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**COVER SHEET**

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**TITLE OF THE ESSAY:**

IMPARTING ESSENTIAL LEGAL SKILLS THROUGH FEMINIST JURISPRUDENCE:  
A CASE FOR INCLUDING FEMINIST JURISPRUDENCE AS A COMPULSORY COURSE  
IN LAW SCHOOLS

**SYNOPSIS:**

This essay answers the question *'Why should Feminist Jurisprudence be a Compulsory Course in Law School'* by seeking to establish that the study of feminist jurisprudence imparts certain skills to law students, which are basic to the study of law and crucial if one needs to know how to read and apply the law in any given situation. These skills could be stated to be, among others, those of logical reasoning, deducing and inferring, viewing an issue from different perspectives and decision-making informed by context.

This 'skill-imparting' quality of feminist jurisprudence, as a subject of study, is what makes it a foundational subject of study and fundamental to the study of law, when compared to other legal subjects, which may provide the field to apply these skills, rather than imparting the skills itself.

Hence, Feminist Jurisprudence deserves to feature among the compulsory courses in the curriculum of a law school.

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COURSE IN LAW SCHOOLS**

Education has, simultaneously, both an instrumental value and an intrinsic value. It is instrumental when the fact of being educated is responsible for a person in applying certain learnt skills to earn his/her livelihood. It is intrinsic when learning is for learning's sake. The curriculum of any course of study hence, needs to be very carefully designed to ensure that these purposes are being served.

With specific reference to legal education, designing the course content for it merits a high level of thought, consideration and deliberation for the simple reason that the Law and laws determine who we are and how we function as individuals, as groups and as a society and it is the students of law who will go on to influence the shape of the Law and laws in various capacities such as advocates, judges, policy-makers, administrators, academicians, consultants and social workers, to name a few.

Law as a discipline and an institution, touches almost every aspect of life and in some situations, the application of the law may mean a question of life and death. For anything as pervasive, invasive and influential to life as Law, legal education, which is the Law's tool of dissemination, has a great responsibility on it to prepare future generations and mould their intellectual capabilities in the most effective manner so as to equip them to deal with the complexities and subtleties which exist in Law. It discharges this burden by imparting certain skills to students through the study of certain subjects and in this exercise of transfer of knowledge and skills, the selection of subjects plays a vital role.

With this in mind, the proposition here being made is that:

- A. Every subject can be divided into two components-firstly, the visible part-the contents which constitute and give identity to that subject and secondly, the underlying and often invisible part-the skills, which the study of that subject imparts to students.

- B. A subject is selected to be included within the curriculum in accordance with the kind of 'skill-set' that the discipline requires that its students imbibe themselves with so that they are equipped to face the ultimate purpose for which the course is aimed at preparing them for.
- C. Whether a subject is regarded as compulsory or optional depends on what kind of skills the student learns through the study of its contents.
- D. Every discipline requires that some basic or core set of skills be learnt and those subjects which impart such skills are eligible to be designated compulsory courses.

Proceeding on this basis, this essay answers the question '*Why should Feminist Jurisprudence be a Compulsory Course in Law School*' by seeking to establish that the study of feminist jurisprudence imparts certain skills to law students, which are basic to the study of law and crucial if one needs to know how to read and apply the law in any given situation. This 'skill-imparting' quality of feminist jurisprudence, as a subject of study, is what makes it a foundational subject of study and fundamental to the study of law, when compared to other legal subjects, which may provide the field to apply these skills, rather than imparting the skill itself. Hence, Feminist Jurisprudence deserves to feature among the compulsory courses in the curriculum of a law school.

#### **NATURE OF LAW AND THE SKILLS REQUIRED OF LAW STUDENTS**

If the various jurisprudential theories on the nature of the law are distilled, it can be seen that in the ultimate analysis, Law is about rights and entitlements, liabilities and duties, whether played out in the litigative or the non-litigative arena.

The very nature of these concepts necessitates, that, when the Law and the legal system deal with them, either in defining them, in delineating their scope, in regulating/recognizing/prescribing/proscribing conduct involving those concepts, they have to grapple with maintaining a balance between two opposing, but simultaneously acting forces of inclusion and exclusion, of stability and dynamism, of rigidity and flexibility. In this function, language, approach, attitude, and perspective play key roles because the boundaries and content of these rights and duties in terms of what, where, when, who, whom and most importantly, why are decided by them.

Law does not rise in nor operate in a vacuum. It is conceived in social contexts which influence it and which in turn are influenced by it, to ultimately result in the 'facts' that law students will address further on in their careers. Whether the issue involved is one relating to family law, company law, tax law, property law or criminal law or any other branch of law, and irrespective of whether the student of law is an advocate or a judge or in any other capacity, he/she will have to handle different parties, having different stakes in the matter. It is widely believed and accepted that the primary purpose of law is to see that justice is done.

To ensure that this goal is achieved, the student will need to apply the law by employing the skills of questioning, of gathering information, of analysis, of comparing and contrasting, of reasoning, of deducing, inferring and interpreting, of identifying and understanding the main idea, purpose and issues and of communicating through verbal and non-verbal means.

Feminist Jurisprudence imparts these skills by making the student aware of the presence and role of perspective and of context and the need to internalize experiences external to ones own, of listening to silences and of reacting and responding and not merely mechanically applying the black letter of the law.

### **FEMINIST JURISPRUDENCE AS A 'SKILL-IMPARTING'SUBJECT:**

Feminist jurisprudence is one of the best subjects to impart these skills for the very reason that the birth of this subject itself took place by way of questioning and reacting critically to legal norms, standards, rules and procedures, hitherto accepted as established and applicable to all. Any subject, which has critique as an inherent part of its identity, must necessarily impart that very skill to its disciples. It is very important for a law student to develop the skill of critiquing because in its absence, law would cease to respond to the changing needs and demands of the society.

Law is concerned with social and societal problems, which because of their nature and location are inherently ever-changing. Interestingly, however, to deal with, address and solve the same, Law adopted the methodology of objective, neutral, universal rules which

being reductionist in nature, fail to factor in life experiences different from that of the standard of measurement decided by Law. In effect, a stationary and 'one-size-fits-all' tool has been used to fix a dynamic problem.

The very fact that this paradox existed in the present methodology of the law was brought to light by the feminist reading of the law which focuses particularly on the impact of law and law's policies on women and 'aims at the goal of raising the law's awareness and understanding of, as well as its responsiveness to, women as women.'<sup>1</sup>

Feminist Jurisprudence would contend that the difference between Man and Woman has been made a basis for discrimination by the operation of the patriarchal structure of society, a "system of social relations in which men as a group have power over women as a group; it is a system that is characterized by relationships of domination and submission, superiority and inferiority, power and powerlessness, based on sex."<sup>2</sup>

This positioning of the sexes made it possible and convenient for Man to impose in Law the male understanding of experiences, of reactions, of conduct and of the content of rights, entitlements, duties and liabilities, as being the norm and the standard of measure and so, Law would believe that anything different from it is deviance from the norm, which either needs to be disregarded or punished. In this process women's voices are unheard, suppressed or silenced and the female understanding made legally irrelevant.

Holding that Women and Men experience and react to the same situations differently and also have certain mutually exclusive experiences, Feminist Jurisprudence questioned the unstated assumptions or 'truths' of the Law and asserted for a difference in approach- one that would allow for including women's distinct life experience, process of reasoning and reacting in the understanding of problems and legal solutions thereto.

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<sup>1</sup> Pruitt, Lisa R., "A Survey Of Feminist Jurisprudence", (1994) 16 U. Ark. Little Rock L.J. 183, 184; [www.international.westlaw.com](http://www.international.westlaw.com). Last visited 12<sup>th</sup> May 2006.

<sup>2</sup> Polan Diane, *Toward a Theory of Law and Patriarchy*, in *The Politics Of Law: A Progressive Critique* 294, 302 n.1 (David Kairys ed., 1982); Storey, Anne-Marie Leath, "An Analysis Of The Doctrines And Goals Of Feminist Legal Theories And Their Constitutional Implications", (1994), 19 Vt. L. Rev. 137, 140; [www.international.westlaw.com](http://www.international.westlaw.com). Last visited 12<sup>th</sup> May , 2006.

For instance, criminal law has now recognized 'Battered Woman Syndrome'<sup>3</sup> as a defense in charges of murder, as being provocation all the same but expressed differently. It recognized that the standard of 'grave and sudden provocation' as a defense was a masculine reaction, which need not be shown by women. In doing so, the Law does not say that women do not get provoked. They do, only that it is manifested differently, due to factors like comparative disadvantage in physical force or constant and long-term subjugation, factors which the man does not experience but for the woman is a fact of her existence. It can therefore, be said that the skill of identifying the underlying principle and purpose of a defense to a crime and separating it from its manifestation is what is being learnt here.

Hence, it is seen that when feminist scholars question vested interests, uproot familiar and comfortable perspectives, and defy the status quo<sup>4</sup> and are suspect of the highly structured nature of legal method, the form and patterns of legal inquiry and decision-making, and legal ways of knowing,<sup>5</sup> they inculcate in students the skill of critically examining the letter of the law, comparing it with the spirit behind the law, reading the text in the context of varied lived experiences, identifying different perspectives to the same issue, employing those perspectives and identifying the clever ways in which the language used by the law can be an instrument of perpetuating vulnerability and injustice.

The techniques advocated by Feminist Jurisprudence such as storytelling, sharing experiences and direct personal interaction makes the law seem more humane to the subjects of law and at the same time imparts an inter-personal empathetic quality to Law itself. Moreover, Feminist Jurisprudence does not stop at critiquing the extant system but it goes a step further to think in terms of refashioning the law to deploy it as an instrument of reform. It thus tries to invest legal rules with foresight by factoring in

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<sup>3</sup> *R. v. Ahluwalia*, [1992] 4 All ER 889;  
<http://webdb.lse.ac.uk/gender/Casefinaldetail.asp?id=117&pageno=6>

<sup>4</sup> See generally Mossman, Mary Jane, "Feminism And Legal Method: The Difference It Makes", (1987), 3 *Wis. Women's L.J.* 147; [www.international.westlaw.com](http://www.international.westlaw.com). Last visited 12<sup>th</sup> May 2006.

<sup>5</sup> Pruitt, Lisa R., "A Survey Of Feminist Jurisprudence", (1994), 16 *U. Ark. Little Rock L.J.* 183, 185; [www.international.westlaw.com](http://www.international.westlaw.com). Last visited 12<sup>th</sup> May 2006.

repercussions of proposed actions and incorporating solutions within the language of the law at the stage of conceptualization itself.

Students of law will see that in almost all cases, such relations of imbalance of power as those with which Feminist Jurisprudence is concerned with, exist in one way or the other in all relations; whether it be in the form of an employer and an employee, or a Company and a consumer or a criminal and the target or the State and the poor or developed countries and developing countries. When conflicts arise in these unequal relations and the Law is invoked, it is the skills mentioned above that students will have to draw upon if they want to effectively use the Law as a tool to solve problems and see that it is not manipulated by persons endowed with favorable social attributes to render incomplete justice or complete injustice.

**CONCLUSION:**

Law has often been criticized as being esoteric and viewing issues from a position in an ivory tower of its own and that legal theory as it exists sharpens the dichotomy between theory and practice within the realm of law.

Feminist Jurisprudence is a non-traditional approach to law which bridges this gap between theory and practice and aims at teaching students to train their attention to those who matter the most on the stage-the people involved and not the legal rules per se.

It might even be said that not including feminist jurisprudence as a compulsory course can itself amount to 'discrimination in the academic domain', not only on the basis of gender, but also on that of traditional v. non-traditional approaches to law. Legal theory will indeed become hypocritical if its shoulders are unable to bear the burden of criticism. Changes in or challenges to established norms and set beliefs in a discipline or branch of study brought about by a scholarly movement will only serve to enrich the discipline more than reduce its value.

Feminist jurisprudence has injected a new stream of thought and a new criteria for analysis of the methods of law and excluding it from the curriculum will indeed deprive

students of the benefits obtained by the same. If legal educators are to enhance and nurture the goals of a just legal system, they must realize that how and what they teach future lawyers must reflect a commitment to equal systemic access and ultimately equal justice.<sup>6</sup>

The above statement reflects the important role that law schools play in the development of the legal regime. If the aim is not to simply impart legal literacy or legal knowledge but legal education in the true sense of the term, then Feminist Jurisprudence must certainly find a place as a compulsory course within the curriculum.

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<sup>6</sup> Wizner, Stephen , “What Is A Law School?”, ( 1989),38 Emory L.J. 701, 714; [www.international.westlaw.com](http://www.international.westlaw.com); Last visited 16<sup>th</sup> May, 2006.