social status and power. Therefore, the need for Feminist Jurisprudence felt among the societies so that law cannot be patriarchal any more. To achieve the aim feminist stood up, questioned the male insight laws. Despite the progress, the war on equality, discrimination and violence is still continue. The road to achievement is long and women have to continue their fight.