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Reconstructing Justice: Theories of Feminist Jurisprudence in Legal Thought

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Abstract

Feminist jurisprudence represents a transformative approach to legal theory that critically examines law through the lens of gender justice, equality, and social inclusion. This paper explores the theoretical foundations, pedagogical implications, and practical relevance of feminist jurisprudence within contemporary legal thought, with particular reference to the Indian context. It argues that law is not a neutral or objective institution but one historically shaped by patriarchal values that marginalise women's lived experiences, especially those belonging to disadvantaged and marginalised communities. Feminist jurisprudence challenges traditional assumptions of universal equality by exposing structural biases embedded in legal doctrines, institutions, and practices. The study analyses major strands of feminist legal theory, including liberal, radical, cultural, Marxist/socialist, postmodern, and intersectional feminism, each offering distinct insights into how law constructs and reinforces gender hierarchies. While liberal feminism focuses on formal equality and legal reforms, radical and Marxist feminisms interrogate deeper power structures such as patriarchy and capitalism. Cultural and postmodern approaches further enrich the discourse by emphasising care, relational values, diversity, and the socially constructed nature of gender and identity. The paper also highlights the importance of feminist pedagogy and feminist legal studies in reshaping legal education. By incorporating affective learning, lived experiences, and critical engagement, feminist pedagogy challenges male-dominated, rule-centric approaches to legal teaching. Additionally, the paper examines the constitutional and legislative recognition of women's rights in India, including protective laws and progressive judicial interpretations, while acknowledging the persistent gap between legal norms and social realities. Overall, feminist jurisprudence is presented not merely as a critique of existing legal frameworks but as a constructive and dynamic movement aimed at reconstructing justice. It aspires to build an inclusive legal order that recognises diversity, promotes substantive equality, and ensures dignity and empowerment for women and marginalised groups.

Keywords: Feminist Jurisprudence, Gender Justice, Legal Theory, Feminist Legal Studies, Women's Rights, Indian Constitution, Intersectionality.

Introduction

Feminism is a assortment of several movements consists of gender equality, precisely in areas like healthcare, education, equal pay and political rights. Considering the Indian scenario, feminism is a crucial instrument to take up the issues like sex-selective abortions, globalisation, and challenges under employment¹. However, there are criticism is been faced for predominantly on the privilege woman, while overlooking the struggles of women of backward and marginalised castes and communities.

Feminist Jurisprudence is a legal theory analyse the broader as well as minute perspective of gender-based discrimination. It emphasise the significance of human rights in addressing and overcoming both gender and racial discrimination. It also highlights how people and legal systems have historically discriminated against women and continues in the today's date as well.

It is essential, for the maximum reach and greater participation for the awareness of audience to engage in the general jurisprudence within academic circle in order to promote the debate and topics like gender-based discrimination in all the branches of law. This area of jurisprudence not only encourages the equality and justice for the specific gender but also emphasise the gender biasness given in the legal system. The feminist jurisprudence not only have the gender based perspective but also incorporates various forms which includes Marxist, liberal, radical, postmodern and intersectional feminism, the each forms has its own comprehension that how law is used as a weapon to dismantle the gender biasness.² Feminist Jurisprudence by interrogating the various branches of rights such as labour rights reproductive rights, employment right and property rights aspire to create the inclusive and equitable legal order. It not only serves transformative movement towards the gender justice but also a critique normative legal structure of legal framework.

Understanding Feminist Jurisprudence

Feminist jurisprudence is a critical appraisal to a law which directly or impliedly interrogates the idea of gender impartiality, fair rationality and global applicability across all the contexts or cultures. Historically, it has been seen that the law and the society has reflected its patriarchal values and often sidelining the perspective and experiences of marginalised women. Concept of feminism also seek to uncover the assumption based on gender evaluating the legal doctrines and procedures.³

¹ Tong, R. (2009). *Feminist thought: A more comprehensive introduction* (3rd ed.). Westview Press.

² Sen, A. (1999). *Development as freedom*. Oxford University Press.

³ MacKinnon, C. A. (1989). *Toward a feminist theory of the state*. Harvard University Press

It is a school of legal thought which advocates the liberalisation of feminism by promoting the rights and opportunities by challenging the deeper structures of power and patriarchy that shape law itself. The ideologies like socialist, postmodern and intersectional feminism, enriches the discourse by exploring the intersection of gender identity by exploring how race, class, and sexuality.

Feminist jurisprudence has the diverse branches, liberal feminism advocates the equal legal rights and opportunities, to radical feminism which challenges the deeper structures of power and patriarchy which shape the law. ¹It not only criticise the legal system but also transforms that envision law as a tool for justice and substantive equality. The concepts like rights, equality, and social justice aims to reshape legal practices which determines social integration, human worth and enablement.

Theoretical Foundations of Feminist Jurisprudence

Feminist jurisprudence incorporates the legal theories that interprets law from the perspective of gender-based oppression. The theories offers the exceptional insights of diverse school of feminist thought each offering relationship of law, gender, and powers.

Liberal Feminism

Feminist jurisprudence has its one of the imperial branch that is liberal feminism is enlightened the ideals of individual liberty, equality, and rationality, it highlights the need of reforms of equal opportunities and rights for women within the liberal structure of democracy. It is the belief that the basis of gender inequality is discrimination, unequal treatment and exclusion under the law rather than difference between two genders.

This theory, thus, advocates uniform application of legal rights and responsibilities but the idea should be gender-neutral and provide women the same legal rights, protection, and access as men. The aim is to reform the principles of fairness and justice without ousting existing legal structure. Mary Wollstonecraft, a liberal feminist thinker in his book *A Vindication of the Rights of Woman* (1792) contended women's education and rational capacity, and Catharine A. MacKinnon, criticises the shortcomings of formal equality and emphasized the importance of substantive equality to recall systematic discrimination.²

The theory of liberal feminism has contributed anti-discrimination laws, equal pay for women employees and other various gender-neutral reforms in areas like employment, education, politics and property rights which also laid to challenge the patriarchal mindset of legal systems.

¹ Smart, C. (1989). *Feminism and the power of law*. Routledge.

² MacKinnon, C. A. (1989). *Toward a feminist theory of the state*. Harvard University Press.

Radical Feminism

Radical feminism considers patriarchy as a foundational cause of women's oppression also believes that male domination is the primary cause because it is rooted deeply into the social, political and legal perspective of the society. This builds a perspective, the law is not neutral subject but a powerful mechanism which creates, reinforce and legitimize the patriarchal values. Law is structured in a way that its reflects male experiences, priorities, interests by normalizing the male dominance and suppressing marginalized women's voices¹. Also, it is evident historically that men occupies powerful position in lawmaking, adjudication and enforcement, thus the legal system embodies their perspective by shadowing the conditions of women.

The great scholars like Andrea Dworkin and Catharine MacKinnon identifies that practices like pornography, domestic violence, prostitution and marital rape are not separate issues but it is a result of systematic male dominance. It is also believe that the law has failed to recognize as genuine harms, as often treating them as private matters or consensual interactions, thereby enabling continued exploitation and control over women's bodies.

Cultural/Relational Feminism

This focuses on the different moral development of men and women. This theory believes on the theoretical perspective that male traits are associated with rationality, autonomy individualism, and competition and undervaluing qualities often associated with women, such as empathy, care, cooperation and rational thinking. Carol Gilligan in book *Ethics of Care* suggests that women tend to approach moral and ethical issues through relationships, responsibility and interconnectedness. Cultural feminists emphasise that ignoring these relational contributions perpetuates gender inequality, as women disproportionately bear caregiving burdens that the legal system undervalues. In law, there is a perspective that the importance of emotions, caregiving nature and relationships are more acceptable in the areas like family law, child custody, domestic work and welfare policies.

Marxist/Socialist Feminism

This theory identifies that suppression of women's right and status is related to economic structure which is established by the capitalism. This argues that how women work status paid as well as unpaid is exploited by the economic system which is dominated by the male counterparts of society. These theories highlight the woman's labour whether its domestic or in workplace doesn't get properly recognised, especially the domestic responsibility of women i.e child-care, household-works etc is often considered as a common perspective that it is the woman counterpart responsibility which neither acknowledged nor compensated. The

¹ Crenshaw, K. (1991). Mapping the margins: Intersectionality, identity politics, and violence against women of color. *Stanford Law Review*, 43(6), 1241–1299. <https://doi.org/10.2307/1229039>

legal system is build in such a way that keep woman economically dependent and undervalued by not giving any rights or recognising the woman rights very late by omitting their rights in property relations, inheritance norms, and labour practice. ¹For example, women were not recognised as coparceners from the beginning whereas men has been given birthrights over the ancestral property. Even after the reforms like the Hindu Succession Act, 1956 many discriminatory decisions have been taken by excluding the married daughters for not granting limited or no any shares, widows were granted only life interest, and also agricultural land is often primarily pass to male heir in several states due their local or family customs.

Although, after the long fight of inheritance right Hindu Succession (Amendment) Act, 2005 rises as the major shifts by granting daughters rights, according to the current law daughters is coparceners by birth. In case of *Vineeta Sharma v. Rakesh Sharma* (2020) ²which popularly considered as landmark judgement where supreme court have clarified daughter's rights are absolute and do not depend on whether the father was alive on the date of amendment.

Pedagogical Shifts and Feminist Curriculum

Male counterparts are evidently dominated the legal education by focusing on formal rules and institutions and ignored the live experiences, especially of those woman and marginalised section of society. Consequently, feminist pedagogy recognises by bringing gender justice and importance by challenging the old approach of study of law. This encourages students to question who the law serves and whose voice are missing.³

Feminist curriculum indicates that social structures, cultural norms, and historical inequalities are the factors which shapes the law of society. The different teaching methods related to discussion based, reflective and experience oriented learning unlike the traditional method of rote learning. The legal areas like family law, labour law, criminal law, and constitutional law helps in understanding the impact on woman lives with the help of case laws.

Feminist Legal Studies in Legal Education

Feminist Legal Studies (FLS) is an important part of feminist jurisprudence and plays crucial role in legal education. It analyses that law often reflects patriarchal values and promotes gender inequality. ⁴According to the feminist scholars many principles are based on male experiences and overlooks women's realities. The purpose behind the Feminist Legal Studies is to understand issues such as gender

¹ Fineman, M. A. (2004). *The autonomy myth: A theory of dependency*. The New Press.

² *Vineeta Sharma v. Rakesh Sharma*, (2020) 9 SCC 1 (Supreme Court of India).

³ Freire, P. (2000). *Pedagogy of the oppressed* (30th anniversary ed.). Continuum. (Original work published 1970)

⁴ Bartlett, K. T., & Kennedy, R. (Eds.). (1991). *Feminist legal theory: Readings in law and gender*. Westview Press.

bias, unequal access to justice and limitations of formal reality. It also brings out new and different viewpoints that emphasise the real equality, care, and social context in which people live.

Law, Culture, and the Disruption of the “Woman” Category

There is a traditional thinking of a term “Woman”, this word assumed as uniform perspective considering all women have the same experience and needs. Feminist jurisprudence challenges this presumption about women by saying that women’s lives are structured differently by caste, class, religion, race, sexuality, and disability.

Law does not operate in isolation, it always works with association of society and for the society and society is strongly influenced by culture and culture stereotypes about women often become ingrained in legal rules, provisions, and judicial decision. For example, the idea of women as caregivers, submissive and obedient wives, or morally being “pure” often influence how laws on marriage, sexuality and honour of women are framed and interpreted.¹

Modern feminist thinking disrupts the notion of a universal “woman” by highlighting diversity and intersectionality. It argues that the law should acknowledge varied identities and life experiences instead of imposing a single and fixed definition of womanhood. This idea supports the development of laws that are better aligned with the modern perspective of feminism associated with social realities and also those are more inclusive in nature.

Postmodern Turn in Feminist Jurisprudence

The postmodern turn in feminist jurisprudence questions fixed meanings, universal truths, and rigid legal categories. Postmodern feminists argue that concepts like gender, identity, and even law itself are socially constructed and constantly changing.²

Rather than searching for one common female experience, postmodern feminism focuses on language, discourse, and power. It examines how legal language produces meanings about women, sexuality, and morality. Thinkers like Judith Butler have argued that gender is not something we are born with but something that is performed through social norms.³

In legal theory, this approach helps expose hidden biases in legal texts and judgments. It encourages pluralism and openness, allowing multiple voices and interpretations. The postmodern approach strengthens feminist jurisprudence by resisting rigid frameworks and promoting flexibility, diversity, and inclusivity in law.

¹ MacKinnon, C. A. (1987). *Feminism unmodified: Discourses on life and law*. Harvard University Press.

² Olsen, F. (1990). Feminist theory in grand style. *University of Pennsylvania Law Review*, 138(4), 1147–1166. <https://doi.org/10.2307/3312408>

³ Butler, J. (1990). *Gender trouble: Feminism and the subversion of identity*. Routledge.

Affective Learning and Sharing of Experience

Affective learning and sharing of experience focuses that education is about understanding emotions, values, and attitudes and not only about acquiring of knowledge. Feminist pedagogy recognises that learning not merely happens through memorising legal rules or theories but it happens through relationships, feelings, and personal engagement¹.

The students are also encouraged to share live experiences in feminists classrooms, the experience evolves such as discrimination, care work, or everyday injustice. These shared experience of students become an important source of learning, helping students related to abstract legal concepts to real-life situations. This gives the students an encouragement to learn values and also promotes mutual respect and active listening. Apart from this it develops self-reflection and emotional awareness, that enables learners to examine critically their own beliefs and social positions. The collective discussion and shared understanding, and affective learning builds empathy, solidarity, and ethical sensitivity, thereby it aids in humanising the legal education and deepening students understanding of the social impact of law.

Legal Recognition of Women's Rights in India

The women's rights is legally recognised in India, that is deeply rooted in constitutional values and guided by evolving framework of legislation and judicial interpretation. The reason behind the recognition is that Indian law has addresses the discrimination against women since the history, therefore law is structured in a way that it promotes equality, dignity, and social justice. The constitution has made the immense legal and social reforms, which directs the State to improve the legal and social status of women and ensure their meaningful participation in social, economical and political life.

The Constitution of India provides the foundation for gender justice by affirming equality and fairness for woman. Article 14 ensures the equality before law, and Article 15 forbids the discrimination on the basis of sex². Thus, both the articles simultaneously enables the State to adopt the measures especially related to women's right as per Article 15(3)³. Article 16⁴ of Constitution of India provides equal opportunity in government jobs of woman.

In addition, Article 21⁵ has been broadly interpreted by the judiciary to include the rights to dignity, privacy, health and reproductive choices, which further protect and strengthen women's rights. Along with Fundamental Rights, the Directive

¹ Cornell, D. (1991). *Beyond accommodation: Ethical feminism, deconstruction, and the law*. Routledge

² Constitution of India. (1950). *Article 14: Equality before law*. Government of India.

³ Constitution of India. (1950). *Article 15: Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth*. Government of India.

⁴ Constitution of India, art. 16 (1950).

⁵ Constitution of India, art. 21 (1950).

Principles of State Policy contribute significantly an important role in ensuring gender justice. Indian Constitution provides two such Articles, Article 39(a) and 39 (d) encourage the equal means of livelihood and equal pay for equal work for both men and women. Article 42 focuses on providing human working conditions and maternity relief for the pregnant employees.

The Constitution also creates moral obligation on citizens under Article 51A(e) to give up practices that harm dignity of women. To put constitutional commitments, Parliament has passed several laws that aims to protect and to empower them. The Protection of Women from Domestic Violence Act, 2005¹ recognises multiple forms of abuse and provides civil remedies to victims. The Dowry Prohibition Act, 1961² seeks to curb dowry-related violence, while the Sexual Harassment of Women at Workplace Act, 2013³ ensures a safe and dignified working environment. The criminal law reforms have strengthened the status of women by ensuring protection against cruelty, sexual violence and victim rights and accountability.

Challenges and Contemporary Relevance

Feminists jurisprudence continues to face various challenges within legal academia and the judiciary despite of contributing into it. The idea that law is neutral have traditional legal thinking focuses mainly formal equality. This is the reason, feminists critiques are often considered as political opinions rather than serious legal analysis. As a result, feminist's perspective are frequently ignored also it is given little importance in legal education, court decisions and which reduces their ability to bring real and meaningful change.

The co-optation or dilution of feminist legal critiques in mainstream legal reforms, this is the another major challenge. The ideas relevant to feminist have influenced several laws and judgements, those are often absorbed in a superficial manner without addressing deeper structural inequalities. This is the cause feminists jurisprudence mere remain as symbolic gestures than a tool for substantive social change.

Feminist jurisprudence in a contemporary context also respond to evolving challenge such as trans rights, queer jurisprudence, and digital violence. The feminist legal framework demands an inclusive and expanded recognition of diverse gender identities on the issues like online harassment, cyberstalking and non-consensual sharing of image. It is become central to understand how gender has become an interaction of sexuality, technology, caste, class, and other indentities.

¹ Government of India. (2005). *The Protection of Women from Domestic Violence Act, 2005*. Ministry of Law and Justice.

² Government of India. (1961). *The Dowry Prohibition Act, 1961*. Ministry of Law and Justice.

³ Government of India. (2013). *The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013*. Ministry of Law and Justice.

Feminist jurisprudence remains highly relevant in shaping future legal reforms, despite of these challenges. By foregrounding lived experiences, power relations, and social realities, it offers a critical lens for developing more inclusive, responsive, and just laws. Its continued engagement with emerging issues ensures that the law evolves in ways that uphold dignity, equality, and substantive justice for all.

Conclusion

Feminist jurisprudence plays an important role in reshaping the law through the lens of gender justice and social equality. It highlights that the law is not completely impartial and often carries patriarchal values and the women's condition were overlooked from long, especially those of the marginalised section of society. By challenging conventional ideas of equality, objectivity, and neutrality, Feminist jurisprudence uncovers the unrevealed biases within legal systems and solicits the real and substantive justice rather than of formal and symbolic equality.

There are various feminist theories such as liberal, radical, cultural, Marxist, postmodern, and intersectional feminism which collectively strengthen legal thought by multiple viewpoints on how gender discrimination functions in the society and in law. These approaches help in explaining the impact of laws on women differently depending on factors like caste, class, religion, economic position and sexuality. Feminist jurisprudence, as a result moves away from a narrow, uniform idea of "woman" and promotes laws that are inclusive and connected to real life experiences.

In India, women's rights have been recognised with the contribution of constitutional provision, progressive legislation, and judicial interpretations. Although, the gap between law and lived reality still remains as before. Feminist legal education and teaching methods play crucial role in bridging the gap by promoting critical analysis, emotional, and value-based learning, and the integration of lived experience in legal studies.

On the whole, feminist jurisprudence is not only challenging and questioning the existing legal structure but act as a transformative approach to redefining the justice. It strives to build a legal system that values the dignity, recognises care, promotes equality, and embraces diversity, ensuring that justice is inclusive and accessible to all, particularly women and the marginalised communities.

