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INTERSECTIONALITY IN FEMINIST JURISPRUDENCE: A COMPARATIVE STUDY OF GENDER JUSTICE ACROSS LEGAL SYSTEMS

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Abstract

As a coherent academic practice originating in 1978, feminist jurisprudence is a critical discipline that responds to the so-called neutral and objective legal systems by proposing to highlight the experience and viewpoint of women historically marginalized by the legal system. Feminist jurisprudence is a plurality of theoretical strands and varied approaches rather than a single theory, that is, the traditional approaches to legal analysis are significantly challenged by it. The history of feminist legal theory has developed out of the primitivism of early liberal feminist approaches to formal equality between men and women in the 1970s to complex theoretical statements that question the very structure of legal systems. The initial legal feminist agendas were reformist agendas which aimed at addressing gender inequities in family law, employment law, and criminal law. But by mid-1980s the feminist legal community shifted the focus onto how law in itself is gendered, deconstructing the masculinist ideologies codified in supposedly neutral legal dogma and approaches. The critical imperative of intersectionality has now been faced by modern feminist jurisprudence as the subordinate status of women is not only not monolithic but must be motivated by a multiplicity of factors interacting in different measures that encompass race, class, sexuality, ability, and other aspects of social identity. Vaccinated feminist legal theory, which was largely a project run by white, middle-class, heterosexual women, came under persistent critique as a formulation of an abstract universal woman in opposition to the differentiated realities of marginalized women - indigenous women, immigrant women, lesbian women, disabled women, and working-class women. The discipline has since disintegrated into various theoretical traditions: liberal feminist jurisprudence continues to be powerful but steadily rivalled by radical feminist theories of domination and sexuality, postmodern and poststructuralist theories of contextual and fluid identity, and critical race feminism showing the intersectional nature of legal doctrines with various marginalized positions. Intersectional analysis is a required modern change in gender justice that does not stop at the examination of the gender discrimination but investigates how

gender works in conjunction with other systems of power to create unique systems of subordination and resistance. This framework understands that various women are differently impacted by legal doctrines depending on their intersecting identities and hierarchies and that constitutional and litigation strategies need to consider the relative positionality of claimants.

Keywords: Feminist jurisprudence, intersectionality, Gendered, Feminist Legal theory, Identity and power.

Introduction

In its essential nature, feminism, is a utilitarian and reformist movement based on the belief that the life of women should not be governed by gender only and that women need to have meaningful choice and dignity in all areas of life. As an academic and analytical practice, feminist jurisprudence is a wholesome critique of law as a social and political institution, which challenges the so-called neutral and objective frameworks that have traditionally pushed women experiences and views to the periphery. The term feminist jurisprudence was coined as recently as 1978 [1]and covers the full body of feminist writing on law, which includes a variety of theoretical traditions and approaches to law, which have radically upset traditional modes of legal analysis[2]. Feminist jurisprudence contains not one identifiable theory, but a multiplicity of strands of thought, as the pluralistic and multifaceted quality of the field of feminist legal scholarship. The history of feminist legal theory has covered a long road within the last forty years[3], emerging out of the initial liberal feminist strategies of formal equality between men and women, to more highly sophisticated theoretical formulations that aim to question the very structural basis of legal systems[4]. Legal feminists in the 1970s had a reformist agenda, which they argued in liberal paradigms that equal rights[5], and tried to redress gender inequities in particular areas of law such as family law, employment law, and criminal law. This stage put emphasis on the immediate justice over the more generalized theoretical deconstruction, acknowledging that there was too much to do to be able to afford intellectual deviations. Nonetheless, closer to the mid-1980s, the feminist juristically community started to venture out of the field of equality-oriented reform to address the gendering of the nature of law itself, and the masculinist assumptions inherent in the apparently neutral legal dogma and methodologies.

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[1] Ann C. Scales, “Towards a feminist jurisprudence,” Indiana law Journal, 19881.
[2] Martha A. Fineman, “Feminist legal Theory,” in The Blackwell Companion to Philosophy of Law and Legal Theory.
[3] Katharine T. Bartlett, “Feminist Legal Methods,” Harvard Law Review, 1990.
[4] Susan Moller Okin, Justice, Gender, and the Family, 1989.
[5] Herma Hill Kay, “From the second sex to the joint venture,: California Law review, 1991.

The modern feminist jurisprudence struggles with the critical term of intersectionality, in the acknowledgment that the status of women as subordinate is not uniform but rather conditioned by multiple factors of gender and race, class, sexuality, ability as well as other dimensions of sociality[6]. Developed by most white, middle-class, heterosexual women, early feminist legal scholarship was subject to ongoing criticism of creating an abstract woman, which could not represent the diverse and differentiated realities of non-English speaking women, indigenous women, immigrant women, lesbian women, disabled women, and working-class women[7]. Such acknowledgement of difference in the category woman radically reconstituted previous feminist certainties, creating both fruitful theoretical work and real conflicts between academic and reformist feminism[8]. The assault on what now has been called essentialism the conviction that there is one identifiable essence of women required a more sophisticated perception of the role of law in creating and reproducing social differences on a variety of planes of inequality.[9] The legal theory of feminism has in turn fragmented into several theoretical traditions. The conceptual space of liberal feminist jurisprudence, although still powerful, is pushed aside by radical feminist approaches that make domination and sexuality the central organizing principles of gender subordination. Feminist jurisprudence based on postmodernism and poststructuralism do not subscribe to any grand narratives or truths but instead rely on multidimensional and contextual analyses that recognize the fluid, emergent and constructed character of identity categories. Such theoretical advances have presented rigorous analytical resources based on philosophy, psychoanalysis and literary criticism, and have allowed more probing investigations of power relations holding within legal systems. At the same time, critical race feminism and other intersectional theories have enlightened the influence of legal doctrines on and by the particular insecurities and struggles of women at the nexus of various marginalized positions. The introduction of intersectional analysis to the field of feminist jurisprudence can be viewed as a necessary shift to present-day gender justice. Instead of studying the issue of gender discrimination separately, intersectional strategies explore the operation of gender in conjunction with other power systems to generate unique mechanisms of subordination and resistance. Such framework recognizes that discrimination in the workplace affects different women in different ways, that family law does not affect women

[6] Kimberle Crenshaw, De- marginalizing the intersection of race and sex," University of Chicago Legal Forum, 1989.
[7] Bell hooks, Feminist theory: from margin to Center, 1984.
[8] Chandra Talpade Mohanty, "Under Western Eyes,: Boundary 2 1984.
[9] Angela P. Harris, "Race and essentialism in Feminist Legal," Stanford Law Review, 1990.

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equally as a group based on race, religion, and economic status and that constitutional litigation strategies should take into consideration the relative positionality of claimants within various hierarchies. Moreover, intersectional feminist jurisprudence should be guarded against dissolving into a series of jubilations of pure difference but should instead sustain its attention on structural power relations and, inasmuch as it is involved with the agency and resistance of women, substantive gender justice. [10]

Feminist Legal Theory: Evolution towards Intersectionality

I. Feminist Jurisprudence and Feminist Legal Theory Foundations and Definitions.

Feminist jurisprudence as a specifically designated area of legal study is as new as 1978 and represents a radical break with traditional jurisprudence, which has always been dominated by men and masculinist views. [11]Feminist jurisprudence does not actually have a definite denotation, but rather it is instantiated by a plethora of ways of theorizing about law, and in this case, it has served to disrupt the traditional paradigm of jurisprudence by involving the challenge of conventional assumptions of legal neutrality and objectivity[12]. The feminist legal theory may be regarded as a multi-layered intellectual project based on academic feminism and practical activism. [13]In its most basic form, the question of feminist legal theory is how to challenge the gendered construction of knowledge in the field of the law, because what is offered as a universal and true description of the world is in fact partial in its coverage of the world, given that all accounts of law and legal procedure pay virtually no attention to the experiences and perceptions of women. Feminist jurisprudence as a meaning and explanation should be seen in the scope of its practical and reformist aspects. Feminism, even though the origin of feminist jurisprudence, is not easily defined because it has numerous strands and feminists themselves are diverse when it comes to substance and approach to issues. Nevertheless, feminist movement is established on the premise that the lives of women and girls should not be by gender determination alone, that women and girls should be in a position to exercise some degree of choice in their lives and that they have a right to dignity of the person. The interaction between the feminist theory and practice of law has been dialectical and dynamic. The relation between feminist legal theory and feminist law-making is based on a spiralling interaction in which feminist practice has produced feminist legal theory, theory

[10] Elizabeth V. Spelman, Inessential woman, 1988.
[11] Patricia Smith (ed.), Feminist jurisprudence, 1978.
[12] Carol Smart, Feminism and the power of law, 1989
[13] Marha Chamallas, Introduction to Feminist Legal Theory, 3rd ed., 2013.

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has produced feminist practice, and practice has produced feminist theory. [14]Moreover, feminist jurisprudence undermines the long-standing liberal myths of the genderlessness of the legal person[15], the individuality of one's course of life, and the universal applicability of the law, as such myths have long been central to the ideology of formal law and feminist scholars have exposed how legal neutrality, objectivity, and non-partisanship are embedded and indeed central to such cherished legal concepts as the rule of law and equality before the law, but which themselves tend to be gender-biased and to perpetuate gender inequality.

II. Evolution of Feminist Legal Theory: The Development and the Direction of Change.

The history of feminist jurisprudence in the West has been a spotted one in the past few decades, with various pathways being followed through research and publication, teaching and curriculum design, and legal practice itself. It is impossible to discuss the evolution of feminist legal thought outside of the context of the social movements and practical struggles of women to equality that have shaped the direction taken throughout that era. Feminist legal theory history demonstrates how intellectual transformations have been born out of, and have also contributed to tangible campaigns to reform the law and better the material circumstances of women's lives. The first stage of the history of modern feminist legal theory began in the 1960s [16]as a second wave of active women rights movement grew out of the civil rights movement, prompting a resurgence of interest in modifying the law to eliminate sex discrimination and in altering the legal profession to include women in it. The dominant school of feminist legal theory in this period was liberal feminism based on Enlightenment ideals of equality, freedom, and autonomy[17]. These liberal principles formed the basis of strategic litigation campaigns aimed at attempting to challenge law-gendered discrimination to court. Since the 1970s, when feminist legal scholars launched a campaign to bring about change and wrote about gendered anomalies in the law, this strategic decision was a practical one in the imperative to maximize the achievement of justice on the part of women as a result of the resultant contradictions and ambiguities. The strategy in this initial era was on letting women in or providing the feminine with the prevailing legal paradigms, which was a pragmatic decision influenced by the urge to maximize the achievement of justice in women. Some feminist legal scholars by the mid-1980s had since moved beyond an emphasis on equality and the concept of reforming discrete aspects

[14] Nicola Lacey, "Feminist Legal theory and the Rights of women," in Feminist legal Theory, 1991.
[15] Catharine A. MacKinnon, toward a feminist theory of the state, 1989.
[16] Nancy F. Cott, the Grounding of Modern Feminism, 1987.
[17] Alison M. Jaggar, Feminist Politics and human nature, 1983.

of law, and had started to conceptualize how the nature of law itself was gendered. The influence of the work of American legal theorist Catharine MacKinnon proved especially influential in this regard, as she developed dominance theory a strategy that challenged the assumptions behind liberal feminism by thinking about embedded structures of power that make the characteristics of men the norm on which difference is built. However, the greatest issue that emerged by the late 1980s and early 1990s was that feminist legal scholars, who largely were white, middle class, and heterosexual, had attempted to produce a new legal subject in their own likeness, and that non-English speaking, indigenous, immigrant, lesbian, disabled and working-class women did not perceive themselves represented in the image that the dominant feminist discourse was thus projecting. The major problem that arose was that feminist legal scholars themselves, who were quite white, middle class, and heterosexual An assault on essentialism heralded the growing receptiveness toward postmodern challenge of foundational and unitary causal narratives in feminist jurisprudence, postmodern feminism cannot be described in terms of a single theory, that it encompasses a variety of approaches which reject the notions of universality, objectivity and the notion that there is one truth., in fact, feminism as such may be seen as a particular form of postmodernism due to its multifaceted attack on universalism and orthodoxy. The trend towards self-conscious postmodernism has entailed the abandonment of theorizing in grand style, where some one or more elements of causation are singled out as the reason behind some broad social phenomenon, as with the oppression of women or patriarchy. Rather, postmodern feminism has adopted a more fluid, contextual, and particularistic mode of analysis that does not attempt to bring universal categories or explanatory models. The sequential development of liberal feminism into the dominance theory and the postmodern and anti-essentialist feminism show us that feminist legal theory has not moved in a purely linear fashion, but rather it has developed in a dialectical interaction with the limitations and contradictions of its own approaches. This shift in evolution has played a critical role in making feminist jurisprudence vibrant and relevant, though it has also generated conflict and discord between feminist legal theorists as to the most effective ways to proceed in promoting gender justice.

III. Schools and Frames of Feminist Legal Theories: Major Schools of Thought.

The four schools of thought mentioned above have become the main directions of contemporary feminist legal theory each of them has formulated its own approach to the causes of gender inequality and how legal and social responses to that inequality ought to take place

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in legal systems. The most influential and ancient branch of feminist legal scholarship is Liberal Feminism and Formal Equality Theory. Following liberal democratic theory, formal equality theory contends that women must be treated equally to men, in disregard of biological and social distinctions, and that legal regulations should not establish or strengthen patterns of discrimination along sex lines.30 Liberal values are based on the ideas of respect of equality, freedom and autonomy, which liberal feminists have applied to women as a form of justice. The constitutional action, represented by Ruth Bader Ginsburg in the ACLU Women's Rights Project[18], is a true example of liberal feminist strategy and achievement. The approach that Ginsburg took, involving carrying strategic cases to the Supreme Court, was to challenge the notion that sex based legal classifications were to be subjected to heightened judicial scrutiny, especially when grounded on an outdated stereotype about the appropriate roles played by men and women. [19]By demonstrating how laws that discriminated based on sex were generally justified by the existence of differences that were presumed to be natural between the sexes, Ginsburg and other liberal feminist litigators were able to help the courts see the unfairness of gender discrimination, and enabled the contemplation of a constitutional principle. Nevertheless, the limitations of the formal concepts of equality have become evident as feminist legal theorists had to undertake an acrobatic act to reach a demand of comparability. An example case in point is the notorious American Supreme Court case Geduldig v. The paradigmatic female condition of pregnancy was compared to male medical conditions of prostatectomy, haemophilia, circumcision and gout, and the Court held that where there was no comparability between the conditions, unfair treatment on the basis of pregnancy did not amount to sex discrimination[20]. In such cases, the formal equality approaches proved to be inadequate in addressing discrimination based on the conditions or experiences unique to women and upon which affected women and men were fundamentally dissimilar. Cultural Feminism/ Difference Feminism was a solution to the shortcomings of formal equality theory. [21]The psychological thesis that women as a group have a different voice by Carol Gilligan appealed to the experience of women in practice, [22]legal classroom and in the academy, and offered theoretical justification to the idea that women might have different approaches to legal problems and solutions. The cultural feminism or difference perspectives of law emerged

[18] Ruth Bader Ginsburg, "Sex equality and the Constitution," Tulane law review, 1979.
[19] Reed v.Reed, 404 U.S. 71 (1971)
[20] Geduldig v. Aiello, 417 U.S. 484 (1974).
[21] Robin West," Jurisprudence and gender," University of Chicago Law Review, 1988.
[22] Carol Gilligan, in a Different voice, 1982.

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predominantly in attempting to make sense of the distinctly female experience of pregnancy and motherhood, and this failure of the equality jurisprudence of the Supreme Court had a colossal implication on the life of women and in the law of law. The historical impact on the life of women and the law was immense, as the practical struggle led to the theoretical development, which in a turn spurred new legislative initiatives. Dominance Theory, and especially the development of Catharine MacKinnon[23], offered a valuable theoretical framework within which the harms of violence against women in the context of domestic violence, rape, sexual harassment, and pornography could be analysed opposed to the theory of formal equality or the theory of gender complementarity[24], dominance theory focused on the inherent structures of power that created and reproduced such harms, experienced in nearly equal measure by women, due to the inability of the former theories to identify the patriarchal structures of power that allowed such harms to happen in the first place. Dominance theory essentially contested the very principle of law in that the law functions to establish male control and female subordination in systematic patterns that go beyond certain statutory texts or case law principles. The strength of the power of dominance theory was in the fact that it challenged the notion that gender inequality was the accidental outcome of a discrimination act or the deeds of separate discriminatory acts, but was instead structural and systemic as it was embedded in the very foundation of law and social institutions. Anti-essentialist and Postmodern Feminism grew in response to the problematic nature of the idea of one feminist legal theory and feminist being in the world[25], arguing that they needed to take into account the wide spectrum of feminist perspectives that had emerged as a result of different women of colour and of ethnicity, the problems of immigrant women, and other groups of women who were marginalized or rendered invisible. Anti-essentialist feminism has focused on the value of storytelling, as a means of introducing diverse experiences into the law, and as a means of expanding the legal representations of experience onto which the law is applied, and as a means of making heard and respected in legal reasoning and adjudication. [26]

Concept of Intersectionality: Definitions, Origin, and the Theoretical Framework.

Intersectionality is a radical redefinition of the understanding of gender inequality and discrimination in the feminist legal theory. The idea was developed in response to critical

[23] Catharine A. MacKinnon, "Feminism, Marxism, Method, and the State," Signs, 1982.
[24]
[25] Drucilla Cornell, The Philosophy of the Limit, 1992.
[26] Patricia J. Williams, The alchemy of race and Rights.

critiques of feminist jurisprudence (by women of colour) especially through the pioneering efforts of Kimberle Crenshaw, whose seminal articles "De-marginalizing the Intersection of Race and Sex" (1989) and "Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Colour" (1991) were central to the theoretical framework of intersectionality in the law[27]. The term intersectionality describes how several systems of power (including race, gender, class, sexuality, disability and migration status, etc.) relate to each other in such a way that individuals are placed in qualitatively distinct positions of privilege and subordination, instead of the harms being neatly compartmentalised and falling onto one axis at a time. [28]Intersectionality came to be conceptualized by Crenshaw as the phenomenon where people are discriminated or disadvantaged across all of these dimensions at once, as well as where the combination of oppression in these different directions around multiple identities may cause some harms that are uniquely and qualitatively different than those caused by discrimination based on any single category of identity. The standard formulation constructed by Kimberle Crenshaw revealed that Black women plaintiffs became legally non-existent when the judiciary insisted on the need to establish discrimination either as race or as a sex discrimination, but not both[29]. Intersectionality thus starts with an analogy to a unitarily axis model of law and theory, which argues that disadvantages at intersection (such as Black women, Dalit women, migrant domestic workers) are not merely the added-up effects of race, gender, and class, but a mode of oppression unique to itself, which cannot be understood or addressed through a unipolar lens like race, gender, or class. [30]Crenshaw differentiates between structural intersectionality the distribution pattern among differently situated constituents of social and legal resources, risks and vulnerability, by feminist and anti-racist movements, or gender-justice and human-rights movements, which is marginalisation in itself. Subsequent literature also highlights such a thing as representational intersectionality, whereby the cultural images of Black or Muslim women as being stereotyped are mentioned, and the difficulty in breaking said images further replicates erasure when they themselves only represent more privileged subsets[31]. These differences are important in feminist jurisprudence: intersectionality is not only the description of various identities but an analytic to follow how

[27] Kimberle Crenshaw, “mapping the Margins: intersectionality, identity politics, and violence against women of color,” Stanford Law review, 1991.
[28] “Leslie McCall,” The Complexity of Intersectionality,” Signs, 2005.
[29] DeGraffenreid v. General Motors, 413 F.Supp. 142 (E.D Mo. 1976)
[30] Sumi Madhok,” Rethinking Agency: Developmentalism, Gender and Rights,” in Gender, Agency and Coercion, 2013.
[31] Jasbir Puar, Terrorist Assemblages: Homonationalism in Queer Times, 2007.

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the legal rule and institutional practices of fact-finding are organized around the experience of comparatively advantaged women (who are often white, majority, heterosexual, citizen women) and comparatively advantaged men of colour, marginalizing women to the edge of the frame. Recent intersectionality theory, particularly as formulated in Black feminist theory by writers such as Patricia Hill Collins, Combahee River Collective[32] and later Anna Carastathis holds that systems of domination are not only mutually constitutive and cannot be ordered or considered an add-on[33]. It also implies that intersectionality is both descriptive as well as normative. Descriptively, it gives a more accurate record of how marginalisation and privilege is being experienced and the way the law doctrine works in relation to differently situated subjects. Dynamically, it relocates equality and gender-justice initiatives no longer around abstract and de-contextualised objects but around the most disadvantaged, claiming that the necessity of substantive equality and the path to a more transformative feminist jurisprudence is through cantering their position. This has a remarkable legal impact in comparative law: equality assurances, anti-discrimination laws and instruments of human rights which seem to be facially neutral or to have a single axis (such as women-only conventions or disability-only treaties) can and have come to be approached through the prism of intersectionality in order to reveal and address complicated manifestations of gender injustice in the law. The work of Angela Harris on the essentialism critique was a complement and continuation of the intersectionality analysis conducted by Crenshaw[34]. Harris challenged an assumed claim of feminism, that a unitary, essential experience of women can be detached and defined without reference to race, class, sexual orientation and other realities of experience. Harris argued that forms of description of women experience that attempted to be universal in their scope were in fact cantered on the experiences and concerns of privileged women and silencing the voices of minority women. The emergence of the intersectionality theory was also informed by the work of Paulette Caldwell who explained that discrimination based on sex and race is not adequately addressed by the employment discrimination law, and that women of colour could easily fall within the gulf of the antidiscrimination law where neither race nor gender was considered separately. Caldwell [35]analysis reflected the fact that intersectional discrimination was not merely an academic or theoretical issue, but rather an issue of vital concern to the substantive protection of rights and the delivery of justice to women of colour and other multiply

[32] Combahee River Collective Statement, 1977
[33] Anna Carastathis, Intersectionality: Origins, Contestations, Horizons, 2016.
[34] Angela P. Harris, "Race and Essentialism in Feminist Legal Theory," Stanford Law Review, 1990.
[35] Paulette M. Caldwell, ' A Hair Piece," Duke Law Journal,1991

marginalized groups. Intersectionality framework also involves the realization that discrimination on the basis of several categories of identity can be in certain forms that can be unique and distinctive. As an example, racial stereotypes and racist ideology may influence the experience of sexual harassment or violence against a woman of colour in certain ways, creating a kind of harm that is not the same as the experience of sexual harassment faced by white women or the racial harassment faced by men of colour. The implications of this insight are significant to the way law should be designed to identify and address the problem of discrimination: it means that antidiscrimination law should be both flexible and sophisticated enough to capture the complex modes of harm. Intersectionality as a concept can further be understood not only as the intersection of gender and race, class, and nationality, but also as intersections of sexual orientation, disability status, immigration status, age, and other aspects of identity and social locus.

The Application of Intersectionality to Feminist Legal Theory: Development and Modern Trends.

Intersectionality as an element of feminist legal theory has seen the realization of a paradigm shift in feminist scholarship concerning the conceptualization of gender, power, and law. It has not been the path of smooth sailing, but, instead, has been marked by the continuous debates, discussions, and debates between those who believed that it was important to focus on the diversity of the women experience, and those who have either resisted or have not given enough attention to the intersectionality in their practices and inquiry into issues of justice and inequality. The attack made in the late 1980s and early 1990s, according to which essentialism was attacked was also salutary in that it shocked even the most obtuse of white Western feminists into an irreducible consciousness of the sheer significance of differences between women. The attack however, also created a dilemma, how then, you could have a politically viable women movement without a unitary category of women? This paradox has remained the source of controversy in feminist jurisprudence, despite the growing awareness among feminist jurists that intersectionality should be seen as central to feminist legal theory. On the positive, the great mass of feminist work is now starting to emerge, beginning with postcolonial and critical race, Aboriginal and lesbian theorists, but the essentialising tendency of those terms themselves needs to be challenged. The nature of identities, including race and gender, can no longer be considered as unqualified and given. The difficult question of the law is to examine the place of legislation in generating and reproducing social diversities in a manner that biases

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certain persons and disfavours others in a systematic way. Intersectionality has brought with it significant reconceptualization's of the feminist legal methodology. Instead of starting with abstract principles of equality or concentrating on gender as an analytical category, intersectional feminist jurisprudence scholars commence with the lived experiences and perspective of multiply-marginalized women [36]and considers the way in which law actually works to privilege and oppress them. This involves a close attention to concrete contexts, individual legal doctrines, and the actual manner in which the various forms of power and subordination coexist and interact. Increasingly, feminist legal theory today acknowledges that gender equality cannot be promoted in a manner that does not eradicate other forms of inequality or makes them even more severe. As an example, a plan to promote formal equality of women in the workplace that does not pay attention to how racial discrimination, wage disparities of low-income workers, or access to affordable childcare, may promote privileged women and leave behind poor women and women of colour to remain in a subordinate position[37]. In the same way, an anti-rape litigation plan that is not developed with attention to how racial discrimination, wage disparities of low-income workers, or access to affordable childcare is developmental may benefit privileged women and leave poor women and women of colour in a subordinate position. Intersectionality within feminist jurisprudence has also necessitated an approach to the ways in which several systems of power and inequality, as well as gender, operate together as well as approach and interact with other systems of inequality and subordination, necessitating more intricate legal analysis and more comprehensive ways of legally reforming. Intersectionality has been integrated in such a way that there have been significant advances in the conceptualization of central categories and concerns in feminist jurisprudence as developed by feminist legal scholars[38]. As an example, intersectional analysis has demonstrated that the family is not a uniform institution that has the same impacts on all women but is structured differently in various cultures and economic frameworks, and that the legal regulation of families has had varied effects on women based on race, class, immigration, and other dimensions of social location. Intersectional feminist jurisprudence has also stressed the need to look to the structural aspects of inequality and to realize that individual acts of discrimination exist within larger structures and patterns of inequality that advantage certain groups of people at the expense of others.[39] The intervention of intersectional feminist

[36] Devon W. Carbado et al., "Intersectionality: Mapping the Movements of a Theory," Du Bois Review, 2013.
[37] Vicki Schultz, "Taking Sex Discrimination Seriously," Denver University Law Review, 1992.
[38] Aya Gruber, "Rape, Feminism, and the War on Crime," Washington Law Review, 2009.
[39] Nancy Fraser, Fortunes of Feminism, 2013.

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jurisprudence is to develop legal theories and strategies that can both target individual acts of discrimination and those that target the structural levels and patterns of inequality that systematically favour one group of people and depend upon and disadvantage others. Intersectionality has become a necessary concept in feminist jurisprudence because feminist legal theory has been struggling with the constraints of previous theoretical approaches in addressing the multidimensions of gender inequality and the multiple experiences of women in different social positions.

Intersectionality through The Lens of Comparative Jurisdiction: Us And Indian Legal Contexts

The U.S. legal system is more or less organized around a one-axis or either/or model of discrimination where identity categories (race, sex, religion, country of origin, etc.) are considered mutually exclusive upon which legal protection is provided. The statutory provisions such as Title VII of the Civil Rights Act of 1964[40] and the Voting Rights Act outlaw discrimination based on discrete considerations, whereas the constitutional doctrine under the Equal Protection Clause [41]considers primarily discrimination based on the analysis of suspect classes. The Supreme Court has not always incorporated an intersectional approach to law considering discrimination working concurrently between different identities yet has created distinct scrutiny frameworks of race and sex. Although it is impossible to erase everyone with a complex marginalized identity, as Kimberle Crenshaw showed, this framework will render those whose identities cut across multiple marginalization axes, especially Black women, to have to demonstrate unique and compounded harm, which can be practically unproven. These structural constraints notwithstanding, there have been partial advances of intersectionality recognition. Judicial acknowledgment of the possibility of the multiplicity qualities of various grounds of discrimination has been recognized by courts and scholars and is not simply additive, as the combination of multiple grounds of discrimination has been found to be greater than its parts. The interaction between race, class and gender to influence criminalization patterns among women of colour, poor women and indigenous women are depicted by Feminist criminology, especially that of Amanda Burgess-Proctor. [42]Sentencing studies also reveal that judges tend to give the strictest sentences to the people who stand at the intersection of race,

[40] Civil Rights Act of 1964, Pub. L. 88–352, Title VII.
[41] U.S. Const. amend. XIV, § 1.
[42] Amanda Burgess-Proctor, "Intersections of Race, Class, Gender, and Crime," Feminist Criminology, 2006.

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age and gender hierarchies, in particular young Black men, which suggests that intersectional factor acts implicitly even without the explicit attention of the legal doctrine. Nonetheless, the American law is still highly resistant to complete intersectional analysis because of the institutional, methodological, and political-economic factors.[43] The categorical organization of antidiscrimination law views identities as stable and discrete instead of social construction and dynamic in relation to each other. The personalized litigation paradigm and the standards of evidence obscure the systemic and structural discrimination, making the intersectional damage hard to establish. Also, allowing feminist ideals to enter the state governance would lead to the domestication of intersectionality, turning it into an apolitical instrument that would seem liberal in its appearance but would leave the power structures at their core. Gender justice jurisprudence sees the development of the U.S. law influenced by the second wave feminist theories of sameness and difference that promote the idea of formal equality but do not consider the various lived lives of women. The latter domination strategy put power and patriarchal subordination at the centre but originally postulated a white, heterosexual, middleclass female subject. This essentialism was revealed through the critique of women of colour and the intersectionality concept emerged as a remedy. Recent feminist legal theory acknowledges that race, gender, sexuality, disability, and gender identity are closely intermeshed, and due in part to the efforts of critical race feminists, queer theorists and disability scholars, but the doctrine still lags behind the theory. The legal system of India is more explicitly based on the idea of substantive equality, which is provided by its 1950 Constitution. Article 14 and 15 [44]assure equality and forbid discrimination based on various factors and Article 15(3) gives special treatment to women and children and Article 17 [45]eliminates untouchability and the caste hierarchy is understood as a basic system. The principle of substantive equality has in Indian courts has given rise to much gender justice jurisprudence covering sexual assault and domestic violence, as well as other forms of gendered harms, including legislative reform in the wake of the 2012 Delhi gang rape.[46] These developments have however been mostly undertaken in gender-centric terms with no systematic intersectional examination. The most significant gap of Indian gender justice jurisprudence is in caste-gender intersection. Although caste discrimination is prohibited by the constitution, it has become deeply rooted in the social, economic and political life. Dalit women face a different kind of marginalization due to the

[43] Cassia Spohn, "Thirty Years of Sentencing Reform," in Crime and Justice, 2000.
[44] Constitution of India, arts. 14–15.
[45] Constitution of India, arts. 15(3), 17.
[46] Criminal Law (Amendment) Act, 2013 (India).

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combination of patriarchy and caste hierarchy, and it is manifested in sexual violence based on the caste, exclusion in the labour market, and marginalization in politics [47]Neither caste-mainstreamed nor gender-mainstreamed systems of laws sufficiently recognize this compounded oppression, indeed, the recent reforms have not completely been able to take the formulation of the role of caste in influencing the nature and outcomes of gender discrimination. In addition to caste, women are marginalized in India based on intersections between class, religion, regional bias language and disability. Women are disproportionately impacted on poverty and informal labour, which makes them feminize poverty. The issue of religious identity is significant as in the case of marriage, divorce, successions, and property various plural laws apply to different religious groups of people, which shape the rights of women in unique ways. Isolated geography, language differences, and geographical unequal development have other impediments to education, healthcare, and access to justice. Both disability-related stigmatization and gender norms of bodily ability and sexuality compound disabled women and these disadvantages are multiplicative or additive. The two nations (United States and India) have similar guarantees of constitutional equality, however, in a very different manner. The U.S. principle of equality is mainly reactionary, limiting action by the states in a discriminatory manner, whereas the Constitution of India is proactive, permitting affirmative action in form of reservation and quotas in order to accomplish substantive equality. The approach of the two regimes towards religion is also different as the U.S. has a strict separation of religion and the state, whereas India has very lenient religious personal laws under the constitutional equality that is causing constant clashes between gender justice and religious freedom. In the United States, race is used as the fundamental hierarchic classification system, and in India, the system is caste, which define access to resources, dignity, and power. Neither of the two legal systems condones discrimination or violence based on these hierarchies, but both have not created strong intersectional jurisprudence that meets the issue of how gender functions within them. The black women in the United States and Dalit women in India are still unprotected sufficiently since law is focused on race or caste and gender as distinct modes of subordination as opposed to intersectional regimes. Although both systems have shifted, albeit in different proportions, towards substantive equality, there is still an unequal progress. Jurisprudence in the U.S. has existed in the duplicity of substantive equality and formalized colour-blindness, which tends to mask structural inequalities. India has expressed support of substantive equality more clearly, considering past discrimination and structural injustice, but

[47] Sharmila Rege, Writing Caste/Writing Gender,2006

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has not always intended to translate that pledge into intersectional solutions that deal with qualitatively different disadvantages as a result of multiple marginalization.

Intersectionality: Possibility of Uniform Global Application

Intersectionality, as a critical paradigm of the feminist jurisprudence, is the belief that gender oppression cannot be studied in a vacuum but must take into consideration a combination with race, class, caste, and other subordination axes, and unearths complicated forms of discrimination that do not necessarily present themselves in lone axis legal practices. The concept in feminist legal theory is used to address conventional antidiscrimination paradigms by highlighting interrelations of power being structural in nature and calling on courts to look at how such identities as gender interact with socioeconomic status or ethnicity to create distinct forms of injustice. Having consistency in the implementation of intersectionality in the law, especially in developed countries such as United States and developing countries such as India, requires the use of standardized interpretive means that span the differences in jurisdiction, such that gender justice is not only concerned with formal equality but also substantive redress of the multiply marginalized women. By uniformity here, it means the harmonization of the doctrinal frameworks -such as the model guidelines or as treaty obligation-that impose intersectional analysis in the adjudication process, to ameliorate inconsistencies in which the U.S. courts could be more inclined to promote the litigation of individual rights whereas the Indian jurisprudence would be more attentive to constitutional pluralism amid caste hierarchy. Feminist jurisprudence in the United States has addressed intersectionality mainly based on antidiscrimination law critique as outlined by Kimberle Crenshaw, who pointed at the doctrinal cracks of race and sex claims as mutually exclusive. Courts in the U.S. with often an additive framework due to Title VII and equal protection jurisprudence tend to miss emergent harms when they are combined, like women of colour who are perceived to be angry due to racial stereotypes and subjected to gender norms. This non-integrity in application cuts across gender justice as could be noted in the case of DeGraffenreid v. Black women had their claims disapproved in the General Motors Company where their claims could not be classified in single categories. Uniformity would necessitate incorporation of intersectionality as an obligatory prism in federal principles, akin to those of CEDAW Committee guidelines[48], to both apply pressure on courts to study compounded discrimination through the prism, and to align with international human rights principles that acknowledge multiple and aggravated

[48] CEDAW General Recommendation No. 28 (2010).

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oppressions. This kind of standardization would bring the feminist theory beyond critique to praxis and it would turn jurisprudence into an instrument of deconstructing interlocking oppressions instead of creating invisibility. On the other hand, in India, there is a feminist jurisprudence, which operates on intersectionality with constitutional provisions in Articles 14, 15 and 21[49], but does not have even distribution because of caste, religion and class divides. The progressive steps that were taken by the Supreme Court such as Shayara Bano Implicitly combining gender and religious minority status, Union of India (triple talaq case), neutralizing patriarchal practice, yet tends to leave the vulnerabilities of Dalit Muslim women unmentioned. The lower courts reuse, however, single-axis gender analysis, and neglect that upper-caste Hindu norms are dominant in the experiences of Scheduled Caste women of caste-based sexual violence, as intersectional scholarship on so-called honour crimes criticizes. The lack of uniformity requires a national judicial training procedure and legal modification of the Protection of Women from Domestic Violence Act, 2005, to impose an intersectional evaluation, which is based on the complexity model by McCall, but explicitly considers the caste-gender intersections, reminiscent of the U.S. structural reforms, but with an awareness of the diversity of India plural legal systems. This would bring about unanimity in application by prioritizing substantive equality to have rulings such as Vishaka v. State of Rajasthan [50]develop to solve the problem of workplace harassment of Adivasi women, who face greater gender harms through their classes and indigeneity. The necessity of the establishment of uniformity of U.S. and Indian systems depends on comparative feminist jurisprudence which draws on the shared commitments to gender justice without disregarding to contextual variation. In the U.S., neo-liberal individualism is weakening intersectionality to checklists of identity and in India, postcolonial pluralism stands to equate caste and gender through individual laws. Transnational models perhaps might offer a common framework, like the intersectional vulnerability analyses of the Inter-American Court in B.S. v. Spain,[51] that are tailored through bilateral judicial interactions or through DSAARC-U.S. human rights discussions. This involves, on the one hand, doctrinal devices such as presumptive intersectional scrutiny, which arises when several grounds are visible, and evidentiary flexibility of systemic forms over individual evidence, opposing U.S. intent requirements and Indian formalism in its procedures. An example would be standardized procedures that would enact both countries to map the "matrix of domination[52]"

[49] Constitutiuon of India, arti14,15 and 21
[50] Vishaka v. State of Rajasthan, (1997) 6 SCC 241.
[51] B.S. v. Spain, Inter-American Court of Human Rights, Judgment of 24 Apr 2012.
[52] Patricia Hill Collins, Black Feminist Thought, ch. 12.

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to show how the U.S. racial profiling of Black women is similar to the caste policing of Dalit women in India, and recompense them through affirmative intersectional quotas. The obstacles to uniformity are not diminished: the inequality of resources impedes the judicial performance in India and U.S. federalism opposes the imperative of centralization. However, the feminist theory does not presuppose the uniformity as the homogenization but the principled convergence, the one that can be traced back to the Black feminist roots, where emancipatory politics stands above the institutional inertia. Empirical data of treaties bodies demonstrate inconsistencies in uptake reflect superficial analysis; standardization, through ILI sponsored protocols who quote Crenshaw and Indian researchers such as Flavia Agnes [53]enable feminist jurisprudence to provide gender justice which is transformative[54]. Finally, consistency in application strengthens the comparative filter of the research paper, as intersectionality can definitely overcome the developed-developing dichotomies, producing fair results in the hands of women standing at the intersection of oppression.

Conclusion

The analysis of intersectionality in different legal systems and its comparative study identifies the potential of intersectionalism as a transformative approach to the implementation of gender justice and the challenges of implementing the intersectional approach to gender justice. Intersectionality in its articulation by Kimberlee Crenshaw and elaborated by Black feminist praxis essentially redefines the phenomenon of discrimination as mutually constitutive systems of oppression that disfavour the people at multiple margins in a uniquely disadvantaged manner. The use of intersectionality in developed legal systems, such as the United States and in developing countries, such as India, is not the same, as it is a representation of more institutional aversions to structural critique and structural change. Although the U.S. legal framework has emerged due to the intersectionality critique, it still practices the privilege of single-axis analysis and intent-focused standards that conceal the compounded harms against women of colour, whereas Indian jurisprudence, limited by the postcolonial pluralism and caste hierarchies, still incorporates gender into the discrimination against women of colour irregularly despite the provisions of the constitution. To achieve gender justice, the law should not continue to rely on identity-based checklists but substantively engage with structural intersectionality by looking at how power relations are organized to reproduce and maintain

[53] Flavia Agnes," Gender Justice in MulticulturalIndia," in Gender and politics in India,2014
[54] UN Human Rights Committee, General Comment No. 28, 2000.

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various oppressions at the same time. This involves aligning jurisdictional frameworks on doctrines via international mechanisms on human rights, making intersectional analysis to be a compulsory part of judicial education, and making the voices of multiply marginalized women to be at the heart of legal reform. The future of feminist jurisprudence lies, in the end, in a denial of the depoliticized interpretations of intersectionality and basing the legal theory on emancipatory politics based on Black feminism and the Global South epistemologies, so that human rights institutions would be agents of transformative social change and not the locus of institutional legitimacy unrelated to the liberation struggles.