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A FEMINIST PERSPECTIVE OF WOMEN'S INTELLECTUAL PROPERTY RIGHTS AND DRAWBACKS IN COPYRIGHT LAWS

AUTHORED BY - ANEESA NAHAN

ABSTRACT

Human innovation and creativity are the engines of social prosperity. From Earlier times, women and men creators from all over the world have transformed our world through their discovery and imagination. However, still some groups are under-represented in the area of Intellectual Property Rights. This is a great time when the potential of every person is required to solve the issues of humanity. Furthermore, as we know Copyright law grants certain exclusive rights to the author of a work, to encourage creativity. Unfortunately, there are some fallacies in the existing copyright laws and through this article I am trying to identify the issue with a feminist aspect and putting forward points in favour of the copyleft regime. Also, this article tries to point out the inadequacy of copyright law incorporating various kinds of works and sectional diversities of society and fails to promote the upbringing of marginalized oppressed groups. This exclusion could be traced to the patriarchal nature of society; on the other hand, the copyleft regime involves both masculinity and feminine prospects. Furthermore, I am using the feminist perspective to analyze the oppression suffered by any marginalized group in general and not confined to women particularly.

In general, we can't put forward any monolithic homogeneous structure that can claim to be the sole school of feminist jurisprudence, conversely, it is on a diversity of voices and experiences that the search to capture gender inequality is based. ¹ Feminism is a mode of analysis, a method of approaching life and politics, a way of asking questions and searching for answers, rather than a set of political conclusions about the oppression of women. ²

¹ For feminist jurisprudence based on diversity rather than universality: see Bartlett, *Feminist Legal Methods*, 103 *Harv. L. Rev.* 831 (1990); Scales, *The Emergencies of Feminist Jurisprudence: An Essay*, 95 *Yale L.J.* 1373 (1986); Rhode, *Feminist Theories*, 142 *Stan. L. Rev.* 617

² See Rhode, *Gender and Jurisprudence, an Agenda for Research* 56 *UCINN. L. Rev.* 521, 522 (1987).

KEYWORDS

Copyright protection, Intellectual property, Intellectual Property Rights, Gender norms, Intellectual Property Rights, Law, socio-economic conditions and Traditional Knowledge, Copyleft

INTRODUCTION

Copyright is a legal concept within intellectual property law that grants exclusive rights to the creator of certain works for a particular period,³ after which the work enters the public domain. Copyright is available on original literary, dramatic, musical and artistic works; cinematograph films; sound recordings, etc.⁴ Copyright authorizes its holder to reproduce the work on which copyright subsists, to distribute the work in public, to make any adaptation of the work, etc.⁵ That is not to say copyright exists only to ensure dissemination of information. Copyrights ‘protect the public from itself’⁶ - an extremely liberal regime with no restrictions on communication of works that lawfully come into their position would lead to a shortage of creation of copyrighted works. The rights of the content creator must not be dominated over as Justice Holmes says that ‘copyright restrains the spontaneity of men where but for it there would be nothing of any kind to hinder them from doing as they saw fit’⁷ and encouraging individual effort through provision of private gains is imperative to advance public welfare through talents of authors and inventors in sciences and useful arts.⁸

Article 27 of the [Universal Declaration of Human Rights of 1948 enshrines Intellectual Property Rights and it clearly upheld the importance of the protection of Intellectual property rights](#), which states “Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.” A recent study published by The International Chamber of Commerce depicts that for approximately 4-11% of the GDP in G8 countries comes from copyright-based industries. Furthermore, recent studies published by the World Bank show that the gender employment gap is likely to affect on the GDP per capita

³ See Indian Copyright Act, 1957, § 22, according to which term of copyright extends to 50 years after author's death.

⁴ Indian Copyright Act, 1957, § 13.

⁵ Indian Copyright Act, 1957, § 14.

⁶ Joost Smiers, Creative Improper Property: Copyright and the Non-Western World, *New Directions in Copyright Law*, Vol. 1, 1, 6 (Fiona MacMillan ed., 2005).

⁷ *White Music Publishing Co. v. Apollo Co.*, 209 U.S. 1 (1908).

⁸ *Mazer v. Stein*, 347 U.S. 201 (1954).

by almost 20%. These two studies show how copyright protection and the gender gap bridging are closely connected.

In this scenario, there has been conscious effort all over the world to protect these intellectual property rights. The World Intellectual Property Organization celebrates April 26 as World IP Day every year to promote knowledge about various IP-related matters along with the motive to spread awareness on crucial role they play in promoting innovations. This year, the theme was, “Powering change: Women in innovation and creativity” to celebrate womanhood and to depict their crucial role in world economy building. This theme gave us the chance to discuss the challenges women face in accessing opportunities, support resources etc. Despite these challenges, across the world women are driving scientific innovations, creating new creative trends, and setting up and leading businesses that transform our business world. Unfortunately, still, women face discrimination based on gender and sex and are not treated on an equal par with men. Even in succession, Inheritance, obtaining legacy, and job opportunities, women face a lot of disadvantages. There needs to be an efficient system of Intellectual Property Protection where they could address and raise their concerns and setting up such an international forum would definitely help in the existence of war among women. Furthermore, the countries with a systematic regime of **Copyright Protection** will, comparatively, have the highest-paid female artists and actresses too.

CHALLENGES

The most fundamental challenge includes the prevailing gender norms and cultural bias where ambitious young girls are discouraged from business-related careers. Even though few enter the field they are supposed to face many hurdles including inadequate support resources, and not much supportive environment or guidance and as a result of this their confidence is hampered, furthermore wage disparity leads them to step back and as a result of all these facts men tend to dominate this field.

Unfortunately in other fields including fields like writing or craft creation, the legal nature of IP protection never supports the value of artist’s works and women writers. For instance, in the case of Handicrafts is argued that they can’t be considered as marketable due to their production within the domestic sphere and are ineligible due to not meeting the “originality” requirement under the law. Together IP laws are inadequate to address this discrepancy and unjust.

COPYRIGHT LAW AND EXCLUSION OF MARGINALIZED GROUPS

In Copyright law, there are some exclusions of certain expressions and as a result of this interests of women, indigenous groups, blacks, people belonging to lower castes, etc are detrimental. This point can be substantiated with some examples. Malla Pollack argues that the exclusions under copyright laws are gendered in an anti-feminist manner.⁹ For example, the extent of copyright protection in the case of food and clothing is very limited. These are certain works in which women are associated and law is not addressing these issues. Furthermore, the existing regime of copyright law is also inadequate for protecting traditional knowledge.¹⁰ In addition, copyright laws threaten such traditional knowledge of appropriation by aliens.¹¹ For instance, tribe's myths recited in their gatherings and its recording, gives a copyright on the work. As the recitation has never been written down, the author does not need permission from the community which gets no remuneration or control over the work.¹² Similarly, copyright laws work against the interests of the black community. In the United States, copyright has caused appropriation, degradation and devaluation of works of black music composers.¹³

Furthermore, copyright law is basically on the experiences of a prototype i.e., rooted in the white/Hindu male. Historically speaking, earlier women did not have opportunity to get an education. Some got a chance but they were facing many constraints socially and in other ways. Therefore many women choose to write anonymously or pseudonymously.¹⁴ As a result of this

⁹ Malla Pollack, *Towards a Feminist Theory of the Public Domain, or The Gendered Scope of United States' Copyrightable and Patentable Subject Matter*, 12 WM. & MARY J. WOMEN & L. 603 (2006).

¹⁰ Traditional knowledge refers to the knowledge and innovations of the indigenous and local communities, which are often collectively owned and transmitted orally from generation to generation in the form of stories, songs, folklore, local languages, etc.

¹¹ See Bryan Bachner, *Facing the Music: Traditional Knowledge and Copyright*, 12 No. 3 HUM. RTS. BRIEF 9 (2007); Ruchira Goswami & Karubakee Nandi, *Naming the Intellectual Property Rights of Women Artists from India*, 16 AM. U.J. GENDER SOC. POL'Y & L. 257 (2007).

¹² Malla Pollack, *Towards a Feminist Theory of the Public Domain, or The Gendered Scope of United States' Copyrightable and Patentable Subject Matter*, 12 WM. & MARY J. WOMEN & L. 603 (2006).

¹³ K.J. Greene, *Intellectual Property at the Intersection of Race and Gender: Lady Sings the Blues*, 16 AM. U.J. GENDER SOC. POL'Y & L. 365 (2008).

¹⁴ See Storylines: Conversations with Women Writers, (Ammu Joseph et al. eds., 2003); Debora Halbert, *Feminist Interpretations of Intellectual Property Feminist interpretation*, 14 Am. U.J. Gender Soc. Pol'y & L. 431 (2006); Ann Bartow, *Fair Use and the Fairer Sex: Gender, Feminism, and Copyright Law*, 14 Am. U.J. Gender Soc. Pol'y & L. 551 (2006).

exclusion, women resorted to other forms of expressions like quilting,¹⁵ knitting,¹⁶ singing,¹⁷ etc. In this manner, they expressed their feelings and narrated their stories. Similarly, the caste system plays a main role and it organizes society based on the occupation and as a result of this practice, one group was not allowed to engage in the activities normally performed by the other group. This resulted in the confinement of a particular form of expression to one particular community only, for instance, Earlier education was a privilege available for Brahmins and as a result, literary works were brought up by them and confined to that particular group of society. According to the Rawlsian notion of substantive equality, it is permissible, and desirable, to incorporate inequalities that are to the benefit of all.¹⁸ Copyright law operates on the basis of inherently flawed principle that all individuals have had similar practices and an equal opportunity to claim copyright over their respective works.

From the above, it's clear of that using the conception of individual importance rather than collective prosperity, ie, copyright law is rooted in the utilitarian principle and focuses on maximum numbers and their goodness. This makes the majority interest dominant over minority interests. Contrary to that Rawls put forward a theory that values every single human being.¹⁹ Martha Nussbaum also argues that the capabilities approach, which aims at providing a minimum level of human capabilities to each individual, is better than the utilitarian one.²⁰ Copyright law couldn't meet the requirements put forward both by Rawls and Nussbaum in their respective theories of justice.

In addition to that, the leaky pipeline phenomenon is something to be discussed. It is the workplace discrimination faced by a small subset of marginalized people who enter creative work and innovative fields despite of all restraints. Furthermore, there is limited data on literary and musical works existing in India on copyright applications filed by women or people from marginalised communities, which list names, occupations and social backgrounds. I would also

¹⁵ See Debora Halbert, *Feminist Interpretations of Intellectual Property Feminist interpretation*, 14 Am. U.J. Gender Soc. Pol'y & L. 431 (2006).

¹⁶ Debora Halbert, *Feminist Interpretations of Intellectual Property Feminist interpretation*, 14 Am. U.J. Gender Soc. Pol'y & L. 431 (2006).

¹⁷ See Ruchira Goswami & Karubakee Nandi, *Naming the Intellectual Property Rights of Women Artists from India*, 16 Am. U.J. Gender Soc. Pol'y & L. 257 (2007).

¹⁸ 18 John Rawls, *A Theory of Justice*, in Lloyd's Introduction to Jurisprudence 566 (2001); race-specific patents may be mechanism to bring substantive equality, see generally Shubha Ghosh, *Race-Specific Patents, Commercialization, and Intellectual Property Policy*, 56 Buff. L. Rev. 409 (2008).

¹⁹ John Rawls, *A Theory of Justice*, in Lloyd's Introduction to Jurisprudence 566 (2001).

²⁰ Martha Nussbaum, *Human Rights and Human Capabilities*, 20 Harv. Hum. Rts. J. 21 (2007).

like to advocate that the expression-idea dichotomy prevailing under copyright law is also one of the major reasons behind the exclusion of certain groups and the problems they face. Copyright lends to expression of ideas, and not ideas themselves, which runs against the interests of the marginalized groups. For example, there are many instances where women can't be in public light instead they play a major indirect role but due to this existing dichotomy, their pivotal role is not often recognized. Certain creations of women in the domestic realm also get excluded merely. The reason behind it is that it's not documented properly but there is creativity even though it's tangible or non-tangible form. As a result of this women are forced to share their ideas with people without any economic remuneration and recognition. Advice and instructions on knitting, another activity traditionally associated with women, are freely shared, both on and offline.²¹ Reason behind this is that the advice and instructions are not converted into any copyrightable tangible form; therefore they do not get copyright protection. Even this dichotomy does not provide any protection to black composers. As a result of the absence of protection, their works are imitated in a large amount. The requirement of fixation into a tangible form also worked against them as improvisation was a key concept of black cultural production.²² Similarly, the intangibility of the forms of expression by indigenous communities is one of the main reasons behind their exclusion from copyright protection as a lot of these works remains only in the collective memories of the members of the groups.²³ From these examples we could derive an understanding how copyright laws are insufficient and exclude protection to the marginalized sections of society.

THE PATRIARCHAL REGIME OF COPYRIGHT LAW

It is a bitter-true fact that this society is uprooted with masculine values and in a way that is the reason behind the exclusion and marginalization of various groups. Cultural feminists acknowledge these differences.²⁴ According to relational feminists, a more humane social order would focus on relationships, not competition; negotiation, not combat; community, not individual self-interest.²⁵ A feminist structure of ideology would incorporate values of caring, sharing, selflessness, love. On the contrary, in a masculine world, we could see separation,

²¹ Ann Bartow, *Fair Use and the Fairer Sex: Gender, Feminism, and Copyright Law*, 14 AM. U.J. GENDER SOC. POL'Y & L. 551 (2006).

²² K.J. Greene, *Intellectual Property at the Intersection of Race and Gender: Lady Sings the Blues*, 16 AM. U.J. GENDER SOC. POL'Y & L. 365 (2008).

²³ See Ruchira Goswami & Karubakee Nandi, *Naming the Intellectual Property Rights of Women Artists from India*, 16 AM. U.J. GENDER SOC. POL'Y & L. 257 (2007).

²⁴ Joan Williams, *Deconstructing Gender*, 87 Mich. Law Review 797 (1989).

²⁵ Joan Williams, *Deconstructing Gender*, 87 Mich. Law Review 797 (1989).

autonomy, hierarchy, labour as a commodity, recognition, abstract and rational knowledge, etc. Masculine knowledge exists within a capitalist mode of production. A feminist way of knowing emphasizes the relationships built, rather than dominion over others.²⁶ A woman's rational mind has feelings and is engaged with, and is not in opposition to, other things and persons.²⁷

It's a trend that in copyright regimes author is often portrayed as an autonomous individual responsible for their creation and it creates a masculine space and consciously imbibes masculine virtues. Such an imbibition and forced consciousness of autonomy would be against the feminist culture of equality. Feminism is always rooted in the sharing of creation, cooperation and community values that are not found in any copyright laws or ideologies. The concept of patriarchy revolves around a hierarchical paradigm where one dominates and the other submits.²⁸ And this results in domination and the suppressed group always tends to stay in that position. There may be criticism that includes the generalization of the topic and his criticism can be countered by encountering true feminist concepts like eradication of domination in all human relationships. Gender subordination is the archetype of all subordination.²⁹ True feminists use these differences as their strengths and challenge oppression as we can see in the case of cultural feminism which celebrates this kind of difference between men and women. This concept also includes empowerment. Women do exercise power in a community, which emanates horizontally, expanding outward in a web-like fashion, rather than vertically in a hierarchy.³⁰ Any society working in a web brings prosperity to all groups than the pyramid model of hierarchy. Primarily, power belongs to the group rather than to an individual. Community is the source of power.³¹ These are basic foundations of feminism that are always given away for the eradication of hierarchy in society. Hence, I put forward my argument logically that any structure based on feminine values will be more egalitarian than one based on patriarchy.

²⁶ Debora Halbert, *Feminist Interpretations of Intellectual Property* Feminist interpretation, 14 Am. U.J. Gender Soc. Pol'y & L. 431 (2006).

²⁷ Beatrice Kachuck, *Feminst Social Theories: Theme and Variations in Sociology of Gender* 68 (2003).

²⁸ Marion Crain, *Feminism, Labor, and Power*, 65 S. Cal. L. Rev. 1819 (1992)

²⁹ Malla Pollack, *Towards a Feminist Theory of the Public Domain, or The Gendered Scope of United States' Copyrightable and Patentable Subject Matter*, 12 Wm. & Mary J. Women & L. 603 (2006).

³⁰ Marion Crain, *Feminism, Labor, and Power*, 65 S. Cal. L. Rev. 1819 (1992); She argues that the feminist way of management is transformation (as opposed to the patriarchal transactional way) and their management structure is a web expanding in circular fashion in contrast to the patriarchal hierarchical pyramid. This facilitates inclusion as well as power and information sharing.

³¹ Marion Crain, *Feminism, Labor, and Power*, 65 S. Cal. L. Rev. 1819 (1992).

WOMEN AND THE INVENTION PARADIGM DOGMA

Women have been restrained from accomplishing inventorship and authorship for a long due to the reasons and social norms we discussed above and their achievements have been brought recently thereby leading the way to acknowledge female scholars in the field of science and technology studies.³² On the positive side of acknowledging women's presence they are gaining credit for their creative skills. Furthermore, women who successfully crossroad the male-dominated waters of the scientific community find themselves in a position to patent their ideas, though historically they have not always received full credit for their inventions.³³ Even non-scientist women who create useful new products may also be recognized; this recognition is purely based feminist desire to emphasize to the world that women do, reassure and invent-that the scientific paradigm is not a world closed to women, even if it is not (yet) inhabited by equal numbers of men and ³⁴ women.

For instance, in case of Olympia Gonzales, a female scientist in the area of food technology, has "concentrated much of her research efforts on the development of new and improved products from the coconut".³⁵ What makes this research stand apart is she amalgamated her traditional elements and cultural knowledge of her country's food economy. ³⁶ This research consists of turning a local vitamin local fruit into a nutritious baby food recipe, here; she incorporated motherhood, local resources, science, tradition and utility into a single product.³⁷ Similarly, Kapinga Mikalu, a school teacher born in what was then Zaire, invented "a microbe-detecting

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³² See, e.g., SUSAN CASEY, *WOMEN INVENT: TWO CENTURIES OF DISCOVERIES THAT HAVE SHAPED OUR WORLD* (1997) (tracing the process of invention through the stories of several female inventors); ANNE L. MACDONALD, *FEMININE INGENUITY: WOMEN AND INVENTION IN AMERICA* (1992) (examining American women inventors' work from colonial times to the present, with an emphasis on patents held by women); see also AUTUMN STANLEY, *MOTHERS AND DAUGHTERS OF INVENTION: NOTES FOR A REVISED HISTORY OF TECHNOLOGY* xxi (1993) (broadening the discussion on what constitutes invention and inventors by focusing on "women's contributions to human technology" and "revising the received definition of technology").

³³ See, e.g., MACDONALD, *supra* note 21, at 3 ("Even after English King George I acknowledged the critical role that colonist Sybilla Masters played in the development of Pennsylvania's economy by citing her as the inventor of the new way 'for cleaning and curing the Indian corn growing in several colonies in America,' he nonetheless issued the patent itself to her husband, Thomas Masters.").

³⁴ 23. See FARAG MOUSSA, *WOMEN INVENTORS HONOURED BY THE WORLD INTELLECTUAL PROPERTY ORGANIZATION* 15-16 (1991) ("The classical image of an inventor is always, exclusively, male.... This book has one message, and it is an important one: creativity knows no frontier, no age and above all ... no gender.") (second ellipsis in original).

³⁵ Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981) [hereinafter CEDAW].

³⁶ Lennon & Whitford, *supra* note 47, at 1

³⁷ . SEN, *supra* note 53, at 15

technique which uses saliva and an elementary microscope.³⁸ Invention came out of an adverse situation, her personal experience to save the life of one of her ten children.³⁹ Here the inventor explains the similarity between saliva and blood plasma also thoughtfully combines science and basic traditional healing knowledge. She has been considered "a spiritualist healer and a conscientious herbalist who is anxious to help the sick."⁴⁰ They are also working to prove themselves the equals of the male scientists who have dominated the field for so long.⁴¹ In addition, some women are gaining compensation for their ideas and holding ownership rights to their discoveries.⁴²

On a more systemic level, relying solely on the invention paradigm for the recognition of creativity and as a source of IPRs may be particularly detrimental to women. Resignation to the fact that IPRs are often awarded only to those who inhabit the invention paradigm would force women to rely solely upon the historically and philosophically masculine ideal of rationality and science in order to gain recognition for their knowledge.⁴³ This may adversely result and force women to neglect other forms of knowledge and focus only on the invention paradigm. In response to the above, there needs to be some solution where a balance between the rights of users and copyright holders is justified and also the economic rights of creators must not be compromised.

³⁸ Surendra J. Patel, Can the Intellectual Property Rights System Serve the Interests of Indigenous Knowledge? in VALUING LOCAL KNOWLEDGE: INDIGENOUS PEOPLE AND INTELLECTUAL PROPERTY RIGHTS, supra note 45, at 305, 306.

³⁹ See, e.g., Tumusiime, supra note 65. Possible roadblocks to making direct remuneration for the products of women's traditional knowledge plausible and just include: 1) concretely identifying the makers or authors of the knowledge; 2) distributing the earnings fairly; and 3) making sure that earnings are not simply appropriated by men (a very real danger in highly patriarchal traditional societies).

⁴⁰ MARGARET J. RADIN, CONTESTED COMMODITIES 2 (1996). See also Phillips, supra note 60, at 370-77 (applying commodification theories, including Radin's, to the case study of the quilters of Gee's Bend). For a discussion of "heritage as property" and the problems associated with it, see Michael F. Brown, Heritage as Property, in PROPERTY IN QUESTION: VALUE TRANSFORMATION IN THE GLOBAL ECONOMY, supra note 43, at 49.

⁴¹ See, e.g., SHARON BERTSCH MCGRAYNE, NOBEL PRIZE WOMEN IN SCIENCE: THEIR LIVES, STRUGGLES, AND MOMENTOUS DISCOVERIES (1993) (chronicling the lives and work of women who have won the Nobel Prize in the sciences). For a discussion of gender in the natural sciences, see generally Sandra Harding, From the Woman Question in Science to the Science Question in Feminism, in FEMINIST THEORY: A READER 404 (Wendy K. Kolmar & Frances Bartkowski eds., 2d ed. 2005).

⁴² See, e.g., Waverly W. Ding, Fiona Murray & Toby E. Stuart, Gender Differences in Patenting in the Academic Life Sciences, 313 Sci. 665, 665 (2006) ("[W]omen faculty members patent at about 40% of the rate of men. We found that the gender gap has improved over time but remains large."). There is a great deal of space for additional research on the gender gap among patent holders, both in the United States and internationally; general conclusions may be drawn from studies like this one, but broader analysis is needed.

⁴³ See generally GENEVIEVE LLOYD, THE MAN OF REASON: "MALE" AND "FEMALE" IN WESTERN PHILOSOPHY (1993) (tracing the "rational man," theories of reason, and the subjugation of "irrationality" and the feminine through the works of predominantly male Western philosophers).

COPYLEFT REGIME: IDEOLOGY TO BE TAKEN

Copyleft is all about a licensing mechanism that grants a permission to reproduce intellectual property. It's just an act of protecting social interest in creation by copyright control in a large general community. The concept of copyleft is the core of many programming projects, and the licence is most commonly used for software, digital art, writings, and other creative content”⁴⁴ Copyleft is based on a common social thought that work needs to be free, accessibility must vest in people, they must be able to use it, modify if required and redistribute it. Here I am trying to put forward copyleft ideology and merely compare it with the repercussions of existing copyright laws not in a completely contrary manner but how can we get along with both ideologies. Till now copyleft hasn't been officially legislated, thus putting forward examples of its implementation would help to validate the existing valid contracts and can be read along present copyright laws.

The ideology behind Copyleft, as Richard Stallman also puts it is that the work that can benefit society should be free for everyone to use.⁴⁵ Human ideas and thoughts always tend to develop over preexisting ideas and notions available around.⁴⁶ If reusing a work helps in a social sector at large without changing the basic idea of invention, then definitely be tried. That is how civilization has come a long way and has developed so much since its start. Reinventions have always been part of human civilization and that has brought us all the way civilized. Mere abandoning of the copyright by one who is willing to distribute it freely in public is not a solution because someone else can always get a copyright over it.⁴⁷ There can be instances where in the absence of such a licensing person who wants to give their work for public end up in struggle that others use the same personal gains and as a result get the copyright over work. Therefore copyleft and other licensing methods help the authors and creators by facilitating the free flow of knowledge and inventions. The same ideology of giving, sharing and cooperation could be traced in feminism and thus I put forward both these ideologies as similar values that would be used to eradicate marginalizations in society. Thus copyleft is more inclusionary in nature. Copyleft rests on the belief that the mutual exchange of knowledge is mandated by an understanding of such work as the “collective property of humanity.”⁴⁸

⁴⁴ <<https://www.britannica.com/topic/copyleft>>.

⁴⁵ <https://www.gnu.org/philosophy/pragmatic.en.html>, (last accessed on November 28, 2023).

⁴⁶ R. Neethu and Zehra Shakeri, My Religion: My 'Copy' 'Right, Journal of Intellectual Property Rights, vol. 18, November 2013, pp 566-575.

⁴⁷ Ira V. Heffan, Copyleft: licensing Collaborative Works in the Digital Age, Stanford Law Review, Vol 49.

⁴⁸ Severine Dusollier, Open Source and Copyleft: Authorship Reconsidered? 26 Colum. J.L. & Arts 28 (1997) 1.

According to Pollack, the public domain is essentially feminine and Public domain consists of those aspects of culture that someone may use without permission from or payment to some owner.⁴⁹ Feminism believes that creation is communal material and that each human develops his or her individuality inside some specific society. Thus, according to feminism, free sharing of your creation with the community is morally appropriate.⁵⁰ The same could be traced in the copyleft that advocates common work rather than individual self-centered work. It provides for the creation of a common foundation to which each person can add, but from which no one can remove⁵¹ ; rather than on the patriarchal logic of the monopoly over the work. Copyleft's paradigm imbibes the feminine values of building relations with each other while functioning in a community. Feminists challenge the boundaries established by intellectual property law as seeking to divide and control instead of facilitating exchange. They locate text within the reciprocal world of ideas.⁵² The copyleft regime encourages this exchange of information by allowing for the postmodernist connection between the author and the readers and refuting the notion of autonomy. By enlarging and protecting the public domain, copyleft enables society to move towards a more feminine, and therefore more humanist, culture.⁵³ Thus incorporating feminine values into copyleft ideology makes it more inclusionary and makes it a read-along alternative to the problems faced by the suppressed groups in society.

Incorporating a hybrid of a 'copyleft' model,⁵⁴ such as the Creative Commons (CC) license, along with certain economic rights of authors, to reach a balance between the rights of users and copyright holders would be sufficient. The terms of license selected by the author are displayed along with the work itself. It is interesting that some concerns raised in the European Copyright Directive,⁵⁵ such as the need to "identify better the work" and to "provide information about the terms and conditions of the work" are satisfied by CC licenses, as all this information is attached

⁴⁹ Malla Pollack, Towards a Feminist Theory of the Public Domain, or The Gendered Scope of United States' Copyrightable and Patentable Subject Matter, 12 Wm. & Mary J. Women & L. 603 (2006).

⁵⁰ Malla Pollack, Towards a Feminist Theory of the Public Domain, or The Gendered Scope of United States' Copyrightable and Patentable Subject Matter, 12 Wm. & Mary J. Women & L. 603 (2006).

⁵¹ See Severine Dusollier, Open Source and Copyleft: Authorship Reconsidered? 26 Colum. J.L. & Arts 28 (1997) 1.

⁵² Debora Halbert, Feminist Interpretations of Intellectual Property Feminist interpretation, 14 Am. U.J. Gender Soc. Pol'y & L. 431 (2006)

⁵³ Malla Pollack, Towards a Feminist Theory of the Public Domain, or The Gendered Scope of United States' Copyrightable and Patentable Subject Matter, 12 Wm. & Mary J. Women & L. 603 (2006).

⁵⁴ Copyleft is a general method for making an item of work free, and requiring all modified and extended versions of the program to be free as well

⁵⁵ Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the Harmonisation of Certain Aspects of Copyright and Related Rights in the Information Society (EU Copyright Directive), 2001 O.J. (L 167) 10.

to the work itself, this act makes it more non-discriminatory. CC harmonises the needs of creators as well as users in a satisfactory manner, inculcating a spirit of creativity,⁵⁶ bearing no ill effects on innovation, retention of the actual work is commendable. Such a system would also satisfy the demands of those who feel that copyright law is leading to a monopolistic exclusivity for cultural industries.⁵⁷

Through advocating for a copyleft regime, I would like to amalgamate both masculine and feminine values and thereby show the importance of social progressiveness. For instance, Carol Gillian advocates recognition of differences between feminine and masculine virtues and argues that both have a contribution to make in the world. Incorporation of both these values will create a more humane social order.⁵⁸ Furthermore, Critical feminism commits to neither embrace nor suppress differences between men and women but to challenge the dualism and make the world safe for differences.⁵⁹ In addition, A feminist critique of copyright seeks a true balance between circulation and ownership of texts.⁶⁰ The copyleft regime works on a middle path and allows authors to share their work only after the copyright is acquired. Midway in the sense this system incorporates both masculine and feminine values, thus allowing midway where texts may not be the private property of their authors, but at the same time, some authorial autonomy is retained. Thereby, it democratically ensures recognition of their work by compiling all values holistically. Such a regime gives marginalized sections a better ground to represent themselves and their concerns by establishing the link among the author, the work, the readers and the previous writings, instead of treating the author as an autonomous male equivalent.⁶¹ It's a revolutionary attempt that questions existing patriarchal societal challenges and conscious effort to put an end to the foresaid discriminations and make the business, intellectual property scene fairer.

⁵⁶ William Patry, Limitations and Exceptions in the Digital Era, 7 *Indian Journal of Law and Technology* 1, 5-7 (2011) (arguing that copyright law ideally evolved to promote creativity, and this not only requires acceptance of the fair use doctrine, but alignment of copyright laws to the current digital environment.)

⁵⁷ Joost Smiers, Creative Improper Property : Copyright and the Non-Western World in *New Directions in Copyright Law*, Vol. 1, 1, 1-5 (Fiona MacMillan ed., 2005) (argues that monopolistic exclusivity of cultural industries which is eternal in nature, can be reduced by providing restricted ownership rights. This would lead to normalization of the industry, thereby allowing smaller players and artists to enter the market and compete fairly.)

⁵⁸ Joan Williams, *Deconstructing Gender*, 87 *Mich. Law Review* 797 (1989).

⁵⁹ Deborah Rhode, *Feminist Critical Theories*, 42 *Stanford L. Rev.* 617 (1990).

⁶⁰ Debora Halbert, *Feminist Interpretations of Intellectual Property Feminist interpretation*, 14 *Am. U.J. Gender Soc. Pol'y & L.* 431 (2006).

⁶¹ See Marion Crain, *Feminism, Labor, and Power*, 65 *S. Cal. L. Rev.* 1819 (1992); which argues how labour unions based on feminine virtues like solidarity are better empowered than labour unions based on patriarchal values of self-interest and lacking a sense of connection and empathy.

CONCLUSION

The Intellectual property gap is a serious problem that the innovative society faces. Women's ideas remain untapped, and their brilliant minds are never showcased. Marginalizations and disparities do exist in society regarding the matter as we discussed above. According to WIPO data released in March 2023, it is estimated that only 16.2 per cent of inventors named in international patent applications were women in 2022. While numbers are rising, progress is slow.⁶² WIPO estimates that, at current rates, parity among Patent Cooperation Treaty (PCT)-listed inventors will only be reached in 2061. Taking action, discussing their problems, and working towards that goal is the need of the hour and by supporting the marginalized oppressed groups we could unlock their potential, strengthen copyright laws, innovate society and drive economic growth. Generally, countries that are efficient in managing IP Rights provide more inclusive rights, equal inheritance rights to women etc. Therefore, protecting Intellectual Property Rights is a win-win situation and in this manner, we could accomplish women's empowerment efficiently. This would also lead to a far better economic state of the nation. Furthermore, in this day and age, substantial rational considerations such as diversity, morality, and equity should also be re-incorporated into the IP regimes. How can the law remain autonomous and independent while in the meantime also avoid undermining diversified interests? Therefore I strongly advocate necessary changes in copyright laws, incorporating more feminist values which get along with cooperation and harmony among all groups of society. Additionally, there needs to be more innovative judicial interpretation, to battle this apparent conundrum. Let us for sure compile the copyleft ideologies to make all existing provisions more flexible, inclusive, and progressive and be part of a forum of fully appreciating and accepting diversity.

⁶² <https://www.wipo.int/women-and-ip/en/>