Feminist Jurisprudence in India with Reference to Individual Freedom of Women vis-a-vis State’s Duty to Protect Them

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ABSTRACT

In the history of mankind ‘equality’ and ‘freedom’ evaded women in comparison to men. Women always suffered subordinate status and were assigned a purely functional role in every society or civilisation of the world. Over the period this unequal status of women being offensive to human dignity and human rights steered to develop feminist jurisprudence. This research paper reflects the perspective of feminist jurisprudence with reference to individual freedom of women, its expansion under other various issues and State’s / employer’s duty to protect women’s individual freedom and to empower them. This research paper exclusively deals with that feminist jurisprudence which has been developed by judicial decisions in India.

Keywords: Duty of State Agencies to Protect Women, Feminist Jurisprudence, Individual Freedom, ‘Life’ and ‘Personal Liberty’, Parens Patriae Power, Res Extra Commerciun, Right of Bar Dancers to Perform Dance, Right to Make Reproductive Choice, Right to Privacy, Right to Self-Determination

DOI: 10.4018/ijcesc.2014040104
INTRODUCTION

Seneca Fall Convention (1848) declared that:

... all men and women are created equal..., Creator endowed them with certain inalienable rights...these are life, liberty and pursuit of happiness and to secure these rights governments are instituted...

Feminist jurisprudence is a philosophy of law based on the political, economic and social equality of sexes. Feminist jurisprudence, a term coined as recently as 1978, has completely disrupted the conventional model of jurisprudence (McClain, LC. 1992). It now holds a significant place in law and legal thought and influences many debates on sexual and domestic violence, inequality the workplace and gender based discrimination around the world. History of Feminist jurisprudence had started with the Declaration of Seneca Fall Convention (1848), Seneca Falls Declaration has opened the floodgates of feminism around the world which steered several International Conventions to discuss women’s status in the society and with the effect several Nations were agreed to support their voice. To recognize women’s status/right legislative, political, economic and educational reforms were made to eradicate sex discrimination in all the institutions of society. During the early 20th century feminist jurisprudence had served to reinforce that social structure- where law has developed in which sexes have been more separate than equal. Women are prevented to get employment in certain occupations. In legal battle discrimination and inequality were remained. Consequently feminist jurisprudence advised debate on the various forms of violence, inequality in the workplace, and gender-based discrimination at all levels of society.

Voice has been raised In India also, to demands individuals recognition as independent human beings by women associations (Agnes, Flaiva. 2004). The Constitution of India ensures every person to have Right to ‘life and personal liberty’ (under Article 21), free from all encroachments unsustainable in law. Bhagvati, P.N. J. in Maneka Ghandi v/s Union of India (1978) observed expression Right to ‘life and personal liberty’ encompasses within it all those variety of rights of a person which go to constitute personal liberty of a person and some additional protection under Article 19 of the Constitution of India. Personal liberty is said to be the delicate fruit of a mature civilization (Dalbeer Bhandari and K.S.P. Radhakrishnan, JJ.-Siddharam Satingappa Mhetre v/s State of Maharashtra, 2011). Personal liberty does not mean merely the liberty of the body but mean more than that. Liberty postulates the creation of a climate wherein there is no suppression of the human spirits, no denial of the opportunity for the full growth of human personality… and there is no servility of human mind or enslavement of the human body” (Khanna H.R.J. 1978). The Supreme Court observed, “…… personal liberty means the prevention of restraints and
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