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Feminism and Feminist Jurisprudence in India

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ABSTRACT

Feminist jurisprudence include various theories , ideologies and philosophies by various scholars from various places. Even though the development and evolution of feminist jurisprudence may be different around the world but the aim is to bring gender justice, which is same even in India. Feminism in India is a set of movements aimed at defining, establishing, and defending equal political, economic, and social rights and equal opportunities for Indian women. In one word it can be said as a pursuit of women rights within the Indian society. The modern feminism movements in India can be divided into three main time period early stage of independence ,the stage of nationalism and post-independence. And during each time period drastic changes and revolution has happened in the field of feminist jurisprudence in India, the paper focuses on each of the time period giving critical evaluation. One of the foundation of India's cultural heritage and diversity is due to the different religious practices so it is evident that even in the matters of jurisprudence religion played a major role in its change as each religion views women in different perspectives. There is also a critical aspect were people criticize that Indian feministic movement has always been in support of the privileged class and not for the deprived classes. It is a matter of fact that the feminist movement in India has always depended on cast, religion, place of birth etc. The paper also focuses on incorporating various issues and problems faced by women in breaking the shackles or stereotypes in the society. Even the framers of our constitution made sure that those women who were deprived of their rights and treated unfairly during the post-independence period gets an equal opportunity and freedom in an independent India. The recent legislature and judgment like scraping of 377 of IPC, Entry of women in shabrimala has won the confidence of many feminist in India who believe that our country is in transitional stage were India is changing from a patriarch ally dominant culture to a gender neutral country

I. INTRODUCTION

The Feminism in general means a set of movement which is aimed at defining,

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establishing ,defending equal political, economic and social rights and equal opportunity to women. All over the world women have been deprived of their rights and opportunities in many fields by labelling them as a weaker section . Feminist jurisprudence argues that law must provide a platform where equality prevails rather than control or domination, feminist jurisprudence can be said as a fight against this injustice which is happening all over the world.

India's attitude towards women has been a mixed bag of fortunes. In each stage there were opportunities which came along with restrictions and difficulties, this was mainly due to the diverse nature of the country. Even at this present time women in our country faces problems in field like employment, globalization, education, sex-select abortion etc. Despite all these Indian women have made great progress in almost all fields, this progress was due to the development of various fields both legal and social system along with feminist jurisprudence and other schools which has also played a major role .

II. FEMINIST JURISPRUDENCE

Feminist Jurisprudence includes the study of different strands of feminist theory and the themes that have emerged and developed within feminist thoughts, as well as the application of theory to issues that interest members of class³. It is the law's neutrality as the very mechanism that perpetuates injustices against women, the advocates of this theory tries to challenge the existing legal status by looking into what kind of institution and legal system will help the redress and imbalance in the society for women. The foundation of the feminist legal theory was laid by women who challenged the laws that were in place to keep women in their respective places in the home. A driving force of this new movement was the need for women to start becoming financially independent⁴.

In a narrow sense feminist jurisprudence can be mainly divided into two ,they explain how the legal system in the past has played a major role in suppressing women and their subordinate status in the society. Secondly, the scholars of this school uses legal system itself as a tool to solve the problems by rework of law to provide gender equality. Feminist jurisprudence and feminism was a crucial point all over the world in allowing women to become their own masters by becoming financially independent and channeling their resources and skills to find new opportunities. Apart from all these,

³*Feminist Jurisprudence (Law 815-001 A and B) Fall 2010*

⁴*Sagers, Christopher L.; Minda, Gary (1997). "Postmodern Legal Movements: Law and Jurisprudence at Century's End". Michigan Law Review. 95 (6): 1927. doi:10.2307/1290030. ISSN 0026-2234. JSTOR 1290030.*

feminist legal theory today stands in a foundation which is so strong and stable that it not only focuses on discrimination or inequality but also to provide new ways of life .

III. FIRST TRACES OF FEMINIST JURISPRUDENCE

If we trace the development of feminist jurisprudence around the world it was a slow paced movement which gained acceptance with the passage of time, with more legal scholars emphasizing the part played by women to keep the society intact. With such recognition and acceptance there was a vacuum created for their rights and protection, as a result the feminist legal theorist became the spokesperson of such rights and violence against women. As the scope of feminist jurisprudence began to expand more and more approaches and thoughts began to develop within the school

The word feminist jurisprudence was first used by Anna scale during the celebration of a party and conference held in 1978 to celebrate the twenty-fifth anniversary of the first women graduating from Harvard Law School ⁵. Even though the word was coined in 1978 movement's and incident's used to happen much prior to this e.g.:-The French revolution this was one of the most revolutionary movement that shook the world.

Even women had a major role to play in this movement. The compelling Women's March on Versailles, on 5 October 1789 where a large crowd of women joined their hands together to protest against the monarch and his administration regarding poverty, economic hardship ,food shortage etc.

IV. ORIGIN AND HISTORICAL BACKGROUND OF FEMINISM AND FEMINIST JURISPRUDENCE IN INDIA

Unlike the western world the feminist movement in India was first started by men which with the combined effort of women was a great success. Men like Raja Ram Mohan Roy, Ishwar Chandra Vidyasaga and many more advocated for the basic human rights for female population of the country. During the early stage of feminism and feminist jurisprudence there were no efforts made by women of the society to rise their voice against the patriarchal domination but in certain regions of the country this was different. In parts of Kerala it was a practice to give a small portion of land to daughters and wife ,also in the interior parts of Rajasthan and Gujarat there were powerful women who controlled large areas of village and followed matriarchy

⁵ Scales, Ann (2006). *Legal Feminism: Activism, Lawyering, and legal Theory*. New York: University Press.

culture. But efforts were also made by women to initiate separate independent feminist movement: Savitribai Phule who started the first girls school, Pandita Ramabai, a strong woman who openly criticized the religious and customary practice of Hinduism, Tarabai Shinde, who wrote India's first feminist text *Stri Purush Tulana* (A Comparison Between Women and Men) in 1882⁶.

(A) FIRST STAGE (EARLY STAGE OF INDEPENDENCE)

- **Time Period;-1850-1915**

After obtaining the complete sovereignty over India the colonial rulers started to introduce codified laws which started to have conflicts with the uncodified law in India but with this intervention came modernity, and a cry for equality and individual rights. The first phase was successful in removing the social evils like sati and child marriage, provisions for widow remarriage was introduced and all these were brought in with the help of the legal machinery. However the support from the society started to reduce in the late nineteenth century as nationalism movement started to spread and so Indians viewed this attempt as an intervention made by the British to sabotage the Indian culture and heritage

A notable resistance in certain regions during the first war of independence during 1847 was led by women, in Jhansi it was led by (Rani Laxmibai), Kattur (Rani Chennama), Bhopal (Quidisa Begum) and Punjab (Jind Kaur)⁷.

(B) SECOND STAGE (STAGE OF NATIONALISM)

- **Time Period;-1915-1947**

This was the period where India freedom changed its path and the struggle against the colonial rulers intensified. Mahatma Gandhi was one of the prominent faces in the freedom struggle he brought in great efforts to include women in freedom struggle as a result feminine roles became noticeable in movements like non-cooperation, civil disobedience

Along with this national level organizations for women were also coming up like All India Women Conference (AIWC), National Federation of Indian Women (NFIW) these organizations helped developing the political and leadership skill of women.

(C) THIRD STAGE (POST INDEPENDENCE)

⁶Chaudhuri, Maitrayee. *Feminism in India (Issues in Contemporary Indian Feminism)* New York: Zed, 2005.

⁷Herpreet Kaur Grewal (31 December 2010). "Rebel Queen – a thorn in the crown". *The Guardian*. Archived from the original on 5 October 2015.

- **Time Period;-1947-**

After independence the battle ground of feminist started to redefine as now they were given the legal backing to be included in the working force of the country, at first industry and other sectors of the economy willingly took the women but sexual divide within labour forces was there which was accepted by most feminists but after a point of time they challenged the inequalities(unequal wages for women, relegation of women to 'unskilled' spheres of work) and discrimination⁸. Post-independence there was an increased influence of western culture in India which resulted in betterment of women population

V. FACTORS AFFECTING FEMINIST JURISPRUDENCE IN INDIA

A multicultural country like India which has always tried to accommodate all type of diversities with reasonable restriction and such a historical background of religious value and orthodox behavior of the population it is important to keep track of such development same as in the case of feminist jurisprudence there has been drastic development in all the religion especially Hinduism and Islam in regards to the same.

(A) HINDU RELIGION AND FEMINIST JURISPRUDENCE

After independence with the codification of many Hindu personal laws there has been a partial success in bringing gender equality, the changes that were brought in(Hindu marriage act 1955,Hindu adoption and maintenance act 1956,etc)helped in bringing gender justice to the Hindu family system up to a large extent. While this is a major advancement compared to other religions in India, it is still not a complete triumph in terms of feminism and relieving oppression⁹

One drawback which can be said about the caste system, is that Hindu religion caste system was very strong about the feminism movement happening within the religion and this converted into struggle among equality of classes, there is also a criticism that women from upper caste benefit from feminism than the lower caste.

(B) ISLAM AND FEMINISM

Same was the case in Islam. They were also given separate religious laws and regulation, and these laws were to strict in the women community. With time a series of events

⁸Kumar, Radha. *The History of Doing* Archived 10 January 2016 at the Wayback Machine, Kali for Women, New Delhi, 1998.

⁹Narain, Vrinda. *Reclaiming the nation: Muslim women and the law in India*. Toronto [Ont.]: University of Toronto, 2008. ⁹ 1985 SCR (3) 844

turned the stone for women. The most important one was the Shah Banucase⁹. The judgment was in favour of shah banu and there was chaos among the Islam community as they thought this was an attack against their religion.

(C) OTHER RELIGION

Other religion consists of just 5 percent of the population and even religions like Christianity and Jew have a pro feministic approach in the modern era and there is no separate laws for them ,same in in the case of buddhism ,sikhetc

VI. PROBLEMS AND OBSTACLES IN FEMINIST JURISPRUDENCE IN GENERAL

There are still various problems that the feminist jurisprudence faces, these obstacles include:-

(A) TRADITIONAL JURISPRUDENCE

The recurring difference of opinion in area that affect women include;-public/private, agent/victim, motherhood/sexuality, production/reproduction, nurture/work¹⁰.It is not that women have been radically different in relation to law when compared to men, but the feminist jurisprudence focuses on the inherent inequalities which is advanced by the methodology of traditional jurisprudence.

Another point where they have clashing opinion is regarding the traditional jurisprudence emphasis to the rule of law, not of men. Universal application of law is recommended regardless of the society¹¹. And in law this neutrality is the very mechanism that promote injustice against women¹²

(B) LEGAL POSITIVISM

Legal positivism is one of the main reasons why most people don't question the law but take it as given. This is the main reason legal positivism is given such space in the fundamental legal theory .Understanding a simple equation that is simply asking for equality of rights is not the answer when the whole system is dominated by male counterparts finding solutions for women¹³

(C) MARRIAGE

The main duty that the society expects from an Indian woman is to marry and continue

¹⁰ *Feminist Jurisprudence (Law 815-001 A and B) Fall 2010 Professor Ann Shalleck*

¹¹ *Jurisprudence Lecture Feminist Jurisprudence Page 2 February 2006 George D. Pappas, Esq. International Center for Legal Studies Page 3*

¹² *Id.*

¹³ *Jurisprudence Lecture Feminist Jurisprudence February 2006 George D. Pappas, Esq. International Center for Legal Studies Page 14*

the lineage of family, childbearing and raising of children. These are considered to be the priorities during adulthood. While men reaches the peak of their career around 25-35 women will just start their career at 35 after all the family duties, this problem to a great extent lead women behind the four walls without a skill or a livelihood to earn for themselves

VII. TRANSFORMATION MADE BY FEMINIST JURISPRUDENCE IN INDIA

With the change in time and influence of western culture there has been increased feminist movements which were accepted with open hands, various acts were passed for protection and prevention on crime, some of the enactments include, The Immoral Traffic (Prevention) Act, 1956, The Commission of Sati (Prevention) Act, 1987 (3 of 1988), Protection of Women from Domestic Violence Act, 2005, The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

Many powerful women like Indira Gandhi , kalpana Chawla have conquered the world with skill and charisma and also helped break the stereotypes to a great extent. Women like them has become an example for the society.

Recent verdicts by the apex court has also given strength the feminist legal theory, SC ruling in the Shabrimala women entry issue can be seen as a pro feminist approach. The judgment was passed with a 4-1 majority, this move by the SC emphasized that no religious right or practices is bigger than the constitutional and fundamental rights. Another judgment which changed the path was striking down section 377 , which is an attempt to bring the marginalized women community into main stream of the society.

The judgment in triple talak also shows the apex court's pro feminist approach.

VIII. CONCLUSION

This paper compared feminist jurisprudence with other disciplines ,time period , and even religious effect as feminist jurisprudence cannot be understood with separating all this. Feminist jurisprudence has always been a fight against the traditional laws governed by the patriarchal norms , to a great extent the feminist jurisprudence was a successful approach all over the world. It is time that we recognize their efforts in bringing changes to the society. The paper studied in detail about changes brought in by the feminism and feminist jurisprudence and how the people of our country accommodated this change.
