



LEGAL FEMINISM: CONCEPT AND ITS SHADES

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Abstract

Feminism is an alternative viewpoint of the legal system. The paper tries to bring out various essence of Indian feminism through select legislation and case laws. The established, bias well entrenched patriarchal values have been commented upon and a possibility of alternative view point has been suggested. The promotion of feminism is nothing but addition of diversity in the society.

Keywords: *Feminism, Domination, Disadvantage, Patriarchy.*

Legal discourse is a discourse that concern the basic terms of social life. Man and woman are both social animals endowed with autonomy mental and physical yet their life reflects the behaviour of social institutions especially the patriarchal values. After all it is accepted truth that social institutions are dominated by patriarchy.

Roberto Unger in demanding for participatory government tells us that society belongs to us and so do its laws. There is no permanent social or legal truth and nothing can stop our changing and reshaping society and its laws. He says “rational actor” is a myth and unlike reason passion (or emotion) is an essential motivating ingredient of participatory democracy. Law is thus expression of passion.

Feminist analysis begins with the principle that objective reality is a myth. It recognize that patriarchal myths are projection of male psyche. As for example the domination of women is a natural right, a mere reflection of biological family. Feminism is critique of institutionalised shield of patriarchal status-quo. Feminism concentrates on real issues of life domination, disadvantage, and disempowerment. Feminist legal theory is a political ideology, in different voices emphasizing women’s emancipation from slavery, celebration of positive attributes of womanhood, its cultural inclination and often an attack on liberal modern social structure. Feminist movement is like a river which branches out during its long course. The branches of feminist movement are liberal movement, cultural movement, radical movement and postmodern movement. According to liberal feminist, women want equality in opportunity like men. Radical feminist like Littleton and Mackinon stress upon difference between women and men and support affirmative action to challenge inequalities between the sexes. Cultural feminism though emphasize difference among sexes but they view it more positively. They (as for example Carol Gilligan and Robin West) promote value and care; relational connection between the sexes. Postmodern feminist generally attack the objectivity and equality of liberal legal regime as a patriarchal construct of the society. Now let us discuss some examples of these different types of feminism in Indian context.

Different shade of feminism:- Previously under different

laws female in India were prevented to administer property like male counterpart or sometime their ownership were limited to the enjoyment of the property. Under liberal feminism invoking Constitutional clause like Article 15(1) this practice has been invalidated by Indian Court. Equal Remuneration Act, 1976 enacted under Article 39 is another example. In C.B. Muthamma vs Union of India the Court invalidated the Indian Foreign Service (Conduct and Discipline Rules) 1961 which provided that “no married woman shall be entitled as of right to be appointed to the service.” In Air India vs Nargish Meerza Supreme Court struck down Air India and Indian airlines Regulations on retirement and pregnancy bar on service rules.

We can also find the strand of cultural and radical feminism in Indian laws. Where the differences between sexes are classified and sometimes affirmative actions has been taken. As for example we find The Sexual Harassment of Women At Workplace (Prevention, Prohibition and Redressal) Act, 2013 and Dowry Prohibition Act, 1961 or The Medical Termination of Pregnancy Act, 1971, Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1994 etc. In Yusuf Abdul Aziz section 497 of I.P.C was not declared unconstitutional because women in our country are married at very young age and husband can have plurality of wives. Thus women are weak in this particular situation and thus legislature has taken a lenient view.

In Gayatri Devi Pansari vs State of Orissa, Orissa government order reserving 30% quota in 24 hour medical stores as self employment scheme was upheld.

The affection shown by women towards child and the family is not totally emotional nonsense. One can easily understand about the value of service provided by the wife, by the mother to her children do have economic value as absence of these service cannot be fulfilled by any paid professionals. As for example a cook or a nanny. Let us go through the following decision of the Madras High Court in the next paragraph.

Rs1,250 a month. This is the monetised value of domestic responsibilities that homemakers discharge 24X7, according to a motor accident claims tribunal in the state. Keeping Rs 15,000 as ‘notional income’ of a house wife, a tribunal in



Virudhunagar district awarded a paltry Rs 1.62 lakh as compensation for her death. But, slamming the tribunal for its narrow-mindedness and saying such a view cannot be tolerated, Madras high court has enhanced the compensation to Rs 6.76 lakh. Justice S Vimala, pointing out that the victim's five year old daughter must be missing her mother's lap, observed: "The primary responsibility of the homemaker is to ensure that the family is happy, healthy and prosperous. To make the home as heart of the family giving total relaxation and complete freedom and joy to members of the family, is the critical role willingly undertaken and delightfully discharged. As it is voluntary, it is quite often neglected, forgotten and devalued." Selvi, 31, earning Rs 5,000 per month by selling clothes, died in an accident on April 23, 2004. Her husband, daughter aged 5 years at that time, and mother moved the tribunal for compensation. Disbelieving the claim of independent income for Selvi as it was not supported by any documents, the tribunal concluded that her 'notional income' as a homemaker was Rs 15,000 annually. Justice Vimala, noting that a house wife's services, described as gratuitous service, has not been considered by the tribunal, said: "When the child was aged 5 years, it lost the lap of the mother, which nobody can afford. The guidance and support needed from the mother, especially for a girl child, need not be emphasized. The tribunal, unmindful of the consequences of the death, has quantified the compensation in a way which nobody can tolerate." Relying on Supreme Court rulings on the issue, Justice Vimala then considered Rs 36,000 as annual 'notional income' of the woman, and arrived at a compensation figure of Rs 6.76 lakh and directed the authorities to deposit the sum within three weeks. The judge also rued that though the government was expected to be a model litigant, it had not even paid the meager compensation awarded by the tribunal.

Citing developmental psychologist Carol Gilligan one can say women grow up based on ethics of care and boys on the ethics of right or justice; that is autonomy of individual is paramount value. Men are disjointed from the others where as women are connected with others through values, emotions, typical activity of gestation, breast feeding etc. According to Gilligan these right and care base approach are compatible.

Lastly we consider the postmodern feminist critique of liberal legal structure. Postmodern feminism hits out at laws male solipsism and so called rational detached objective standard promoted by patriarchy. We now examine some examples. Section 2(c) of Indecent Representation Of Women (Prohibition) Act, 1986 says: "indecent representation of women means the depiction in any manner of the figure of a woman her form or body or any part thereof in such a way as to have effect of being indecent, or derogatory to denigrating women or is likely to deprave, corrupt or injure

the public morality or moral."

However this section fails to give attention to other derogatory messages and images not explicitly indecent but more harmful and responsible for increase of violence against women. As for example, all the television advertisements promoting washing powders depicts only women washing all types of clothes and getting value from their family especially husband. In Hindi cinemas hero does have the right to physically assault the heroine to discipline her or to teach her a lesson. It is the winners who make the typical picture of the world seem necessary. Professor Mackinnon says that women value care because men value women according to the care they give to men. In the recent judgment passed by supreme Court *Aveek sarkar vs State of West Bengal*, where a prosecution was launched against editor of *Anandabazar* for publishing a nude photo of famous tennis player Boris Becker and her lady friend. The learned advocate who initiated the complaint maintained that the photograph *prima facie* gives a sexual tilting and its impact is moral degradation and would encourage the people to commit sexual offences (Paragraph 6 of the reported judgment). He maintains that the dignity and honour of our womanhood would be in jeopardy (Paragraph 4).

One can easily see that though the nude photo was of both men and women, it is the argument of complainant advocate that womanhood is so vulnerable in India that it would be in jeopardy. On the contrary, male hood seems to have no threat and can handle them quite maturely.

Let us go through some sections of Indian Penal Code to understand male psyche and to demystify the so called rational objective truth.

Section 375 of Criminal Amendment Act, 2013 states that, fourthly:- with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

This clause talks about only married woman, but on the sexuality of unmarried or widowed woman the Act is silent. It seems same protection shall not be given to unmarried or widow woman. Section 477 of Indian Penal Code declares that fraudulent cancellation, destruction of will, authority to adopt a son is an offence. However the same section is silent if somebody destroys the authority to adopt a daughter. One can't say son includes daughter because section 10 of Indian Penal code defines "man" denoting male human being of any age; the word woman denotes female human being of any age. Only the pronoun " he" and its derivatives are used of any person, whether male or female. Section 27 of Indian Penal Code provides that property in possession of wife, clerk, and servant of a person; on account of a person shall mean to be in the possession of that person. Thus

wife cannot give away the property without permission of her husband. But husband possessing wife's property need not take permission from wife because the code is silent whether he possesses the property on his wife's behalf.

Feminist Method: Feminism brings law back to its purpose—to decide the moral crux of the matter in real human situation. Any logic is a norm, and cannot be used except with reference to its purpose. Feminism emancipate the hidden, silenced dissent of subjectivity, brings out the marginalized oppressed other. Patriarchy and its naked dominance, process of disadvantage and disempowerment is brought out by feminism.

Famous jurist Aristotle said that treat like people alike and unlike people unlike. Thus based on this premise there was two distinct feminist methods one equality approach and another difference approach. Equality approach treat inequality between sexes as mere irrational classifications thus to be negated. With this method it is possible to protect women who have been denied to administer property as for example A cracknel case. However where there is real difference as for example, for biology or highly successful socialization; by strictly following Aristotle premise plaintiff shall lose in a given case. Then the remedy is to compensate women by positive affirmative action based on difference of sexes as for example pregnancy. But postmodern feminist criticize both these methods. They prefer dominance approach. They say "in equality approach" female following male norms, standards are only promoted. Maleness is here setting the standard. Difference approach again take the maleness as standard and judge women as how far they are different from men. Difference here justifies dominance. As for example in medical schools it is taught a male body is human body, all those extra things women have studied under obstetrics/gynecology.

Dominance approach takes out the stigma of being different, as it emphasize male are different from women too. Dominance approach is critical of reality. This approach centers on the most sex differential abuses of women as gender issues. As for example when men are hit, they are assaulted and when women are sexually abused simply not taken seriously, found entertaining or as necessary structure of family, the price of civilization or Constitutional right.

Reasonable Woman: Unlike reasonable woman, reasonable man is a product of English, judicial genius. He was created for juristic convenience. Judges attempting to unravel the mysteries of human conduct, intent and motive have for years turned to the reasonable man for guidance. Deviance and delinquency have been determined by reference to him. The presence of reasonable man however alerts us to presence of reasonable woman. Though this particular phrase of "reasonable woman" has never been coined. It seems that

legislators clubbed women with mentally challenged or minor. In Ram Sumram Prasad vs Govind Das it has been laid down by the Court that a woman derives spiritual benefit in gifting property to her son-in-law in consideration of marrying her daughter. It is the marriage that is imperative and religious duty of the widowed woman according to the Court. But Court ignored the fact had she not agreed to gift the property to her son-in-law the marriage may not have materialised.

But the divorce does not get support as the marriage does. Here the mother sells the property to get her daughter divorced. The Court said divorce unlike marriage is not legal necessity.

Conclusion

Thus feminism is in reality a political theory, a criticism of existing unjust patriarchal social structure. As a strand of critical legal studies, or postmodern theory it does not promote nihilism but add to the society a considerable amount of diversity—the silenced other.

References

Lyod, "Introduction To Jurisprudence" 7th edition at p 1052
 Article 1 of Universal Declaration Of Human Rights explain that "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood
 Supra Note 3 at p 1054
 Best example is after Delhi gang rape case, public passion made way for the enactment of Criminal Amendment Act, 2013 changing hitherto rape laws considerably
 Supra Note 3 at p 1139
 A Cracknell vs State, AIR 1952 ALL 746
 AIR 1979 SC 1868
 AIR 1981 SC 1829
 AIR 1954 SC 321
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 Times Of India, Chennai, Dec 31st 2014
 Supra Note 3 at p 1140
 AIR 2014 SC 1495
 Supra Note 8
 In India women though equally qualified most of the time they carry out the burdensome domestic chore.
 Usha Ramanathan "Images(1920-1950) Reasonable Man, Reasonable Woman and Reasonable Expectations" "Engendering" at p 33
 AIR 1926 Pat 582
 AIR 1928 Bom 495