**UNFOLDING THE CONCEPT OF FEMINIST JURISPRUDENCE**

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**ABSTRACT**

Feminist Jurisprudence which is also termed as Feminist Legal Theory is based on a belief that if the women of the society are considered to be inferior to men, then the law of the land has played primary and a fundamental role. It is the lack of neutrality in the mechanism of law making which has led to the injustices against the women and there is a need of reconstruction in the existing laws, so that the concept of gender neutrality can flourish in the society.

**INTRODUCTION**

Feminism is a range of committed inquiry and activity dedicated to (*i*) understand the extent of women's subordination, (*ii*) know the reasons therefore, and (*iii*) plan and interpret means of change for their better life.[[1]](#footnote-2) It is a set of movements seeking gender equality, a movement to change social, political and economic rights such as equal wage and the right to access to health and education, and equal political rights.[[2]](#footnote-3) In Feminist Theory: from margin to center, feminist theorist Bell Hooks proposed a new definition of Feminism, one that does not simply fight for the equality of women and men(of the same class) but of a movement that fights to end sexist oppression and exploitation without neglecting other forms of oppression such as racism, classism, imperialism and others. Feminism is not simply the struggle to end male chauvinism or a movement to ensure that women have equal rights with men; it is a commitment to eradicating the ideology of domination in the society.[[3]](#footnote-4)

**FEMINIST LEGAL THEORY**

Feminist legal theory comes in many varieties, with some overlap. But all the theories share two things- first an observation, second an aspiration. First, feminists recognize that the world has been shaped by the men, who for this reason possess larger shares of power and privilege. All feminist legal scholars emphasize the rather obvious (but unspoken) point that nearly all public law in the history of existing civilization were written by men. Second, all feminists believe that women and men should have political, social, legal and economic equality. But while feminists agree on the goal of equality, they disagree about its meaning and about how to achieve it.[[4]](#footnote-5)

Feminist Jurisprudence points out that what is neutral or natural for one person is a distortion for another person. Pregnancy, child rearing and other caregiving activities are still treated in the workplace as peculiar occurrences, rather than what they are: commonplace functions that serve the larger good. This reflects the reality that the workplace was designed largely from a traditional male point of view.[[5]](#footnote-6)

**Historical Evolution of Feminist Jurisprudence**

In India, the feminist movement was actually started by the men unlike the other western countries. It was the efforts of the men which led to the abolition of the Sati system in the country with the enactment of The Commission of (Sati Prevention) Act, 1987. It was done to uplift the status of women in the society so that they can also join forces with others in the struggle for freedom. Even after the independence, although Constitution of India did no discrimination on the basis of sex, colour and creed and guaranteed equality, there was no state of commotion among the women for the equality as the roles, functions, aims and desire of women were different at that time. But now with the increasing globalization and changing time, the concept of feminism has taken a new shape in Indian Society. Basically concept of Feminism has been divided in the three phases which are explained as follows -:

**First Phase: 1850-1915**

With the venture of colonialism into modernity the concepts of democracy, equality and individual rights were brought. The rise of the concept of nationalism and introspection of discriminatory practices brought about social reform movements related to caste and gender relations. The first phase was able to uproot practices such as Sati and remarriage of widows, forbid child marriage, reduce illiteracy etc.

However, efforts for improving the status of women in Indian society were somewhat thwarted by the late nineteenth century, as nationalist movements emerged in India. These movements resisted colonial interventions in gender relations’ particularly in the areas of family relations. In the mid to late nineteenth century, there was a national form of resistance to any colonial efforts made to modernize the Hindu family.[[6]](#footnote-7)

**Second Phase: 1915-1947**

The second stage of nationalism became the pre-eminent cause. Gandhi legitimized and expanded Indian women’s public activities by initiating them into the nonviolent civil disobedience movement against the British Raj. He exalted their feminine roles of caring, self-abnegation, sacrifice and tolerance; and carved a niche for those in the public arena. Also, national level organizations such as All India Women Conference (AIWC) and the National Federation of India Women (NFIC) came up in the second phase. These organizations aimed at issues relating to women’s political rights, leadership and roles in parties etc[[7]](#footnote-8). Also participation of women in the struggle for freedom made them realize their efforts and role in the independence of India which resulted in the introduction of civic rights of women.

The second wave feminism saw cultural and political inequalities as inextricably linked. The movement encouraged women to understand aspects of their own personal lives as deeply politicized, and reflective of a sexiest structure of power. If first wave feminism focused upon absolute rights such as suffrage, second-wave feminism was largely concerned with other issues of equality, such as the end to discrimination.[[8]](#footnote-9)

**THIRD PHASE: Post Independence**

Prior to Independence, most of the feminist had accepted the sexual divide in work force. But after India got Independence feminist started redefining the extent to with women could participate in the workforce. Various shifts in position with regards to policy approach to women were seen in that period. There has been a shift from welfare to development to integrating women in development, of the earlier decades to empowerment in the present. India has also ratified various international conventions and human rights instruments committing to secure equal rights of women. Key among them is the ratification of the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) in 1993[[9]](#footnote-10). The 73rd and 74th amendments of 1993 to Indian constitution, providing for reservation of seats for women in panchayats and municipalities, are a giant stride in the empowerment of women with 33% reservation for women in rural and urban local bodies. In 2001, the department of Women and Child Development in the Ministry of Human Resource Development prepared a National Policy for the Empowerment of Women with the goal to bring the advancement, development and empowerment of women.

**Researching sensitive issues from a feminist perspective**

Because the ‘personal is political’, and many of the issues of most critical importance to women concern issues that have historically been seen as private, and/or sources of stigma or shame, a key focus of feminist researchers is to research these topics and air them, asserting the importance of exposing them to public debate. Research into violence against women (VAWG) and gender-based violence (GBV) is an obvious example of naming and exploring the dimensions of a social issue affecting all women, whether or not they directly experience this violence themselves; knowledge that it is a possibility shapes women’s and girls’ lives in countless ways. The ramifications of researching VAWG in a fragile, conflict-affected context is discussed in this issue by Dashakti Reddy et al, who focus particularly on the impact on local researchers, as described in the last section.

Mirna Guha researches the lives of women formerly and currently involved in sex work in Kolkata, India. Mirna Guha came from a development practitioner perspective to her academic research. She considers the ways in which insideroutsider distinctions are often blurred, and the multiple, overlapping positionalities that we all occupy as researchers, a theme that cuts across all the papers in this issue. Her article begins with a discussion of the exclusion of sex workers from the mainstream feminist movement, and their marginalization from policy discussions on VAWG. Perspectives on women selling sex are, as she says, ‘sharply divided’ in feminist movements from Anglo-American traditions – and many feminists with that heritage are currently working in international development. Some radical feminists see the act of a man purchasing the use of a woman’s body as a patriarchal act of dominance: a form of violence against women. For other feminists, sex work is just that: work undertaken by women whose right to choose to do this should not be in question. In international development, policies and programming reflect both these positions.

The nuanced accounts of women sex workers are critical to better inform those with responsibility and power to determine policies around sex work. But it is a challenge to present these in ways that allow the diversity and range of views of different individuals and groups to cut through. One response is to consciously choose research methods which allow for sustained narrative voice from participants, who can then tell their stories in their own words. For Mirna Guha, using life histories within an open-ended ethnographic research approach allowed the possibility:

 … to move away from standard topics associated with sex work. It also allows women in sex work to share their accounts of the dynamism and fluidity within their lives, within and before/after sex work.Spending time with women, ‘ethnographically “hanging out” preceded more formal interviews, to build trust and rapport with them. Women expressed surprise that the conversations and interviews touched on subjects and came from angles that they did not expect from researchers. Many communities in the global South are well-acquainted with social science researchers scrutinizing their lives, but many of the topics that feminists ask about – sex, violence, the drudgery of unpaid care work and women’s thoughts on marriage and other topics – are still unexpected topics to be expected to discuss with anyone beyond close friends and neighbors. Feminist principles of equality and reciprocity informed Mirna Guha’s decision to make the process of research questioning a two-way one. The women involved in her research quizzed her on issues of her own personal life. Teasing, cracking jokes, and smoking together created a relationship that subverted the power dynamics of traditional interviewing.

Asking questions about sensitive subjects is just one aspect of deciding how to produce research that minimizes harm to respondents. Crucially, Mirna Guha also reminds us of the need to sometimes be silent as researchers, and also the importance of establishing boundaries that ensure both our participants’ and our own wellbeing. A related issue is around the use of pseudonyms and anonymity in the writing up of research. In her article, Rebecca Gordon compares the advice given to her by the authorities at her university with her own thinking about the question of anonym sing the views of women she interviewed in Bihar, India. ‘Why would I want to be anonymous?’ asked one participant, wanting to have her words included together with her name. Her views would then be clearly her own.

As Rebecca Gordon says, feminist researchers anxious not to appropriate knowledge may well feel that giving credit to research participants by naming them is a positive thing. What emerges here is the acknowledgement that the ethical standards to which we must strictly adhere if we are to have projects ‘approved’ by our institutions are not always appropriate in the field. Instead, issues are best resolved by paying adequate attention to the views of women involved in the research, and giving them decision-making power, along with sufficient information for them to be fully informed about the consequences of these decisions. As Elsa Oliveira observes of her own project's process:

It is about making sure that participants have a say in the ways they are represented, and how the research unfolds, but also at the same time, it is about recognizing that it may not be equitable to assume that participants have the same investment or interest in research and/or its significance and value.

**Understanding Feminism by way of Religion**

Indian Feminism is a cluster of movements which are made from time to time to rediscover and establish the political, social, economic rights and equal opportunities for the women of India. Feminism has also been challenged by various minority groups for not addressing the issues of women belonging to the minority population. India being a country with dynamic culture, there is some difference in the concept of feminism on the basis of religion as well, which can be understood as following:

**Hindu Feminism**

In the Hindu Religion, there has been commendable advancement in comparison to other religions in India but there is still a scope for growth in gender equality reform laws and family laws. Although, it hasn’t yet gained that success which is expected in terms of feminism but it is an ongoing process. In a recent judgement of **Vineeta Sharma V. Rakesh Sharma &Ors**[[10]](#footnote-11) , the question concerning the interpretation of section 6 of the Hindu Succession Act, 1956 that whether it was necessary for the father of a daughter to be alive in 2005(when the amendment came in) for the daughter to be able to successfully seek her share and assert her right as a coparcener, was referred to a SC Bench in view of the conflicting verdicts in previous judgement of this court in Prakash v. Phulavati[[11]](#footnote-12) and Danamma @ SumanSurpur v. Amar[[12]](#footnote-13)

It has been held that daughters born before or after the amendment have the same rights and liabilities as that of a son. Moreover, rights in coparcenary are by birth, so it is not mandatory that father should be living as on 9/9/2005, as she has not been conferred the rights of a coparcener by obstructed heritage. The court further observed that uncertainty in the right of share in a Mitakshara coparcenary is inherited in its underlying principles, and there is no question of upturning it when the daughter is treated like a son and is given the right by birth. It is not to resurrect the past, but to recognize an antecedent event for conferral of rights, prospectively.[[13]](#footnote-14)

It is indeed one of the best verdict for gaining gender equality and gender justice. However, it took almost 15 years since the last amendment and many women who were supposed to be entitled for their share in the coparcenary property have been deprived of it. While the end effect of this judgement is no doubt an excellent development and progress in the right direction, it also strengthens the financial position of the women in India.

**Islamic Feminism**

Many Muslim women have been pointing out the points in Quran and Sunna which are highly patriarchal. Some reformists also talk about interpretation and construction of the Quran in a female friendly way. All India Muslim Women’s Personal Law Board also claims that Muslim Personal Law has failed to read the true intention of Quran. Constitutional laws in India have taken more initiative to improve gender equality than Muslim Personal Law. The political arena for Muslims in India are overwhelmingly male dominated and the Muslim society in India is heavily patriarchal.**[[14]](#footnote-15)** However, starting from the Shah Bano Begum case[[15]](#footnote-16), in which right to maintenance u/s 125 CrPC was given to Muslim women to triple Talaq Case[[16]](#footnote-17), in which the practice of talaq-e-biddat was declared unconstitutional by the majority of 3:2, Muslim women’s legal rights are well preserved but still there is a long way to go.

In one of the recent case of, **Rana Nahid @ Reshma @ Sana &Anr V. SahidulHaqChisti[[17]](#footnote-18)**, the question for consideration was whether the Family Court has jurisdiction to try application filed by Muslim Divorced woman for maintenance under section 3 of Muslim Women (Protection of Rights on Divorce) Act, 1986. In this case a two Judge Bench of SC, after hearing the proceedings gave a split view. Where Justice R Banumathi, was of the view that although section 5 of the 1986 Act gives an option to the couple to be governed under Section 125 of CrPC, which they could exercise jointly at the first hearing only, but if the wife files the application for maintenance beyond the iddat period under Section 3 read with Section 4 of the 1986 Act then it has to filed before the competent magistrate having jurisdiction. Family court has no jurisdiction to entertain the petition under section 3 and 4 of the 1986 Act. On the other hand, Justice Indira Banerjee was of the view that there is no reason to single out Muslim wives to deny them access to the Family Courts and it was never the intention of the 1986 Act to deprive divorced Muslim women from the litigant friendly procedures of the Family Court Act and moreover when the Muslim Women Protection Act was enacted, there was no existence of Family Courts in India.

Because of the difference in opinion, this case will be placed in front of the higher bench. If the Judgement comes in the favor of the Muslim Divorced Women then it will be a great accomplishment for the Muslim Divorced Women and their Right to equality envisaged under Article 14 will be restored.

**Conclusion**

Feminist Jurisprudence is a fight against traditional law which is mostly patriarchal in nature. One wonders what changes could have possibly occurred had the feminine view was taken in framing of laws.Earlier, women did not question their roles in society but with the increase in influence by women in various areas, the revolution has given food for thought, for women to question the ways and methods of society and why they are the way they are, and to find out a possibility of their change. In India some of the issues which need our attention are issues related to female foeticide, domestic violence, maternity leaves, sexual harassment, sexual violence, equal pay for equal work etc.Though a lot still needs to be achieved and there are various impediments in making this reality available to a large section of women, the women’s movement has brought women’s issues center stage and made them more visible, contributing immensely to women’s struggle for equality.

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