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Legal Theory from the Feminist Perspective

NAEESHA HALAI¹

ABSTRACT

Since time immemorial, 'equality' and 'freedom' evaded women in comparison to men. Women always enjoyed a secondary status and were assigned a purely functional role in societies across the world. Over the period women have been accorded unequal status that is offensive to human dignity. This has steered the feminist movement. Undoubtedly, it's is the law's neutrality as the very mechanism that perpetuates injustices against woman. This paper focusses on the struggles witnessed by women to improve their position and the kind of institutions and laws that would be necessary to redress the imbalance against woman in society.

Keywords: *Exploitation, Gender inequality, Jurisprudence, Patriarchal, Reforms.*

I. WHAT IS FEMINIST JURISPRUDENCE

Feminist Jurisprudence encompasses the study of different aspects of women's life and the themes that have evolved within feminist thought. It is the law's neutrality that perpetuates injustices against woman. Feminists opine that attempts to challenge the existing legal status is the need of the hour. All feminists share the belief that all women are oppressed or disadvantaged in comparison with men and that their oppression is in some way illegal and unjustifiable.

It's high time we need to focus on what kind of institutions and laws would be necessary to redress the imbalance against woman in society. They opine that we must ponder over the norms deep rooted in our legal framework

Feminism as a movement aims at gender equality. It intends to change social, political and economic rights such as equal wage and the right to medical and educational opportunities, and equal political rights. In India some of the prevalent issues which are to be curbed by feminism are issues related to employment, globalization, female infanticide, dowry deaths, education, harassment at work places, forced marriages etc. Despite its efforts, feminism in India is severely criticized. It has been considered a sham. Critics believe that it caters to the needs and expectations of the privileged women and the aspirations of lower caste women are neglected.

¹ Author is an International Accredited Civil-Commercial Mediator from ADR-ODR International, London, UK.

Feminist jurisprudence stands for the plethora of feminist theories. It naturally extends to law and justice. Law related strategies have played an important role in the campaigns of women's organizations to achieve greater equality and social justice.

Feminist jurisprudence points out that women are still perceived to be home makers, child bearers and care takers. They have to give up their careers to pursue motherhood. All our social structures are under the influence of patriarchy and a lot needs to be done to improve their lot. Reforms will have to be brought about to correct gender injustice, exploitation, or restriction.

II. FEMINIST THEORIES

Feminist theory is one of the major contemporary sociological theories, which analyzes the status of women vis-a-vis men in society. The intention behind this is to utilize that knowledge to improve women's lives. Feminist theorists also question as to why factors such as religion, race, caste, colour of the skin, ethnicity, family background, choice of career as well as partner affects women in their day to day lives.

Most of the decisions that they take in their lives centre around the questions like 'what would society think or say about me?' For instance, a small town girl from India opting for a glamorous profession is presumed to be of loose moral character.

Yet another example is of Khap Panchayat that unfortunately enjoys legal sanction. These panchayats often take decisions offending the dignity of women. They even approve of honour killings and I'll treat the Dalit women. Khap Panchayats of Haryana have given diktat that women should not possess mobiles till the age of 30 as they are vulnerable species and could fall prey to vices. Isn't that ridiculous? While in India, women are still trying to break the glass ceilings, women in the US and Europe are gaining strong foothold and voicing their concerns.

Renowned sociologist Patricia Hill Collins is known throughout the field for developing feminist theory based on extensive research.

Feminist theory is most concerned with giving a voice to women and projecting their achievements in the society. There are three main types of feminist theories that show the gender disparities. There are basically three major schools of thought within feminist jurisprudence.

(A) Liberal feminism:

Emphasises that women are rational creatures. They are no less than men in competence and intellect. They should be given equal opportunities in all spheres of life. Their decisions should not be influenced by societal factors. They should be able to make their own choices without

fear.

Liberal feminism dates back to the 18th century wherein individualism is given more importance. A woman is an individual, she can have her own choices, preferences, likes, dislikes, reservations and so on. She cannot be compelled to do things against her own wishes. If she is deprived of her fundamental rights or her identity is jeopardize she can move the court. Society has been writing her off as incompetent, less intelligent, physically weak, emotional fool and so on.

It tends to discriminate against women in the association, global forums, work places, conferences. Her success cannot be digested by the patriarchs. They often try to block her entry in the public world. So, women will have to fight to prove her mettle will have to strive for sexual equality through. political and legal reform.

Liberal feminists opine that liberals have faith universal human rights so obviously they demand that women must be treated at par with men. They do not want law makers to be blind to gender sensitive issues.

(B) Cultural feminism

Celebrates the differences that exist between men and women. This group of thinkers believe that women are relationship oriented whereas men are more logical creatures. To put it in simple terms, women think from heart whereas men think from head.

Cultural feminism reverses the focus of liberal feminism. it is concerned with women differentiation from men. It argues that important task for feminism is not to mould women to suit the patriarchal norms. They need not meet the expectations of the male dominated society. The only thing is to change institutions who view women to be possessing motherly virtues, of love, compassion and tolerance. Cultural feminism advocates independence and institution building. The goal of this school is to give equal recognition to women's moral voice of caring and communal values. Let us study feminism from the point of view of religion.

1. Hindu Feminism

Hindu religion has been successful to some extent in establishing gender equality, reform laws and family law. It cannot be considered a win-win situation as women are still exploited be it the widows at Varanasi or the Devdasis. Still they are denied entry to the sanctum Sam Toruń of religious shrines. Feminism is not merely fight for women, it's a fight for equality and dignity. It has been seen that women from a higher caste seen to benefit more from feminism than the lower caste women. Increasing cases of Dalit girls being humiliated indicates the

miserable plight of such women.

2. Islamic Feminism

An event that took the nation by storm was the Shah Bano case. It can be termed as a win for feminism in the historical annals. Shah Bano, an old Muslim woman, was divorced by her husband. According to the Sharia, her husband was not supposed to pay her monthly compensation. Shah Bano appealed in the Supreme Court, which eventually ruled in her favor. This invited the ire of the Muslim clerics who denounced the judgments and suggested that there was undue political interference in their religion and that the Muslim Sharia law is not amendable by non-believers of the religion.

3. Radical Feminism

Radical feminism focuses on inequality. It states that men have dominated women over the years. Ultimately, gender is a question of power. Radical feminists want the approach of maleness as reference point to be abandoned. They argue that sexual equality must be established on the premise of woman's difference from man.

Termed as dominant feminism, it does not see the issue of gender equality as an issue of differentiation and equality but rather as issues of domination of women by men. Radical feminism calls for a social reordering in which male supremacy is eliminated in all public domains. Carole Pateman rightly says that, *“traditional jurisprudence treats citizenship as patriarchal constructed in the masculine image”*.

“The story of the original contract shows how sexual difference gives rise to a patriarchal division of labour, not only in the conjugal home between the (house) wife and her husband, but in the workplaces of civil society.”

Radical feminists view society as fundamentally a patriarchy in which men suppress women. They seek to liberate women from the shackles of customs and traditions—the chains that have enslaved women over the years. Radical feminists are opposed to women being objectified or subjected to violence. This includes opposing the idea of women being treated as sex objects. It also implies creating public awareness about such issues as rape and violence against women, and challenging gender stereotypes.

Radical feminists opine that women have been systematically oppressed and marginalized in the male dominated society. They further assert that men have benefitted from the oppression of women. Patriarchal theory is not based on the belief that all men always benefit from the oppression of all women. Radical feminists believe that men use social systems and other

methods of control to suppress women.

Radical feminists aim to abolish patriarchy by challenging the prevalent social norms and institutions in India. They have retaliated strongly when the heads of women were shaven, when they were paraded naked in front of villagers, when they were put in tandoor pots. Patriarchy is the source of women's disempowerment.

III. HISTORICAL BACKGROUND OF FEMINISM IN INDIA

In India, basically there were three phases of feminism explained as follows:

1850-1915

Colonialism brought concepts of democracy, equality, liberty and social justice. The introspection of discriminatory practices brought about social reform movements related to caste and gender inequalities. The first phase was able to eradicate practices such as Sati and remarriage of widows, forbid child marriage, reduce illiteracy etc. Feminist writers expressed their grievances and attacked the male dominated social system and caste system. Tarabai Shinde wrote '*Stri Purush Tulana*' in 1882. In 1888, the book written by Pandita Ramabai was published entitled '*The High Caste Hindu Woman*' that caught the attention of one and all.

1915-1947

The second stage nationalism became the main cause. Gandhi expanded Indian women's public activities by encouraging them to participate in the salt satyagraha and other mass movements against the British Raj. He appreciated the caring nature of women and carved a niche for those in the public domain Also, national level organizations such as All India Women Conference (AIWC) and the National Federation of Indian Women (NFIW) came up during this phase.

Post-Independence

Prior to independence the women in India did not question their status. They did not question the gender specific roles. The state of Kerala improved the status of women by imparting them education and giving them property rights. At the national level, women are now demanding 33 percent reservation in political field but it's falling on deaf ears. Currently, the percentage of women Parliamentarians is 14.4 percent, a record high in Indian history.

IV. FEMINISM AT WORK IN INDIA

Our Constitution has provided us with certain rights and provisions to ensure gender equality. Article 12, Article 14 and Article 15 reflects the ponderings of our Constitution-makers who wanted to prevent gender discrimination.

Article 14 in states that all persons including women are equal in the eyes of the law and they are also entitled to enjoy equal protection of laws within the territorial jurisdiction of India. Within the article 15, clause 3 empowers the State to make special provision for women so that the concept of equal protection of law remains stable in the cases where same treatment would have received but was denied. Article 39(a) and Article 39(d) of the Directive principle of state policy also talks about gender equality.

Acts passed for protecting the Dignity of women:

- i. The Immoral Traffic (Prevention) Act, 1956
- ii. The Dowry Prohibition Act, 1961
- iii. The Indecent Representation of Women (Prohibition) Act, 1986
- iv. The Commission of Sati (Prevention) Act, 1987 (3 of 1988)
- v. Protection of Women from Domestic Violence Act, 2005

These Acts are adequate proof that feminism exists in India and that women are fighting tooth and nail to get their demands accepted.

V. CONCLUSION

Women and men are endowed with the same abilities: Women, can get cushy jobs, demand equal pay for equal work, can become law makers, administer and vote responsibly. They can become catalyst for change. They can start campaigns like the '*#Me too campaign*' and demand answers from politicians for environmental neglect. They can rub shoulders with men. The law must accordingly not discriminate on the basis of a false claim of difference and must also forbid discrimination against women in all walks of life.

Undoubtedly, women and men are the same in their needs: Women need protection against violence, meaningful work, the freedom to develop their individual life plans. Even men have similar wants. The law should therefore extend to women protection against violence and gender specific harms and autonomy in making reproductive and other social choices.

VI. BIBLIOGRAPHY

1. Gangoli (2007), pages 88–89
2. Amity International Journal of Juridical Sciences (Vol. 5, 2019) Page 33
3. The Sexual Contract, Pateman, pg.340 Hilaire Barnett
4. Constitution Itself Is Feminist Justice Chandrachud on Transformative Constitution & Feminism, Live Law www.livelaw.in/constitution-itself-is-feminist-justice-chandrachud-on-transformative-constitution-feminism/
5. The Bridge: Critical Theory: Feminist Legal Theories (harvard.edu)
6. FEMINIST LEGAL METHODS AND THEORY- A LEGAL REVIEW by M. Tony Mathew, Ms. Jayapreethi Manoharan; International Journal of Pure and Applied Mathematics, Volume 120 No. 5 2018, 4111-4121 <https://www.acadpubl.eu/hub/2018-120-5/4/343.pdf>.
