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SOME ASPECTS OF THE FEMINIST LEGAL THEORY

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ABSTRACT

The feminist legal studies have defined the role of law for bringing social change and also discussed the complex relationship between law and women's subordination. The law should be understood as tools of social change. We are going to discuss the two major issues as the notion of rights and citizenship in this context. So that we could able to find out that how do these concepts justify the discriminating measures of laws and ignore the importance of the concept of gender difference? We need to view the women's right in the framework of post - colonial approach and find out how can the underlying idea of subordination be transformed and challenged? So, we need to go beyond the notion of sameness and difference by providing equality along with gender difference in a positive way.

KEYWORDS: women's rights, law, gender equality, gender difference, right and citizenship.



INTRODUCTION :

The feminist legal studies have defined the role of law for bringing social change and also discussed the complex relationship between law and women's subordination. The law should be understood as a tool of social change. The role of legislature and law reform could be helpful to achieve gender justice. We can understand the limitations of law and how does law play an important role to achieve gender justice by legal reforms. So, law can be place of an important symbolic value. We are going to discuss the two major issues as the notion of rights and citizenship in this context. So that we could able to find out that how do these concepts justify the discriminating measures of laws and ignore the importance of the concept of gender difference? We can say that the post-colonial literature show that law is itself 'exclusive and subordination', in which the concept of right is rational virtual and who has a 'civilizational maturity' and reason, will be able to get right, on the other hand who unable will be denied for getting rights. As we find out law has played a role of place of exploitation along with emancipation for women. Even, women have also got some right to vote, to education and some privileges, special rights through legal reforms.ⁱⁱ

The sameness approach claims that women should treat equally as man and providing the special rights for child upbringing will be accepted as a violation of equality. The women are needed to be treated as differently so

that they could realize their rights properly. For example, pregnancy, child care is ignored by the sameness approach. The other argument is if we perceive the notion of gender justice within the framework of patriarchy, the demands for citizenship will always be a subject of subordination of woman or women exploitation. Here, the question is not why does not the concept of citizenship give differentiated right to women? But our question is should we view the gender justice beyond the perspective of patriarchy.

It is notable that the concept of citizenship is shaped by the colonial encounter in legal discourse. As the concept of citizen that a person who is virtuous and rational as the colonial subject viewed as weak, indecisive and irresponsible. So they should have right to get citizenship. As we find the same notion are reaffirmed for justifying the rejection of women's right of citizenship. So women are also viewed as colonial subjects as they are indecisive, irresponsible and so they need protection. On this basis we can say that the colonial state used as law as a "Cultural enterprise" to make difference between the colonial state and subject in the matter of social status and gender. The colonial state justified their domination on the indigenous people through law. So law should be an issue of discourse as it forms subject. The notion of citizenship also a barrier for achieving the gender justice. As it is based on the idea of sameness so it claims only for formal equality by affirming that each individual should have equal right regardless of his/her caste, religion, race, sex etc. It does not consider on the necessity of the protection of gender difference. We can say that it treats women as a second class citizen in the public life.ⁱⁱⁱ

So the feminist and postcolonial approaches have criticized the notion of citizenship as pure, virtuous and rational. Their argument is the notion of citizenship should include the concept of gender difference so the woman could get equal rights with difference. So, we can say that the notion of citizenship is perceived as membership, rights and responsibilities but it should also be viewed as a means through which the norms of patriarchy subordination of the woman by giving her equality and ignore the gender difference in a positive way. Initially we find that women are denied of rights of citizenship as they are inferior to man. The essentialist perspective affirms this rejection. As the essentialist perspective views woman as caretakers, mothers and wives. So, they need protection. These views undermine the notion of gender justice. , here we need to consider on the conception in a way so that the notion of citizenship would not be the subject of subordination of woman.

The post-colonial perspective argues, right is useful for achieving gender justice. It criticizes the notion of enlightenment, rationality, objectivity and subjection. It also criticizes the core feature of law that are notion of objectivity and neutrality. The notion of right and law both affirm universalistic perspective and reject the notion of difference. On this basis the right should be given to all. But the postcolonial approaches consider that these rights for women are not sufficient for them. So, we need to understand gender and subjectivity of women in the realm of colonial framework the universalistic notion of right is used as a means make as subject. We need to deconstruct the colonial framework the women's right in the framework of post -colonial approach and find out how the underlying idea of subordination will be transformed and challenged?

This approach considers these rights should be available for all as we find that one who has already right, she/he can easily get other rights in comparison of the other groups who have not any rights. It defines the struggle for achieving rights. We need to go beyond the universalistic notion of right with the notion of gender difference. We can consider that the notion of right should be a tool for achieving gender justice. If the notion of right should be defined within the framework of gender difference then we can achieve gender justice substantially. In this context, we should consider on the substantive equality approach which consider on the impact of law on the disadvantage class, merely

equal treatment of law is not sufficient, we should examine the impact of law on these classes.^{iv}

The notion of law should be discussed in the context of the notion of rights for example, abortion, sexual violence and reservation. The concept of right is contested and the actual meaning of right should attune with the related context in which the issue of rights has been discussed. If the concept of rights is defined within the framework of feminist perspective it could be helpful for achieving gender justice. Here feminist understanding of law is based on the concept of right in which right is defined in a contextual way.^v There are some issues for example entitlements and rights in the context of gender difference. We do not recognize the gender difference can treat women equally. Because, there are some example as child care and pregnancy which show that we need to consider the equality within the framework of gender difference. If the gender difference is excluded from their purview of equality then, the protectionist approach is justified and if the gender difference is included in the equality then then women become a disadvantage class. So, here we need to go beyond the notion of sameness and difference, we try to provide to equality along with maintaining gender difference in a positive way.

There are three ways through which the notion of gender difference is defined. According to protectionist, women are different from men as they are weak, subordinate .So, they need to be protected and should be treated differently. Sameness –women are equal to women. Women should be given equal right as men have. If any law which treat women differently then legislation on practice undermines the essence of equality. As Compensatory approach women should perceived as a disadvantage group historically, so they should be given compensation or corrective treatment. According to the protectionist approach, women are needed to be protected as they are weak, indecisive. The concept of sameness and equality views woman as equal as man. On this basis it claims the woman should have equal legal rights as man has .In this process it ignores the gender difference. The concept of sameness and equality .As we know that marriage and family are the institution in which the roles of women are defined in a gender specific terms for example wife ,daughter ,mother .These terms are helpful to know about the matrimonial relationships.

So, the notion of equality and sameness ignore the inequality within these matrimonial relationships. As the gender neutral term 'spouse' shows not any inequality within the matrimonial relationship and ignore the gender roles. So there are different provisions for husband and wife. So we need to view these matter through the notion of gender difference. As the equality or sameness approach has not about to see the inequality within inequality measures with man and woman. The liberal feminism supports this approach which support gender neutral term and ignores the gender specific term for example, husband .So it is not able to find inequalities within the framework of equality. This approach says that the women should be identified as gender neutral legal persons. So the feminist legal theory should include the agenda for protecting gender difference .So that the women should not be viewed as gender neutral legal person. The feminist should adopt an intersectional approach so that we could understand the issue of gender inequality in a multidimensional way. The term 'women' does not show that all women have to face the similar exploitations as they are different from each other .So ,we should not view the gender injustice by one feminist method or feminist epistemology.^{vi}

i. Ratna Kapur, Challenging the Liberal Subject Law and Gender in South Asia page- 14-16

ii. Ibid page 15-16

iii.Ibid page-10-11

iv.Ibid page-14-15

v.Ibid page-15

vi.Flevia Agnes,(2011), Family Law Valume II Family Laws and Constitutional Claims ,Oxford University Press, Page-xxvii

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