CHAPTER II
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WOMEN FROM SUBORDINATION TO LIBERATION

In the history of humanity woman has been as important a factor as man, yet she was always looked down upon as an inferior creature. It is harsh reality that women have been ill-treated in every society for ages. "A woman is deprived of her independent identity and is always considered as the property of man-father, husband or son. She is being looked down as a commodity or slave"\(^1\). She has been kept in subordination and always been treated as inferior to man in rights and privileges\(^2\).

At different ages philosophers, religious preachers, political leaders, social reformers and scientists have all justified the inferior status of women\(^3\). Before proceeding to inquire into the justifications offered it is pertinent to briefly look at the religious condemnation of women, which even to this day is perpetuated.

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\(^3\) Rekha Pandey, *Women from Subjection to Liberation*, Mittal, New Delhi, 1989, p. 4.
2.1 Religious view on Women

2.1.1 Christianity

According to Bible, the original sin in the Garden of Eden was Woman’s. She tasted the forbidden fruit, tempted Adam and has been paying for it ever since. The charge sheet held against her is as follows.

1. That the woman was first to disobey God.
2. The woman prompted Adam to follow her in disobedience.
3. That woman was cause of the fall of Adam.
4. That woman’s guilt has been transmitted to the whole of mankind and every child is born in sin.
5. That owing to woman’s crime all humanity except a number of Christians is condemned to eternal perdition.
6. That woman, even if she is a Christian, is responsible to see her own unbaptised infant going to eternal fire.
7. That God had sent Jesus to be sacrificed because of the first crime of woman, so she is responsible for the crucifixion of Jesus.
8. That those who believe that Jesus was more than human have every reason to curse woman more for having caused “the death of their Lord”.4

4 M.H. Kidwai, supra note 2, p. 24.
2.1.2 Hinduism

Hindu laws and customs were extremely unfavourable to women, and was treated as very inferior to man. Manu, the law giver said "Day and Night woman be held by their protectors in status of subjugation" and that the 'woman is under the subjection of her father when a child, when married under that of her husband, after her husband under her sons and if she has no sons then to her agnate relations, because there is no woman whatsoever who is fit to be independent". Manu further says "women love their beds and ornaments, and have loose desires, they have bad temper, are frail, irresolute and never straight. They should always be kept under subjection and control".

2.1.3 Buddhism

Gautam Buddha, the founder of Buddhism, who is considered as a wisest rationalist and perfect man could not 'reconcile a married life' and had to leave his wives for his own perfection. While he fought against Brahminical system to establish equality of all men, he did not extend the same equality to women. when Ananda asked Buddha,

"How are we to conduct ourselves, Lord, with regard to womankind"

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5 Manu V 147-8.
6 Ibid., p. 7.
7 Ibid., p. 10.
“Don’t see them Ananda, replied he, and when further cross examined”; “But if we should see them, what are we to do?” his cutting answer was “keep wide awake, Ananda”

This gives an impression that Buddha considered every contact with women as something unholy.8

Elsewhere Buddha regarding women has said,

“A sex composed of wickedness and smile unknowable, uncertain as the path of fishes in the water, womankind

Hold truth for falsehood and falsehood for the truth

As greedily as cows seek pastures new

Women unsated yearn for mate on mate

As sand unstable, cruel as the snake

Women know all things, nought from them is hid”.9

2.1.4 Islam

Koran lays “Men have authority over women because Allah has made the one superior to the other, and because they spend their wealth to maintain them. Good women are obedient. They guard their unseen parts because Allah has guarded them. As per those whom you fear disobedience, admonish them and send them to beds apart and beat them if they don’t

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8 Ibid., p. 11.
obey you. Take no further action against them if they obey you, Allah is high supreme.\(^{10}\)

Thus the principal religions have held that women are responsible for men’s downfall, worthy to be mastered by force, inferior to men by nature and deserving to be kept under surveillance and control.

### 2.2 Ideological Justifications for subordination of women

#### 2.2.1 Biological Explanation

In order to justify women’s inferior position, a set of scholars, both classical and modern, take shelter to biological explanation. They argue that women are biologically different from men and that it is their biological characteristic which is root of women’s subordination. They argue ‘that they are genetically adapted to reproduction’, ‘that is women are by nature programmed to reproduce and take care of children’. The ‘sexual division of labour in society is the outcome of natural biological difference and not of men’.\(^{11}\)

This argument presumes physical weakness of women, ‘unable to bear arms and unwillingness to use force’.\(^{12}\) Consequently males’ dominance over female is considered to the result of formers’ physical strength and latters’ physical weakness, i.e., reproduction capacity of women. Physiological weakness provide women the subordinate status.


\(^{11}\) Rekha Pandey, *supra* note 3, p. 7.

2.2.2 Psychoanalytic Approach

According to Psychoanalytic theory formulated by Sigmund Freud, anatomical differences and development of personality are root causes of women’s subordination. He holds that “absence of phallus”, women feel as being ‘castrated’ and this leads them to consider as inferior. His Oedipus complex, “a complex developed by the child at 4 or 5 where the child desires for the parent of opposite sex” is responsible for development of personality\(^\text{13}\). Dividing personality into three parts id, ego and super ego, he holds that super ego in women is less developed\(^\text{14}\). For him women “have limited capacity for self criticism, are less likely to behave according to conscience and their ideals and conscience will be less effective than men’s”\(^\text{15}\).

2.2.3 Functional Approach

The Functionalists hold that all institutions fulfill certain functions. They argue ‘that the subordinate position of women emerges from the need of all societies to allocate different duties and responsibilities to their members. After analyzing 250 societies the leading exponent Murdock holds women perform four basic functions ‘sexual, reproductive, economic (including preparation of food) and educational a term used for socialization’\(^\text{16}\).

\(^{13}\) Ibid., pp. 18-20.
\(^{15}\) Ibid., p. 98.
\(^{16}\) In “Social Structure”, Mc Millon New York, 1949, cited by Rekha Pandey supra note 3, p. 22.
Similarly another leading exponent endorses this view when he discerns “two basic functions of family, by implication of women: first the primary socialization of children and second the stabilization of adult personalities”\(^{17}\), by this he means marriage relationship and emotional security of couple. All approaches/theories have been criticized, criticism reveals that no, single criterion is sufficient to explain women’s subordination.

### 2.3 Sex Roles – Feminist Perspective

#### 2.3.1 Classical Position

(a) **The traditional ideological position:** The traditional ideological position had its roots in Judaic and Christian religions and ideas. Its basic assumption is that men and women are essentially different types of beings, women as weaker and the man stronger, and the man is woman’s lord and master and woman is man’s mistress and servant maid. Its implication is that the differences between sexes must mirror in their relative status in society - they must enjoy different rights and be required to fulfill different duties\(^{18}\). The only way getting respect in society for women is to be a virtuous and gentle wife and a pious fertile mother\(^{19}\).

This status to women came from the original sin in the Garden of Eden. “Eve ate the forbidden fruit first and therefore she has to pay for

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\(^{18}\) Rekha Pandey, *supra* note 3 pp. 59-60.

In genesis the Lord said 'I will greatly multiply thy sorrow and thy conception, in sorrow thou shalt bring forth children and thy desire shall be thy husband and he shall rule over thee'. This view that of husbands superiority was held throughout the ages.

(b) **Liberal ideological position:** This position on the sex roles lies in the doctrine of Natural rights. It holds that all individuals are unique but of equal value. Women and Men are basically alike and have the same natural rights. The implication is that women shall have the same right to equal treatment in all domains of life, be it education, inheritance, law, marriage occupation or to public positions.

John Stuart Mill, leading liberal theoretician thought that married women would continue to discharge their duties as mothers and housewives and those they would thus, cease to be gainfully employed when they married and had children. That is, in the 'old liberal tradition' no change was envisaged in womens status of the home, apart from the right to legal equality.

(c) **The Romantic ideological position:** The Romantic ideological position on the sex roles accepted some and rejected other elements of the traditional and early liberal attitudes and tried to synthesize the two. Its basic assumption is that men and women are essentially different. However, society needs them both and assigns equal value. "In love the sexes

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21 Rekha Pandey, *supra* note 3, p.60.
22 Ibid., p. 60.
complement each other. The women graces the home with her motherliness, virtue, innocence, submissions, self sacrifice, charm, softness, piety, intuition, naturalness etc. Society must guard their virtues of women and protect them as wives and mothers. In other respects, women should be allowed to enjoy a greater degree of equality with many eg., in education and in marital status. Functions outside the home, however, such as gainful employment, public positions, and the exercise of the political rights are best left to men"25.

(d) Marxism: The ideological positions of Marxism is "family life has developed into a patriarchial system in which woman is enslaved, suppressed and isolated from the public life of the community". Her status involves a form of domestic slavery and in effect "legalised prostitution". In a capitalist society, she is forced to choose between an enslaved and dependent status as mother wife and an independent existence as a single person26.

2.3.2 Contemporary position

Radical ideological position on Sex Roles

Until the 19th century, women in western countries too were in bad position. Example, in America women not only could not vote, when married, but could not sign contracts, they had no title to own by inheritance or dower or to their children in case of legal separation27.

25 Ibid., p. 171.
26 Ibid., p. 172.
In order to get rid of this situation women in America and western countries launched suffrage movements and partially were successful. The women’s liberation ‘movement appearing in late sixties’ ‘developed around 1967’\textsuperscript{28}. Black power Movement, Youth Movement and Peace Movement (protest against Vietnam war) ‘emphasized on freedom’.

Feminist jurisprudence too, developed at the same time in late 60’s and early 1970’s in the writings of Simone Beavoir\textsuperscript{29}, Betty Freidan\textsuperscript{30}, Germain Greer\textsuperscript{31}, Kale Millet\textsuperscript{32}, Eva Figes\textsuperscript{33} and others.

The Western radical feminists viewed sexism manifested primarily as the power of men over women and the benefits and satisfactions which men received as a result of that power\textsuperscript{34}.

Radical feminists ‘focus on women as a class, typically as a class that is dominated by another class known as men’, and unlike liberal feminists who base their arguments on similarities, radical feminists build their arguments that focus on the differences between ‘men’ and ‘women’\textsuperscript{35}. The most important difference between men and women is the difference in power. Men dominate women. Men take from women. Furthermore men have been in control for so long that legal discourse completely ignores the

\textsuperscript{28} Rekha Pandey, \textit{supra} note 3, p. 65.
\textsuperscript{29} The Second Sex 1949.
\textsuperscript{30} The Feminine Mystique 1963.
\textsuperscript{31} The Female Eunuch 1971.
\textsuperscript{32} Sexual Politics 1970.
\textsuperscript{33} Patriarchial Attitudes 1970.
\textsuperscript{34} Rekha Pandey, \textit{supra} note 3, p. 67.
\textsuperscript{35} Patricia Cain, ‘Feminism and Limits of Equality’, in MDA Freeman (ed), \textit{Lloyds Introduction to Jurisprudence}, 6\textsuperscript{th} Ed, Sweet & Maxwell, p. 1108.
reality of women’s lives. Thus equality theory as a legal discourse has focused on public sphere issues like pregnancy in workplace – issue of import in male lives – rather than focusing on those long-silenced parts of female experience such as rape and sexual assault36.

‘Using the rhetoric of domination and sexual subordination instead of equality’ they argue for changes in laws that will end the inequality in power17.

The methodology adopted by the radical feminists is that of ‘consciousness raising’. For them effective political action could only emerge if women become conscious and this consciousness will spirit from the classification of experience and politicisation of the personal38. Consciousness raising in about giving voice to the unknown in women’s experience. Consciousness raising makes available stories that are personal and private. Consciousness raising brings new understanding by making known the unknown. Legal theories to support consciousness raising would include not only theories that protect speech, but theories that encourage the right trend of listening, a listening that privileges (temporarily) the previously silenced39.

2.4 Feminism

Feminism, in its generic sense, focuses on ending the social political and economic subordination of women in society. All forms of

36 Ibid., p. 1109.
37 Ibid.
38 Rekha Pandey, supra note 3, p. 69.
39 Patricia Cain, supra note 35, p. 1114.
feminism recognise women as historically oppressed and view women as free beings, equal to men, rather than as inferior to and dependent upon men.\footnote{Laura Ann Davis, 'A Feminist Justification for Adoption of An Individual Filing System', \textit{Southern California Law Review}, Vol. 62 Nov. 1988, p. 223.}

It is basically a western concept associated with women's movement. Until the 19th century and more so before the women in western countries and North America were in a poor condition. For instance women not only could not vote, when married but could not sign contracts, they had no title to own by inheritance or dower, or to their children in case of legal separation.\footnote{Flexner, \textit{Supra} note, p. 8.} In order to get rid of this situation women launched Suffrage Movements. The suffragettes argued that women could participate equally with men in the public realm and this possibly had no bearing on lives of men and women in the private realm.\footnote{Dubais Ellen, 'The Radicalism of Woman Suffrage Movement', Feminist Studies 3, quoted in Rekha Pandey, \textit{Women from Subjection to Liberation}, Mittal, New Delhi, 1989, p. 65.} The first voice raised in support of emancipation of women is said to be Mary Wollstonecraft in her famous 'Vindication of Rights of Women (1792)'.\footnote{Van Klien, \textit{The Feminine Character}, Trubner & Co, London 1946, p. 21.}

'Industrial revolution, change in economic status of families, growth of middle class', 'admittance of women in number of trades', and democratic ideological factor that everyone should have an equal chance of free development as an individual etc., made women to attack on the absence of women in public. Association of women in civil rights movement of 1950's and 1960's, (the movement by blacks protesting racial
exclusion) ‘women became more sensitive to their own’ and resulted in ‘womens liberation movement’.

Womens liberation movement, both in Europe and America, could achieve a high level of acceptance, and was responsible for many substantial theoretical formulations and legislative reforms in the direction of greater equality for women. ‘Information sharing among women, led to a consciousness that womens experience at home and work are not personal, private and isolated’.

Women’s consciousness-raising groups, surprisingly similar to grassroots labor organizing efforts, arose in “friendship networks, colleges and universities, women’s centers, neighborhoods, churches, and shared work and workplaces”. These grassroots structures produced the central feminist concept – now the modern movement’s slogan – that “the personal is the political”.

MacKinnon summarizes the four interrelated facts of the idea that “the personal is the political” as follows:

First, women as a group are dominated by men as a group, and therefore as individuals. Second, women are subordinated in society, not by personal nature or by biology. Third, the gender division, which includes the sex division of labour which keeps women in high heeled low-status jobs, pervades and determines even women’s personal feelings in

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44 Ibid., pp. 21-22.
45 Rekha Pandey, supra note 3, pp. 65-66.
relationships. Fourth, since a woman's problems are not hers individually but those of women as a whole, they cannot be addressed except as a whole. In this analysis of gender as a non-natural characteristic of a division of power in society the personal becomes the political\(^47\). That is, it insists that women's issues are political.

### 2.5 Legal Feminism

Legal feminism is feminism within the legal academy. The aim of feminism has been to uncover the shortcomings of the dominant legal form of life in relation to women and, by necessary implication, also in relation to men\(^48\). For legal feminists, women do not have a natural home within the legal world. The historical plight of women in law has been summarised by Elizabeth Evatt as follows:

> 'For centuries the legal system, shaped and enforced exclusively by men, denied women the attributes of citizenship and personhood, and subordinated them to the decision of men. Lacking standing, women who fought to overcome their legal disabilities had to enlist the support of fair-minded men.'\(^49\)

The legal feminists 'perceive the deficiencies of law, both from personal experience and from the systematic study of legal doctrine and legal practice. Because they are familiar with the legal rhetoric of

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justice and equality, they appreciate also the aspirations and claims of law. Their power of persuasion and indeed their very ability to communicate with the other lawyers, which is critical to legal changes, also comes from their position within the legal community. This places them in an ideal position to engage in immanent critique of law. critique from within\textsuperscript{50}.

But legal feminists are not uniform in their ideology or methodology. They have put forth ‘different ethical theories about the value of individual freedom and beliefs about the relations of the individual to society\textsuperscript{51}.

Equal opportunity to compete with men in a male world is no longer sufficient. Today, radical elements within the feminist movement are developing new ways of addressing women’s relationships with men and with each other in terms that are uniquely “female”. More traditional brands of feminist theory are oriented for thinking about women in terms of their place in a male-dominated, male-defined society – that is, for thinking about women as men think about women, rather than as women idealize themselves. Newer forms of feminism reject the individualistic, atomistic views coined by male society in favor of a more communal vision of society and the woman’s role within it\textsuperscript{52}.

\textsuperscript{50} Ngai re Naffine, \textit{supra} note 48, p. 78
\textsuperscript{51} Laura Ann Davis, \textit{supra} note 40, p 223
\textsuperscript{52} \textit{Ibid}. 

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Within this diversity attempts have been made to describe the basic ideological currents in feminist thought. Some have broken feminist theory into three groups: liberal feminism, socialist feminism and radical feminism\(^{53}\).

One scholar Rosemarie Tong has identified seven distinct feminisms: liberal, radical, marxist, socialist, psychoanalytic, existentialist, and post-modern\(^{54}\). Patricia Cain, identifies the same into four, Liberal Feminism, Radical Feminism, Cultural Feminism and Post-Modern Feminism\(^{55}\).

2.5.1 Liberal Feminism

Liberal feminism traces its roots to the seventeenth century liberalist focus on individual rights and freedoms as the central ethic of the ideal society. Early feminists adopted the liberalist view that the worth of an individual is inherent in that individual's separate identity\(^{56}\).

Liberal feminism is rooted in the belief that women as well as men are rights bearing autonomous human beings. Rationality, individual choice, equal rights, equal opportunities are central concepts of their theory\(^{57}\). On basis of these concepts they argue that women are equal just rational as men, therefore women should have equal opportunity with men. Liberal feminism is mainly characterized by the pursuit of formal equality. As Scales puts "The liberal feminist believes that "an individual woman


\(^{56}\) Laura Ann Davis, *supra* note 40, p. 224

\(^{57}\) Patricia Cain, *supra* note 35, p. 1106
should be able to determine her social role with as great a freedom as does a man." This freedom results primarily from the elimination of legal constraints and the achievement of equal civil rights, thus allowing the individual woman to compete equally in the marketplace. The liberal feminist thus emphasizes the equal opportunity for the individual in the here and now, with no consistent focus on the particular historical features of the subjection of women as a group. That is, for the liberal feminists, equality is achieved through political action.

The equality approach of the liberal feminists is criticized by other feminists. To argue on the basis of women's similarity to men merely assimilates women into an unchanged male sphere. In a sense the result is to make women into men. Some criticize it as acceptance of patriarchal social structures which 'legitimize and institutionalize domination of men over women.

Ann Scales provides a representative critique of liberal feminism: "To demand only the chance to compete is to embrace the status quo in a way that tends to sanction oppressive arrangements-for example, the necessity of choosing between children and career. Moreover, to ask only for equal opportunities to compete is to obscure the fact that the restrictions presently imposed on individual women are functions of class characteristics .... The failings of the liberal feminists concept of equality

59 Patricia Cain, supra note 35, p. 1107.
60 E. Storkey supra note 58, p. 427.
result from the fallacy inherent in the liberal vision: that men are the norm\textsuperscript{61}.

The liberal feminists are trying to work within the existing social, political and legal structures (arguably) gives them access to tools for change.

2.5.2 Radical Feminism

Radical feminists focus on women as a class, typically as a class that is dominated by another class known as men, their arguments are based primarily on the differences between men and women\textsuperscript{62}.

Radical feminists argue that differences between the sexes are a product of male dominance, rather than traits which male dominance exploits. Therefore, their focus is on male dominance over women, not difference\textsuperscript{63}. Radical feminists point to disparities in economic, sexual, and social power, and argue that difference theory helps to maintain these power disparities by obscuring the force used to improve the "celebrated" feminine characteristics that is, by a social structure in which men are on top, and women play a subordinate, and subordinated role\textsuperscript{64}.

The most important difference between women and men is the difference in power, men dominate women. Men take from women. Men have been in control for so long that legal discourse completely ignores the

\textsuperscript{61} Ibid.
\textsuperscript{62} Patricia Cain, \textit{supra} note 35, p. 1108
\textsuperscript{63} MacKinnon, \textit{supra} note 47, pp. 22-23
reality of women's lives. For the main proponent Mackinnon, "Equality question is question of distribution of power".

For MacKinnon, "[A] discourse of gender difference serves as ideology to neutralize, rationalize and cover disparities of power, even as it appears to criticize them. Difference is the velvet glove on the iron for the domination. This is as true when difference are affirmed as when they are denied, when their substance is applauded or when it is disparaged, when women are punished or when they are protected in their name... One of the most deceptive antifeminisms in society, scholarship, politics, and law is the persistent treatment of gender as if it truly is a question of difference rather than treating the gender difference as a construct of the difference gender makes". For Mackinnon 'to accept womens difference society must do something more than merely accommodate the differences.

Andrea Dworkin, another prominent radical feminist, focuses on the sexual subjugation of women by men because she believes that practicing heterosexual physical intimacy is collaboration with patriarchy. She argues that women have been "colonized" by men, both sexually and economically, and concludes that consequently it is impossible for women to imagine what they would be like in the absence of male domination.

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65 Patricia Cain, supra note 35 p.1109.
66 Ibid.
67 Marion Crain, supra note 64, p. 1189
68 Ibid.
69 Patricia Cain, supra note 35, p. 1108.
Many, including radical feminists believe that change is necessary in the structure of relationship—male-female, employee-employer—rather than in the structure of the economy. Radical feminism also advocates the social collective over traditional western individualist structures.

2.5.3 Cultural Feminism

Cultural feminism had its origin in the work of Carol Gilligan and Nancy Chodorow. Chodorow, attempting to explain the perpetuation of nearly universal differences that she believed characterized masculine and feminine personality and roles, attributed the differences between the sexes to the allocation of child care responsibility to women. She concluded that 'in any given society feminine personality comes to define itself in relation and connection to other people more than masculine personality does.

Building upon Chodorow’s work, Gilligan undertook studies of female development and its relationship to concepts of identity, morality, and the making of life choices. Gilligan concludes that girls and boys, women and men, seem to approach moral dilemmas and make life choice differently. While boys and men assign primary importance to separation and autonomy, girls and women value intimacy and connection with others.

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71 Laura Ann Davis, supra note 40, pp. 227-228
72 In a Different Voice 1982.
73 The Reproduction of Mothering 1978.
74 Marion Crain, supra note 64, p. 1188.
Consequently, boys and men assume that autonomy of individuals is the paramount value, and employ an "ethic of rights" or "ethic of justice" in moral decision-making. By contrast, girls and women have as their goal the preservation of relationship in any given situation and so are guided by an "ethic of care" or "ethic of responsibility".75

Cultural Feminists also focus on the difference between men and women. They 'embrace woman's difference'.76 Robin West has aptly summarized the beliefs of cultural feminists, she asserts that cultural feminists celebrate as inherent feminine traits (at least in the white, middle-class community) a commitment to an ethic of care, and a focus upon the preservation of the relationship involved in a given situation.77

Cultural feminists attribute this difference between the sexes to women's historical obligation to care for children.78

As West puts it, the crucial difference is that "women raise children and men don't." Because these feminine traits are the same ones that traditional (male) culture has stereotypically celebrated, cultural feminism appeals to traditional culture as a moderate feminist perspective.79 In short, it does not necessarily threaten or challenge stereotypical notions about women's natures, it simply urges their affirmation and celebration.

75 Ibid.
76 Patricia Cain, supra note 35, p. 1110
78 See. Chodorow, Family Structure and Feminine Personality in Rosaldo & Lemphere (Ed), Women Culture And Society, pp. 43-44
79 Robin West, supra note 77, p. 13.
In a cultural feminist model, for example, celebrating women's attributes and values in the workplace would mean restructuring the workplace so that communitarian behavior (caring and nurturing) is valued, rather than restricting women to occupations requiring communitarian behavior, which in today's workplace tends to be undervalued, underpaid, or otherwise considered inferior.80

Feminists argue that the category 'woman' has not been so much misdefined by men, as it has been ignored and undervalued. Using equality rhetoric, cultural feminists argue for material changes in present conditions that would support woman-valued relationships.81

MacKinnon, the principal critic of cultural feminism, ‘has suspicions about different voices’, she says ‘this voice after all has been constructed in response to patriarchy’.82

She argues that until women cease to be victims of subordination they cannot speak for themselves83. Women identified values such as caring and connection to others are suspect because they are values that women have created in response to the patriarchy. We value caring because that is what our oppressors have caused us to value84.

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80 Marion Crain supra note 64, p. 1188
81 Patricia Cain, supra note 35, p. 1110.
82 Ibid., p. 1111.
83 Ibid.
84 Ibid.
2.5.4 Post Modern Feminism

To understand post modernism it is necessary to grasp what is meant by modernism. Modernism was a revolt against realism. One way to understand it is to see it as a ‘rage against existing order’, ‘an attack on form, the belief that an ability to go beyond, to transcend, to break through.’\(^{85}\) they showed that the ‘form’ of rights was different from what had been assumed and that the ‘form of orthodox reasoning, particularly the case method of legal education, over looked considerations of value and ignored Social science data\(^{86}\). This is what the Realists were doing. It was an accusation against Realists who were ‘breaking down the structure of the society for preparing the way for some sort of anarchy or revolution\(^{87}\).

Postmodernism is realisation that there is ‘no beyond’ no place ‘outside the forms’. It stands for ‘flux, dispersal, plurality and localism’\(^{88}\). It challenges pre-existing methods of legitimation. Therefore it is challenge to assumptions and foundations of Western Thought\(^{89}\). In legal analysis a most modern perspective brings into focus issues otherwise obscured from view. For example, the claim that law consists of universal and abstract principles provides legitimation to the legal system. But once it is asked how the laws are experienced by the differently situated persons, what values are incorporated in the laws and how they affect different sections of


\(^{86}\) Ibid.


\(^{88}\) Ibid., p. 503.

community it becomes obvious that law operates at many levels and differently for different people\textsuperscript{90}.

'Law gets its meaning from the intersection of legal and various other social systems of meaning\textsuperscript{91}. The single most important point of any legal theory, therefore, is the acceptance of the idea that meaning including legal meaning is constructed rather than pre-existing and simply waiting to be discovered.\textsuperscript{91}

That is, 'categories, especially gender categories are mere social constructs\textsuperscript{92} of patriarchial society. Therefore they view 'women' category as 'multifarious', focusing on the 'situated realities of women'.\textsuperscript{93} That is there is no single category as 'woman'. There simply is no such thing as the woman's point of view. There is no theory of equality that will work for the benefit of all women. Indeed, there is probably no single change or goal that is in the best interest of all women.\textsuperscript{94} For them the concept of 'woman' was a creation of culture', therefore bereft of culture there could be no authoritative female voice\textsuperscript{95}.

'Women could not be pared down to true selves' because 'the very idea of women was cultural product and more worryingly the dominant culture was (is) predominantly patriarchal'.\textsuperscript{96}

\begin{enumerate}
\item \textit{Ibid.}
\item Patricia Cain, \textit{supra} note 35, p. 1111.
\item \textit{Ibid} p. 1112.
\item \textit{Ibid.}
\item \textit{Ibid.}
\item \textit{Ibid.}
\item \textit{Ibid.}
\item \textit{Ibid.}
\end{enumerate}
consequently many women, not one. That is, the postmodern insight is 'there is no single unitary definition of “women”.'

Therefore the task of legal feminist 'is to explore sociologically the conditions under which law can become a principled component of social life a direct expression of community interests, structures and concerns. But women to be under one umbrella, it is necessary to reconstruct “women”, Towards this, Cornell shows a new way to construct woman. ‘Rather than deriving what ought to be from the reality of what is, ‘with the help of allegory and myth, an imaginative universal, a mythology of the feminine in which all women can find themselves’. The appeal to myth carries with it a call for collective imagining, informed by women’s realities but not limited by them. That is to build a shared concept of ‘woman’.

2.6 Feminism in India

'[R]egardless of whether they are based on capitalist or on socialist ideologies, all the countries of Europe and North America claim equality as one of the core principles of their political philosophies'. Yet women were refused to be accepted as equals. They had to have long

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97 Ibid., p. 88.
98 Patricia Cain supra note 35, p. 1115.
101 Patricia Cain supra note 35, p. 1115.
suffragette movements and better struggles for acceptance of the idea of equality.

The situation in India is altogether different. The concept of equality as a co-relate of the concept of individual freedom is alien to Indian society. It came to Indian culture through the exposure of western educated Indians to liberalism at the beginning of 19th century. It became an operational principle only after the adoption of our Constitution.

History reveals, the educated Indian's acquaintance, inspired to reflect upon their own value system and to examine the inequalities, injustices and oppression of their own culture. This stimulated a strong social reform. Raja Ram Mohan Roy's struggle against sati led the British Government to abolish sati in 1829 by Regulation XVII. The law was first applied to Bengal but Madras Government also passed similar rule in 1830.

Social reform movements under enlightened reformers like Ishwar Chandra Vidyasagar, Gurudev Ranade, Dayanand Saraswati, Aurobindo Ghosh, Lajpat Rai, Annie Besant, M.K. Gandhi, Sarojini Naidu and others led to prohibition of infanticide through the Act of 1870, widow remarriage was legalized through The Widow Remarriage Act 1856, child marriages were prohibited through The Child Marriage Restraint Act 1929. Equal property rights were given through The Hindu Women's Right to Property Act 1939.

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103 Ibid.
Gandhiji's concept of Stree-Shakti (The moral power of womanhood)\textsuperscript{105} communicated with women convincingly leading many women to participate in the freedom movement. As he 'emerged as country's political leader he called for the people to arm themselves morally and declared that the eradication of untouchability, the acceptance of equality for women; and cultivation of humanism, were critical to this armament. He declared 'that equality for women would be one of the central objectives of his political program'\textsuperscript{106}.

Similarly women's organisations at the national level such as Bharat Mahila Parishad (Started in 1904), Womens Indian Association (started in 1917 by Annie Besant) National Council of Women in India (founded in 1925 by Lady Tata) All India Womens Conference (established in 1927) and host of others took up 'issues like women's education, abolition of pardah, child marriage, equality of rights and opportunities, and women suffrage'\textsuperscript{107}.

Unfortunately after 1947, women again stopped taking interest in larger social issues.\textsuperscript{108} Around 'mid seventies India witrssed emergence of womens organisations'' which took up feminist issues from new perspective their activities were not restricted to merely passing resolutions or sending delegations to various authorities. These groups engaged not

\textsuperscript{105} Suma Chitnis. \textit{supra} note 102, p. 87.
\textsuperscript{106} \textit{Ibid.}
\textsuperscript{107} Ram Ahuja, \textit{India Social System}, Rawat Publications, New Delhi, 1997, p. 98.
\textsuperscript{108} Vibhuti Patel, Emergence and Proliferation of Autonomous Women's Groups in India, in Rehana Ghadilly (ed), \textit{supra} note 102, p. 250.
only in militant activism to assert women’s rights but also made serious attempts to articulate their thoughts on the roots of oppression of women.\footnote{Ibid.}

Many young women involved with radical and leftist organisations started raising voice against sexual discrimination. They found it necessary to take up issues related to oppression of women like dowry, violence in the family, alcoholism, sexual discrimination at workplace etc.\footnote{Ibid., p 251} Magazines like Feminist Network, Stree Sangarsh, Manushi, Baija (Rural women) sabala, Sachetana. Samata, Women’s Centre a news letter etc were mouth pieces of women’s movement.

There were also Nationwide Anti Rape Movements in gang rape of Laxmi, a beggar woman in Punjab, Rameezabee in Hydrabad. Mass rapes in Patnagars, Rajhara, Goa, Singhbhum, Maratwada, Agra, Bhojpur, and Kareimnagar were brought to light by bold journalists\footnote{Ibid., p 253}. In 1979, four professors of law, Delhi University wrote an open letter to Supreme Court of India condemning its judgment on Mathura rape case. Women’s organisation all over India demanded re-opening of the case\footnote{Ibid.}.

2.7 Legal Feminism in India

India as a post-colonial state operates with a common system of law. The current state of legal scholarship is partly a reflection of the hold of legal positivist ideas that were dominant when the British Law was transferred to India\footnote{Ibid.}. The state of contemporary legal scholarship shows

\begin{itemize}
  \item Amita Dhanda & Archana Parashar, \textit{supra} note 90, p. 2.
\end{itemize}
an overwhelming reliance on positivist ideas about the law. 'Institutionally the conception of legal knowledge is primarily a positivist conception'.

Most of the last century legal theory in common law has sought to answer the fundamental question of why law is authoritatively binding and invariably the background context for this analysis is the claim of common law as representing the accumulated wisdom of a community. However, legal scholarship in India by and large does not concern itself with justifying the authority of the law and therefore, mechanistic analysis of the doctrine seem like sufficient analysis. The resultant paucity of legal theory suitable for the specific contexts of Indian women thus is not surprising.

The introduction of legal positivist ideas was not challenged ever since. As a consequence legal writing is mostly confined to the analysis of legal doctrine i.e., examining the details of judgments and legislation. There is no means of explaining why the law has binding authority, why does the law have this particular shape or form, or whether law can be expected to help in achieving social change or what can be done when law is actually hindering social transformation.

Cotterrel's empirical theory treats law as a social phenomenon, which must be examined through systematic empirical analysis of the

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114 Ibid.
115 Ibid., p. 3.
116 Ibid.
117 Ibid., p. 5.
political, economic and social conditions in which it exists\textsuperscript{118}, Amita Dhanda\textsuperscript{119} opines that this is the kind of legal theory necessary for understanding the role of law in contemporary Indian society. She suggests that the necessary tools are the theories proposed by the western feminists.

Contemporary Indian feminists have not really produced a critique of the law without which it is not possible to evolve a new jurisprudence. In fact, they seem to have accepted a premise of the liberal theory, that rule of law can guarantee human rights and by extension, women's rights. In a draft on law reforms some feminists state that "the law has to provide more rights and equality than the society itself... the law also has to be forward looking and progressive"\textsuperscript{120}.

The Indian feminist movement from the very beginning targeted law reform as the strategy for changing the conditions for the women. Despite many law reforms in the few decades women continue to be oppressed. This has prompted some feminists to change the focus of feminist activity from law reform to seeking improvement of women in more immediate ways i.e., employment opportunities, education, health, and access to medical services\textsuperscript{121}. On this foreign analyst Leslie Calman\textsuperscript{122} says

\textsuperscript{119} Amit Dhanda, \textit{supra} note 84, p. 5.
\textsuperscript{120} Nandita Haskar, \textit{Human Rights Lawyering} in Amita Dhanda (Ed) \textit{supra} note 90, p. 83.
\textsuperscript{121} Archana Parashar, \textit{Feminism in India Legal Education} in Amit Dhanda (ed) \textit{supra} note 90, p. 90.
the Indian women's movement divide it into a 'Rights Wing' i.e., those who target their demands on the state and seek legislature mandates for women's advance, and an 'Empowerment Wing'- consisting of groups who place more emphasis on empowering women from within themselves.

2.8 Empowerment of Women

Empowerment means 'equal status to women and provide opportunity and freedom to develop themselves'\textsuperscript{123}. It means 'enabling them to realize and utilize their full potentials to take part in decision making, to exercise control over their own lives and circumstances around them, to break free from outdated derogatory customs, beliefs and practices to take active part in the process of social, economic and cultural development, to contribute towards the societal and national development'\textsuperscript{124}.

Empowerment "also implies a state of mind and attitude of person". An empowered woman has a positive self image and takes part in decision making, has greater access to knowledge and resources, self confidence and undertaking of the importance of human values, rights and privileges for a more dignified life\textsuperscript{125}. Empowerment is an active, multi dimensional process\textsuperscript{126}. Empowerment can be political, economical and social. More often education along with economic independence are said to


\textsuperscript{125} Devadas Rajammal, 'Education and Women Empowerment', Association of Indian Universities, New Delhi, 1999, p. 125.

be the means to achieve empowerment in social, political and cultural reality\textsuperscript{127}.

**Political Empowerment:** Womens empowerment is essentially a political task. It cannot be achieved until and unless a criticalness of women access formal political power by entering political institutions on a large scale\textsuperscript{128}. Reservation polices in formal political institutions is an enabling condition for empowerment of women, because 'it legitimizes and provides State sanction for women’s presence in local self government and by doing so sends out a larger social message heralding and advocating a significant shift in one area of gender power relation'\textsuperscript{129}. Case studies from Karnataka, Kerala, Orissa, Himachal Pradesh, Maharastra, Rajasthan, and West Bengal show that women elected to Panchayat Raj Institutions (PRI), show that they are ‘for more articulate and effective, function autonomously and are better able to identify and promote the practical and strategic interests of the poor women and oppressed of their communities’. They have also been better equipped to address gender discrimination\textsuperscript{130}. Therefore, the demand is to pass the proposed Womens Reservation Bill, where 33% of seats are reserved for women in the Lok Sabha.

**Economic Empowerment:** 'Since Women comprise the majority of the population below the poverty line and are very often in situations of extreme poverty, given the harsh realities of intra household and social

\textsuperscript{127} See, [www.google.com](http://www.google.com), visited on 17.02.2003.

\textsuperscript{128} Sritatha Batliwala, 'Empowering Women', Seminar, 449, Jan 1997, pp.88-89.

\textsuperscript{129} Ibid., p. 91.

\textsuperscript{130} Ibid.
discrimination\textsuperscript{131}, the economic empowerment envisages strategies and programmes; 1) to eradicate poverty, 2) establish credit systems at microlevels, 3) to recognise labour in formal and informal sectors including homes, 4) to evolve new policies in the light of globalization which has increased economic disparities, feminised poverty and deteriorated working conditions, 5) to train women in agriculture related fields such as horticulture, social forestry, livestock, animal husbandry, fisheries etc, 6) to provide support services for the aged and disabled etc\textsuperscript{132}.

Social Empowerment: Social empowerment consists of policies, strategies and programmes relating to; i) education with focus of girls and women belonging to weaker sections including scheduled castes/scheduled tribes/other backward classes/minorities, ii) to address health needs of women, to reduce infant mortality and maternal mortalities, to have safe access to family planning, to take into account reproductive rights of women, vulnerability to sexual health problems, including communicable diseases such as AIDS/HIV, etc., iii) to meet the nutritional needs of woman in all stages of life cycle, iv) to provide safe drinking water, sewage disposal, toilet facilities and sanitation, v) to evolve policy which enables to provide shelter both in urban and rural areas vi) to train women for conservation and restoration of non-renewable energy and vii) to recognise needs of women in disadvantaged groups, and to provide special assistance to women in extreme poverty, destitute woman, women affected by natural calamities, disabled, widows, elderly women, single women in different

\textsuperscript{131} http://www.interpal.int. visited on 17 Feb 2003.
\textsuperscript{132} See for details, www.msnsearch.com. visited on 17.02.2003
circumstances, women displaced from employment, migrants, victims of violence, deserted women and prostitutes.

Thus in conclusion it may be said that historically religious condemnation, prescription of roles and denial of equal rights have been responsible for women's oppression and subordinate position. Patriarchial societies have tried to justify the subordinate position by offering various theories based on biological psychological and functional differences in women.

To possess equal rights to that of men, women have had long struggle both politically (feminism) and legally (legal feminism). In their legal struggle inspite of their differences in their approach, methodology, value about individual freedom and about relation of individual to society, they agree that women are free beings, equal to men and their goal is to liberate themselves.