International Journal of Pure and Applied Mathematics
Volume 120 No. 5 2018, 4111-4121
ISSN: 1314-3395 (on-line version)
url: http://www.acadpubl.eu/hub/
Special Issue

FEMINIST LEGAL METHODS AND THEORY- A LEGAL REVIEW

[1]M.Tony Mathew,[2] Ms.JayapreethiManoharan

[1]Student, Studying BBA.LLB(hons); IYEAR,saveetha school of law, Saveetha University, Saveetha Institute of Medical and Technical Sciences , Chennai77, Tamil nadu , India.

[2]Assistant Professor Of Law, saveetha school of law, Saveetha University, Saveetha Institute of Medical and Technical Sciences , Chennai77, Tamil nadu , India.

[1]totonyms@gmail.com , [2]jayapreethim.sse@saveetha.com

ABSTRACT:

Method matter because methods shape the person's view of the possibilities for legal practice and and reform. Feminist legal methods have been adopted by feminist legal theorists not only to analyze and to seek reform of existing legal approaches, but also to maintain feminist legal theory's distinctiveness.This paper analysis whether Feminist legal method differs from the normal legal method in achieving the feminist goals effectively. It also analyses the changing perspectives of feminist views and intervening new ideologies that determine the feminist legal methods. It further analyze the principal theoretical assumptions of feminist legal methods, placing special emphasis upon identifying and discussing their strengths and weaknesses and their ways in which from this legal methods helps to achieve the feminist goals effectively.

KEYWORDS: Feminist, legal methods, lawyering, feminist goals, Legal theory.

INTRODUCTION:

Legal methods all the basic tools that the lawyers and legal scholars use. Critics of law have sought to Challenge and develop alternative to traditional methodologies.Methods matter because method is shaped ones view of possibilities for legal practice and reform. Method " organises the apprehension of truth it determines what counts this evidence and defines what is taken as verification"[1]. Method is also matter because without an understanding of feminist method feminist claims in the long will not be perceived as legitimate or correct. Traditional methods are inadequate for women who wish to understand and change their circumstances.... Women, after all, have been studied as objects for centuries, just as slaves, barbarians and workers have been studied…Since there is a high

[1] Catharine A. MacKinnon , feminism, Marxism, Method, and the State:, Agenda for Theory,at 527.(1982)

convergence between those who hold power over them and those who make the tools of thinking which 'explain' and 'justify' reality, they will learn little of themselves useful for achieving change by employing the intellectual tools of their oppressors'[2]. The difference that the traditional legal methods and the feminist legal. Method is relate less in differences in principles of logic than to differences in emphasis and union underlying ideas about rules. Traditional legal methods plays a high premium on the predictability certainty and fixity of rules.

In contrast feminist legal methods which have emerged from the critic that existing rules over represent existing power structures valued more flexibility and the ability to identify missing points of view.[3]As feminist articulate their methods they can become more aware of what do you do and thus do it better. Feminist in a broad sense that encompasses a self-contained consciously critical stance Toured the existing order with respect to the various ways it affects different woman as women. Being feminist you say political choice about one's position on a variety of contestable social issues. As Linda Garden writes " feminism is not a natural excretion of women's experience but a controversial political interpretation and struggle by no means universal two women. Further being feminist means owning up to the spot one place in a sexist society, it means taking responsibility for their existence and for the transformation of our gender identity of the politics and our choices".[4]

OBJECTIVE :

- ➢ To study about the different theories in feminist jurisprudence.
- ➢ To study about the different feminist legal methods that the feminists use in perceiving law.
- ➢ To study the effects of feminist way of intervening law.

HYPOTHESIS:

The following hypothesis is examined in this research paper

- Feminists legal methods provides a contemporary solution for obtaining the feminist goal effectively.

[2] McOalla-Vickers, Memoirs of an OntologicalExile: The Methodological Rebellions of Feminist Research;in Miles and Finn, eds.,, at 32.
[3] Katherine T Bartlett , Feminist legal Methods ,832,(1990).
[4] Alcoff, Cultural feminism versus Post structuralism; the identity crisis in feminist theory.I3 SIGNS 405,432.

MATERIALS AND METHOD

The study was done in the form of a doctrinal research, where the problem/question is systematised, rectified and clarified by sources from authoritative texts. The study took a qualitative research approach. The information, primary and secondary are gathered from journals, articles, research Papers, study articles, survey results and newspapers. They are analysed, interpreted and presented in narrative form.

R**EVIEW OF LITERATURE**:

Catharine A. MacKinnon (1983) claims that the state is male within the feminist sense.'The law sees and treats women the manner men see and treat women. Further Judith A. Baer (2011) in his article points out that feminists aren't the very first to oppose the law's claim to neutrality, Marxists and the Critical Legal Studies movement had a head start. Cynthia GrantBoivman and Elizabeth Al. Schneider(1988) in their article points out to the fact that the examination of theory and practice reveals a spiral relationship in which feminist practice has generated feminist legal theory, theory then reshaped practice, and practice has in turn reshaped theory. MacKinnon(1982) has claimed that method matter because without an understanding of feminist method feminist claims in the long will not be perceived as legitimate or correct and the traditional methods are inadequate for women who wish to understand and change their circumstances.Katherine T. Bartlett (1990) stressed how feminists should not ignore methods while challenging existing structures to ensure that they do not end up in recreating the same structures of power that they are trying to undermine.

CONTENT:-

PRESENCE OF BIAS:

Feminism doesn't begin with the premise that it's unpremised. Feminism isn't objective, abstract, or universal. It does not demand for any external ground or varied sphere of generalization or abstraction on the far side male power, nor transcendence of the specificity of every of its manifestations. selection of methodology is selection of determinants-a alternative that, for women intrinsically, has been inaccessible thanks to the subordination of women. The state is male within the feminist sense.'The law sees and treats women the manner men see and treat women. The state coercively and with authority constitutes the order within the interest of men as a gender, through its norms, relevance society, and policies. Substantively, the way the male purpose of read frames associate expertise is that the method it's framed by state policy. feminism has been caught between

giving more power to the state in each attempt to claim it for women and leaving unchecked power in the society to men.[5]

Feminist jurists who accept the presence of male bias stand up for on "asking the woman question ... to identify the gender implications of rules and practices which might otherwise appear to be neutral or objective" [6]. This approach to law is radical and also in a way it is revolutionary. The "woman question," well represents the result-oriented jurisprudence that conventional jurisprudence rejects. Feminists aren't the very first to oppose the law's claim to neutrality. Marxists and the Critical Legal Studies movement had a head start[7] Whether or not male decision-makers conspire to disadvantage women, policies designed for men have fit badly with women's lives. The Feminist jurists who accept this premise that the society is biased differ widely in their own explanations of how and why reality is gendered and proposes different views.

FEMINIST LEGAL THEORIES:

There is a complex interaction between theory and practice that has two main "arenas": the interaction between feminist legal theory and the development of feminist lawmaking and substantive law, and the impact of feminist legal theory upon the way law is practiced[8]. The examination of theory and the practice of feminist legal theory reveals a entangled relationship in which feminist practice has generated feminist legal theory, and so theory then reshaped practice, and practice has in turn reshaped theory.[9] The formulation of legal theory has played an very important role in bring up of social change in all areas in the society.

Today, feminist legal theory has branched into the following major schools: formal equality theory,dominance theory,cultural feminism , and post-modem or anti-essentialist theory.[10] Formal equality theory, grounded in liberal democratic thought, argues that women ought to be treated an equivalent as men. Formal equality has emerged from the contradictions, conflicts and political struggles that developed in the course of action to the implement formal equality in follow and it addressed the bounds of formal equality in

[5] Catharine A. MacKinnon , feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence, 637-645,(1983)

[6] Supra note 3, 833.

[7] Judith A. Baer, Feminist Theory And The Law,3,(2011).

[8] Cynthia GrantBoivman and Elizabeth Al. Schneider,feminist legal theory, feminist lawmaking, and the legalprofession ,at 249(1998).

[9] Elizabeth M. Schneider, The Dialecticof Rights and Politics: Perspectivesfrom the Women's Movement, 61 N.Y.U. L. Rev. 589, 604-10 (1986).

[10] Mary Becker et al., Feminist Jurisprudence: Taking Women Seriously, at 68-98, 110-35(1994)

redressing sex discrimination. Cultural feminists emphasize the requirement to require account of "differences" between men and women. The emergence of cultural feminism or "difference" views within the law were for the most part formed by efforts to grasp the unambiguously feminine experiences of maternity and family relationship.

Dominance theory sidesteps each of those approaches, focusing instead upon the embedded structures of power that create convenience characteristics the norm from that "difference" is built. dominance theory given a very important theoretical framework at intervals that to grasp the harms of violence against women in areas similar to violence, rape, molestation, and porn. Formal equality (or a minimum of a "gender complementarity" theory of formal equality) wasn't capable analyze these harms, experienced nearly completely by women, as a result of it didn't address the patricentric structures of power that led to and perpetuated them. Thus, dominance theory emerged from efforts to grapple with the truth and knowledge of male dominance and privilege in these areas.

Anti Essentialism, by contrast, contends that there is no single category "female," pointing instead to the varying perspectives resulting, for example, from the intersection of gender, race and class. anti-essentialist or post-modern feminism developed from challenges to a notion of a single feminist legal theory and perspective and articulated the need to account for the wide range of feminist views that emerged from women of color, issues of ethnicity, problems of immigrant women, and cultural differences.[11]

Feminist legal theory has pointed the problem of sexes in law, and therefore the vary of feminist legal theories that have developed continue to deepen our understanding of the complicated interrelation between gender and law. however it's vital to understand the crucial approach within which feminist legal theory emerged from apply, and therefore the approach within which new theoretical insights developed by litigators and aca- demics still reshape apply. Indeed, feminist legal theory,understood generically, has been the intellectual means that for argument and discussion concerning problems with equality that first emerged in law reform apply and still resonate each in apply and within the world at large. In short, feminist apply and theory concern problems with daily life-how women and men live, work, and relate.

[11] Kimberl Crenshaw, Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of AntidiscriminationDoctrine, Feminist Theory and AntiracistPolitics, 1989 U. Chi. Legal F. 139, 140

THE NEED FOR FEMINIST METHODS:

Contemporary women's movement in India had in fact coalesced into a movement by mobilizing public opinion around the need for legal reforms for redressing individual cases of atrocities against women. The Mathura rape case of 1979, the Shah Bano case on divorce under the Muslim personal law in 1985 or the Bhanwari rape case in 1994 are landmarks that in many ways determined the course and content of the contemporary feminist movement in India[12]While feminists paid significant attention to critiquing law and advocating law reform, they were less devoted to explore what the 'doing' of law should entail. Katherine T. Bartlett writing in 1990 stressed how feminists should not ignore methods while challenging existing structures to ensure that they do not end up in recreating the same structures of power that they are trying to undermine. Challenging conventional approaches means complete rejection, adaptation or mere careful examination reveals, feminists have developed their own methodology in order to "expose and eliminate bias against women" by following their own way. We can also argue that the feminist legal methods are "crucial to the success of feminist goals in law".[13] As Clougherty notes, feminists use feminist legal methods in three ways:

(i) to expose bias against women in traditional legal methods,

(ii) to rebuild decisionmaking by including the woman's point of view, and

(iii) to convince decisionmakers to employ feminist legal methods as a means to identify (and perhaps to legitimately justify) bias inherent in their decisionmaking.[14]

Bartlett believes that even though feminist legal theory has brought new insights into traditional legal doctrine, feminists have nearly ignored the importance of methodology and have not said anything new about it. Bartlett points out that feminists should not disvaluate method, because if they aim to challenge prevailing structures of power with the same methods of dominant legal methods.

THE FEMINIST LEGAL METHOD: THREE MAIN TECHNIQUES:

'Asking the woman question', 'feminist practical reasoning' and 'consciousness-raising' in feminist legal theory are the three main techniques that the feminist legal methods use.Beside there are other methods which are developed and suggested by other feminists. However, the aforementioned three methods can be accepted as the core techniques adopted by feminists since they are often cited and applied in practice by numerous feminist scholars.

[12] Swapna Mukhopadhyay,Law as an Instrument of Social Change: The Feminist Dilemm,1,(1998).

[13] Lydia A. Cloughtery, Feminist Legal Methods and the First Amendment Defense to Sexual Harassment, 75 Nebraska law review, 25, (1996).

[14] Id.at 6

Asking the Woman Question

It is a way of exposing "how the substance of law may silently and without justification submerge the perspectives of women and other excluded groups." In other words, this method involves analyzing "how the law fails to take into account the experiences and values" of women, or "how existing legal standards and concepts might disadvantage women."[15] The three essential features of asking the woman question: "(i) to identify bias against women implicit in legal rules and practices that appear neutral and objective, (ii) to expose how the law excludes the experiences and values of women, and (iii) to insist upon application of legal rules that do not perpetuate women's subordination."

Accordingly "the bias of the method is the bias toward uncovering a certain kind of bias [that is to say, disadvantage towards women]."It may be argued that one of the main aims of feminist legal theorists is to distinguish bad bias from good bias and to favor the latter by asking the woman question.[16]

Feminist Practical Reasoning

Feminist Practical Reasoning is the next step of feminist legal methods. It is "expanding traditional notions of legal relevance" with a point to render legal decision making more adaptable to the "features of a case" which has mostly disregarded in the legal doctrine.[17]It puts forward the idea that women, rather than men, are "more sensitive to situation and context," that they oppose "universal principles and generalizations," and finally that "reasoning from context" enables us to "respect for difference" and to take into consideration "the perspectives of the powerless." Sanger also depicts practical reasoning as a "contextualised deliberation."[18] Feminist legal methods normally, and sensible reasoning especially, replicate the "maleness of traditional legal methods" since they're "grounded in hierarchic thinking."In different words, it's by replacement 'objectivity and abstraction' with 'contextual thinking', feminists "elevate women's ways that of thinking over men's ways that

[15] Bartlett, Supra note 3,837.
[16] Carol Sanger, Feminism and Disciplinarity: The Curl of the Petals, 27 Loyola Los Angeles law review 225, 243 (1993)
[17] Bartlett, supra note 3, 836-837
[18] Sanger, supra note 16,223,245.

of thinking, therefore, a decision maker decides not to apply feminist methods since feminist reasoning reveals them as too 'male.'"[19]

Consciousness-Raising

Consciousness-raising is the "major technique of analysis, structure of organisation, method of practice, and theory of social change of the women's movement."[20] The method of consciousness-raising allows for "testing the validity of accepted legal principles" from the perspectives of the personal experience of women who are directly been affected by those legal principles."It is an 'interactive and collaborative process' of expressing a woman's experiences and sharing it with others.[21]Consciousness-raising can even be regarded as the most essential method among all three of the methods Bartlett formulates.

The knowledge arised from consciousness-raising helps in determining "how legal practices affect women"; this knowledge is also a part of the process of feminist practical reasoning. Feminist method unlocks objective reality and posits alternative claims to truth through consciousness-raising.[22]

CONCLUSION:

Feminist legal scholars are expected to think and write using the approaches of legal method: defining the issues, analyzing relevant precedents, and recommending con- clusions according to defined and accepted standards of legal method. A feminist scholar who chooses instead to ask different questions or to con- ceptualize the problem in different ways risks a reputation for incompe- tence in her legal method and may put her feminist accomplishments on the line. Too often, it seems almost impossible to be both a good lawyer and a good feminist scholar. Further just by adding women's experience to the law school curriculum cannot transform our perspective of law unless it also transforms legal method.This focus on methodology is significant. Thus, if feminism has a power to transform the perspective of legal method, it must be because it permits feminists "a new way of seeing" both the reality of present lives and of imagining better ones. As Adreinne Rich defines the challenge, feminists need imagination "not merely for changing institutions but for human relationships; not merely for equal rights but for a new kind of being."[23]That, in the end, is the task that awaits the work and the imagination of feminist lawyers.

[19] Cloughtery, supra note 13, at 17
[20] MacKinnon, supra note 5, 515,519.
[21] Bartlett, supra note 3, at 864
[22] Ann Scales,feminist legal method: not so scary,25,(1992).
[23] A. Rich, Toward a Woman-Centered university, On Lies, Secrets and Silences (1979) 125, at 155

REFERENCE:

1. Scott Brewer (1998). Evolution And Revolution In Theories Of Legal Reasoning.
2. Catharine A. MacKinnon (1982): Feminism, Marxism, Method, and the State:, Agenda for Theory.
3. Broke A. Ackerly (2006): Feminist Methodologies For International Relations, Cambridge University Press.
4. McOalla-Vickers, Memoirs of an OntologicalExile : The Methodological Rebellions of Feminist Research;in Miles and Finn.
5. Mary Jane Mossman (1987): Feminism And Legal Method: The Difference It Makes, Osgoode Hall Law School.
6. Katherine T Bartlett(1990):Feminist legal Methods.
7. P A Cain (2013): Feminist Jurisprudence Grounding The Theories, Berkeley Journal Of Gender, Law & Justice
8. Alcoff, Cultural feminism versus Post structuralism; The Identity Crisis In Feminist Theory.
9. Catharine A. MacKinnon (1983): Toward Feminist Jurisprudence.
10. Judith A. Baer (2003):Feminist Theory And The Law.
11. Kathryn Abrams(1991): Feminist Lawyering And Legal Method, Berkeley Law Scholarship Resository.
12. Cynthia GrantBoivman and Elizabeth Al. Schneider(1998) :Feminist Legal Theory, Feminist Lawmaking, And The Legal Profession.
13. Elizabeth M. Schneider(1986) :The Dialectic Of Rights and Politics: Perspectives From the Women's Movement.
14. Mary Becker (1994): Feminist Jurisprudence: Taking Women Seriously.
15. Kimberl Crenshaw (1989): Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of AntidiscriminationDoctrine, Feminist Theory and AntiracistPolitics .
16. Swapna Mukhopadhyay (1988):Law as an Instrument of Social Change: The Feminist Dilemm.
17. Lydia A. Cloughtery(1996): Feminist Legal Methods and the First Amendment Defense to Sexual Harassment, 75 Nebraska law review.

18. Carol Sanger (1993) : Feminism and Disciplinarity: The Curl of the Petals, 27 Loyola Los Angeles law review.
19. Ann Scales (1992) :Feminist Legal Method: Not So Scary.
20. A. Rich (1979) : Toward a Woman-Centered university, On Lies, Secrets and Silences.
21. Dr.Lakshmi T and Rajeshkumar S , March. 2018. "In Vitro Evaluation of Anticariogenic Activity of Acacia Catechu against Selected Microbes", International Research Journal of Multidisciplinary Science & Technology, Volume No. 3 , Issue No. 3, P.No 20-25.
22. Trishala A , Lakshmi T and Rajeshkumar S, April 2018." Physicochemical profile of Acacia catechu bark extract –An In vitro study", International Research Journal of Multidisciplinary Science & Technology, Volume No. 3 , Issue No. 4, P.No 26-30.