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A RESEARCH PROJECT ON SEXISM IN INDIAN LAWS- A JURISUDENTIAL ENQUIRY

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Abstract

The basic purpose of this project is to examine why law as it is does not confirm to any jurisprudential schools but rather, a fair amalgamation of it. Any given law, on close examination is apt to prove the same. So, easiest way to examine how inter-related law is with society, is to prove the very existence of this hesitation of Indian judiciary when dealing with sex and sexuality. The conformity of law to the wish of the general public and the resistance to change despite of the fact that change being inevitable to law, leads to a new theory of jurisprudence which has nothing new but everything unlike the past. – The unifying theory of jurisprudence, a perfect amalgamation of all existing jurisprudential theories.

Keywords

Indian law, Jurisprudence, Unifying theory, Sexism, Gender Bias

1. Introduction

Law is like a work of art where jewels of simple logic of good and bad embed itself in the intricate ornament of popular opinion, emerging as a beauty in itself, transcending the meaning

and form apportioned to it by its own creator. What law is has been debated more than what law ought to be. Is law merely a scale of calculus where pleasure and pain are weighed to decide the best course of action? Or is it a holy book bound with leather of morality and inscribed with the golden nib of conscience and styled with the secrets of a greater knowledge? Or is it something much simpler – a middle path through which a society threads without greater considerations of morality or conformity to dry lifeless calculus?

The true solution to this conundrum must lie somewhere in between. Someplace where all the theories propounded on law are proved and disproved simultaneously. The relevance of unifying theory comes into picture at this very juncture. More often than not, jurisprudential theories are found on a particular social condition in existence.

India fears sex. Whether taken in the meaning of gender or in that of intercourse, society is customized to fear it, hate and prejudice against it. Generations that went by taught the present generation that sexual intercourse is to be shunned from, to be ashamed of and to be fought against. Gender differences are so glaring that it sits proudly in the crown of our legal leviathan. Even justice changes its colour for difference gender and for the so called ‗confused' ones, justice simply fails to exist. Passing through the initial phase of bride burning, child marriage and widow burning, we have new found ways to stereotype sex and sexual orientation in whole new different ways. Or is it a holy book bound with leather of morality and inscribed with the golden nib of conscience and styled with the secrets of a greater knowledge? Or is it something much simpler – a middle path through which a society threads without greater considerations of morality or conformity to dry lifeless calculus?

The current practices include shunning homosexuality, intolerance to public display of affection and live in relationships, making separate and gender based laws in the name of protective discrimination which, with its lacunas in written law present to be more detrimental than useful, blind eye to marital rape and most importantly keeping uniform civil code inside the cupboard in the name of cultural sentiments. We, in this project would focus on the cause than the issue itself. The project would seek to understand as to why the Indian law seems to be prejudiced, and to an extent, scared to deal with sex and sexuality related issues. It is because of the inherent bias that is carried in the heart of the society or is it because of the fact that culture still holds the reins of law or is it because law evolves more from sociological factors than

historical factors. Somewhere in the evolutionary history of Indian society, females lost their stand, gender became biased and sex became a taboo. The project would examine the existence of gender biased laws and Supreme Court opinion on the same. Then we would see adequacies and inadequacies of existing theories and definitions on jurisprudence.

2. Hypothesis

- Cultural influence is inevitably present in every law made.
- Many Indian laws are sexually prejudiced and some even encroach upon the fundamental rights prescribed under article 21 of the Indian constitution.

Laws are more customized to suit the popular opinion than what would be prescribed as justice i.e. laws are factor of mass social consent than what would essentially be called as natural justice.

3. Biased Criminal Justice

Gender bias is omnipresent in our legal system and probably personal laws reeks of all the explicit bias in black and white. While it is tolerable that personal laws should essential make a _few‘ exceptions and concessions, it does not mean that the legal system should tear itself in half and get customized to suit the gender on which it is applied. So, addressing the real question – why is gender biased laws so badly? Let us start with our criminal justice system.

Thanks to the whole plethora of gender biased laws that every family law case is being taken to criminal courts. The misuse of such laws is so rampant that the courts seem helpless while pronouncing the verdict. And, for which there should be laws, well… that remains unaddressed. Marital rapes get a silent nod whereas laws such as Domestic Violence Act is accepted despite of its cons outweighing the pros. So why doesn‘t our legal system stop the females from attaining legal supremacy? Why should injustice be tolerated in the name of justice?

The harm done by this clause is seen in sec 498 (A) of Indian Penal Code, 1860. Further, sec 376, 363, 354, 509 of IPC is in their language, highly _unsettling‘ when it comes to equality. We must not forget the SLLs like the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; The Protection of Women from Domestic Violence Act,

2005; Indecent Representation of Women (Prohibition) Act, 1986; Immoral Traffic (Prevention) Act, 1956; the author is not of the view that these legislations have entirely failed in its purpose. In fact, author‘s concern is in the very existence of these legislations. Why does the government think that females need protection? The gender biased laws have proven to be disastrous in many aspects and yet why is the government hesitant in amending and altering them?

Before we go deeper in this regard let us focus on the infamous 498 (A) of IPC. 498A. - Husband or relative of husband of a woman subjecting her to cruelty.—whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be pun•ished with imprisonment for a term which may extend to three years and shall also be liable to fine.

There are three fundamental problems with this law – a) excessively gender biased in favor of women, b) it has high chances of misuse c) the definition of domestic violence is too vague and extensive.

The major flaw in this section is that it assumes that females are the only victims of domestic violence. But the statistics show a different story. Statistics show that 40% of domestic violence victims are men. Additionally, heterosexual male victims of IPV are often judged harshly for "allowing" themselves to be beaten by a woman. This view is based upon the general rule that men are physically stronger than women, and, therefore, should be able to prevent any kind of female violence; a view which disregards that violent women tend to use objects during IPV at a higher rate than violent men. [3] The misuse is another major issue of this legislation. Every 8 minutes an innocent male is arrested for domestic violence suit. Around 2286 woman are annually arrested annually on fake law suits of domestic violence. Every 8 minutes a married man commits suicide in India due to the misuse of sec 498 (A) of IPC. After years of legal turmoil, 82.5 percent of the total FIRs filed under Section 498- A (non- boilable) were found false.[4] It is ironic how a legislation intending to protect the peaceful marital life of one endangers that of others. The effect of this legislation is so fatal that Supreme Court called this legislation ‗legal terrorism‘. [5] The existence of this legislation is based on the presumption that females are weak and prone to domestic violence. Domestic violence laws incriminate people on claims by the victims and are hardly based on any other criteria and the penalty can extent up to 7 years of rigorous imprisonment. Such a powerful law indeed prevents domestic violence but is

it not fair to amend the laws so as to suit both gender than to presume that only females can be victims of domestic violence. The question why hasn‘t the law changed? The answer is simple – society cannot comprehend the male being harassed, though that is the hardcore reality now.

Now moving on to other laws like rape legislations and other legislations subject to bias. It is a sad joke that the law perceives that only females can be kidnapped, immorally trafficked, harassed or raped. Law assumes that men are predators who crave for sexual pleasure while the females shun from it. Another such law is IPC 497. For reason incomprehensive to the author, the traditional law says that females cannot commit adultery. Adultery can be committed only by males; rather, males are only punished for adultery. These ideals root from the society itself. Indian society is so utopian that it cannot conceptualize wives cheating on their husbands. While a husband can claim for a divorce, punishment for adultery is the ultimate weapon the females wield, preventing their husbands from straying. Section 497 unequivocally conveys that the adulteress "wife" is absolutely free from criminal responsibility. She is also not to be punished (even) for "abetting" the offence. Section 497, by necessary implication, assumes that the "wife" was a hapless victim of adultery and not either a perpetrator or an accomplice thereof. Adultery, as viewed under IPC, is thus an offence against the husband of the adulteress wife and, thereby, an offence relating to "marriage". [6]

Another, glaring example of the stereotyped law hiding behind the societal norms is marital rape. So what exactly is marital rape? It is a husband forcing his wife to have sex with him even when she does not want to or force her to do any sexual activities that she doesn‘t want to. Marital rapes often go hand in hand with physical torture and cruelty. It is a non-consensual act of brutal perversion by a husband against the wife where she is physically and sexually abused. The UN Population Fund states that more than 2/3rds of married women in India, aged 15 to 49 have been beaten, raped or forced to provide sex. In 2005, 6787 cases were recorded of women murdered by their husbands or their husbands‘ families. 56% of Indian women believed occasional wife-beating to be justified.[7] It is famously quoted that :"The husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given up herself in this kind unto her husband which she cannot retract.... In marriage she hath given up her body to her husband...‖[8] Though by the end of 19th century the United Kingdom, which being the godmother of commonwealth principles,

criminalized marital rape in 1991 taking in the Scotland legislation of 1982 as precedent. But we, in India still believe the R v. Clearance ratio that a wife was deemed to consent to sexual intercourse with her husband no matter if he is infected with Sexually Transmitted Diseases or not. [9] While arguments extend from impracticality and misuse to the futility of such a legislation, the primary reason behind shunning such a revolutionary legislation is nothing but the inherent fear of the law for the society.

4. The Homosexuality Debate

The most evident and perhaps evergreen example of how the law sharing the societies fears and prejudices can be shown by art 377 of IPC. What is wrong with homosexuality? Law thinks those tax issues need a little dusting up or perhaps the corporate laws need a little bit of rearrangement but who shall dare mess with Art 377 of IPC. Referring to the nature of Samara, the Rig-Veda, one of the four canonical sacred texts of Hinduism says 'Virtue Evam Prakriti' (perversity/diversity is what nature is all about, or, what seems un-natural is also natural). The third gender is mentioned in the Vedas. It is customary to distribute gifts to such people as it is believed that all their sexual energy is converted to spiritual and they has the power to give a boon or curse. [10] What does Art 377 say? Why does it say? And most importantly, why do we keep repeating it.

Art 377 says,

377. Unnatural offences.—Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.‖[11]

From the point of view of a modern man, all is fine. Despite of the fact that the beautiful carvings of Khajuraho temple [12] would speak otherwise, for the sake of argument let us assume that bestiality is indeed savage, uncouth and very much uncivilized. But what exactly is the extent of scope of the so called ‗unnaturalness'? Before we deal with Supreme Court ratio on Nazi Foundation v. Union of India [13], let us see the much cited provisions of our constitution.

Art. 13 (2) and Art. 21 of the constitution says respectively-

Art. 13 (2) - _The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.‘

Art. 21 - _No person shall be deprived of his life or personal liberty except according to procedure established by law.‘

Here the concept of personal liberty and _procedure established by law‘ is very much ambiguous that more or less, it is the discretion of the judiciary alone to give meaning to this word and read the Art. In accordance to a situation. But the same is the case with _order of the nature‘. The mere description of the two articles, 13 (2) and 21, read with section 377 of IPC is enough to prove the invalidity and unconstitutionality of section 377 of IPC. We live in a country where objectification of woman in movies is as common as the in-law battle in television soap, where the playboy hero has his choice of women for his pleasures but where an act of love between spouses result in the pseudo socio-cultural glasshouse that maintains the law breaking apartThe judiciary would have no right to deprive an individual of his right to sexual intercourse provided that there is mutual consent and that the both consenting parties are adults and is prudent enough to understand his acts and that his acts are done in places where he is reasonably expecting privacy. But here is the stand of the Supreme Court of India in the same. In Suresh Kaushal v. Naz Foundation the honorable court has said that the details provided to the High Court were thus ‒wholly insufficient for recording a finding that homosexuals, gays, etc., are being subjected to discriminatory treatment‖ and that the party _failed miserably‘ to provide the details and evidences of such practices.[14]

As for the contradiction with Art 14, the court has said, ‒Those who indulge in carnal intercourse in the ordinary course and those who indulge in canal intercourse against the order of nature constitute different classes and the people falling in the latter category cannot claim that Section 377 suffers from the vice of arbitrariness and irrational classification.‖

But despite of the well detailed judgment the court seem to fail miserably as to why gay couples cannot have a family life or intimate relationship. Why is their relationship termed as unnatural? The answer is because the society says so. Rather, the majority of the people in this country seem to think that homosexuality is unnatural. In simpler terms, what society fears and

frowns, law fears and frowns too. An exaggerated inference would be that ‗Law is nothing but a projection of the society it rules over'.

Nobody perhaps discussed societal and moral aspects of law than in the famous Hart- Devlin debate. Here is the crux of the whole debate. Devlin tried to emphasis on the point of moral obligations of law or how the aspect of morality is inalienable from the concept of law. According to him, law without morality ―…destroys freedom of conscience and is the paved road to tyranny‖.[15] In his own words,

"Societies disintegrate from within more frequently than they are broken up by external pressures. There is disintegration when no common morality is observed and history shows that the loosening of moral bonds is often the first stage of disintegration, so that society is justified in taking the same steps to preserve its moral code as it does to preserve its government... the suppression of vice is as much the law's business as the suppression of subversive activities." [16]

In his famous social cohesion argument, states that in order for a society to function, the laws governing it should conform to a ‗shared morality'. He seemed to be at confusion on the aspect that despite of the fact that he talked a great deal about respecting individual privacy, and established the minimum standard of law but failed reason the circumstances where the morality of the society spurs from religion and is in violation of human rights. He also failed to explain what society is. Is society merely a consensus between the majority and the minority interests are to be sacrificed? Does not the argument of Devlin carry the inherent assumption that the society can never take the wrong decisions? Why should the conventional morality of a few members of the population prevent people doing what they want? Morality being a vague abstract term cannot be used as a base to something as definite as law. It can therefore be only concluded that it is again the society that rules the law.

5. Public Display of Affection

―I court the effusions that spring from the heart,
Which throbs with delight to the first kiss of love?‖ [17]

It is ironic that this beautiful piece of poetry should lie in such proximity to the sarcastic one liner about our society which goes thus – ‗It is okay to piss in public but not kiss in public.' India shuns Public display of affection (PDA). We live in a country where objectification of woman in

movies is as common as the in-law battle in television soap, where the playboy hero has his choice of women for his pleasures but where an act of love between spouses result in the pseudo socio-cultural glasshouse that maintains the law breaking apart. Justice Krishna Iyer rightly pointed out that _What is a sex crime in India may be sweet heart virtue in Scandinavia.' [18] Why does India seems so prejudiced about public kissing and hugs.

The Sections 292-294 of the IPC primarily prohibit and punish the sale of obscene books and other published material. Section 292, which was amended in 1969, stipulates that –a book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object shall be deemed to be obscene if it is lascivious or appeals to the prurient interest or if its effect, ….is…to tend to deprave and corrupt persons who are likely… to read, see or bear the matter contained or embodied in it. But the ticklish part of the law is –whoever, to the annoyance of other… does any obscene act in any public place‖ shall be punished with imprisonment extending up to three years or with a fine or both[19] and Sec. 294 of IPC which penalizes any act of obscenity or sings, recites or utters any obscene songs, ballad or word, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both[20]. Quite conveniently, the law is ambiguous about what constitutes and obscene act. Obviously what the society would think is _inappropriate for public, unrestricted display' is what is obscene. Here lies the major problem. It is again left to the norms of the society that what they would like to perceive as obscene.

Famous examples of judicial smugness come in Richard Gere case and the extent of societal intolerance can be well exemplified by Kiss of Love, a nationwide protest against moral policing. It was all over the newspapers when Richard Gera, a prominent film artist gave a peck on the cheeks of Shiplap Shetty, an Indian cine artist. They were both filed under obscenity for what seemed like a peck in the cheek. Trail court, having pronounced them guilty, an appeal was moved to the High Court, which acquitted both of them. Another interesting case was that of A & B v. State of NCT of Delhi and Anr [21] where a husband and wife was filed under Sec. 294 of IPC for kissing in public as it was presume to _undermine the social standards' and _incite lustful feelings'. Thankfully, our legal system took a break from the well attached reins of social consent and pronounced the couple innocent. Quoting the judgment - "It is inconceivable how, even if one were to take what is stated in the FIR to be true, the expression of love by a young married couple,

in the manner indicated in the FIR, would attract the offence of "obscenity" and trigger the coercive process of the law."[22]

Kiss of love was a peaceful protest against the moral policing that has been gaining momentum in the past few years. Though the High Court of Kerala did not ban the movement, it did not prevent the police from wrecking hell on the campaign area and arresting 50 plus campaigners.

So, what is wrong with kissing or hugging in public? It would be preposterous to believe that seeing someone kissing would incite lustful feelings in anyone and if it did, the society would have some serious introspection to do. There are progressive nations where a true relationship for life is sealed with a kiss and then there is India where kissing your spouse can get you a jail term of 3 months.

Another hot issue was live-in relationships. Mercifully, our courts have moved ahead of the society in that case. Quite conveniently, the law is ambiguous about what constitutes and obscene act. Obviously what the society would think is _inappropriate for public, unrestricted display' is what is obscene. Here lies the major problem. It is again left to the norms of the society that what they would like to perceive as obscene.

We have now – precedents which legitimize the children born out of live in relationships and also laws which give freedom to every adult of this country to decide if he needs a marriage or not to live as family.

6. The Unifying Theory of Jurisprudence

Having discussed what not law is we have finally arrived at that question. What is law? It is not any but all. It is that cannot be defined yet be explained by many terms. Law is like its very genetic material – human thoughts and emotions, something that can be described but never defined. We have before us the great theories of jurisprudence names the felicific calculus, imperative theory of law, the theory of volksgeist, the grundnorm theory of law and Dworkin's soundest theory of law[28].

Felicific calculus is a simple method of counting heads – the happy ones and the not so happy ones and if the happy ones exceed the unhappy ones by even the smallest of margins, it is the law of the land. One major drawback of this theory is that it does not take into consideration the intensity of pain and pleasure. The core contention of the theory goes thus –quantity of

pleasure being equal, push-pin is as good as poetry‖[29] Though law, it its roughest of sense is indeed a mere felicific calculation where pleasure and pain are weighed. But law as we see it is much more than that. If it were simple pleasure and pain counting, then many laws protecting minorities or the laws like Special legislations for Dalits or other minorities would not exist and if the theory was utterly pointless then homosexuality would have been legal in India long back. Next is the imperative theory of law. Imperative theory views law as the command of the sovereign backed up by sanction [30] and what sovereign is, is an entity which receives habitual obedience from and the bulk of the society and who pays habitual obedience to none.

[31] Despite of the huge flaw that it fails to explain the existence of International laws and other

A customary law, one of the major issues in this definition is the assumption that sovereign is an entity or a personality in itself. What is a sovereign? It is claimed to be a determinate human superior. But in reality, there is no determinate human superior. Sovereign is nothing but a mirror image of the people it rules over. The will of the sovereign is nothing but a translation of the collective conscience of its people and hence the core contention fails.

Now for the more ‗purified' of theories – The pure theory of law by Hans Kelson. This theory states that laws are based on norms which are arranged in hierarchical order and has a basic norm called grundnorm at the bottom of it. He advocated for the separation of law and morality and called for the division of law into its dynamic and static aspect. Grundnorm cannot be questioned further on its existence. In the later years of his life, Keelson himself has admitted that the grundnorm was hypothetical and just a mere presupposition. It is nothing but a mere assumption to exert that law is completely separated from morality and used to obscure the roots of law in the moral reasoning of the people of that society. There is a silent admission that the grundnorm exists without possible explanations for its existence and that it has may be from the preexisting beliefs of the people. These are the beliefs which form the base of what would be later called as morality and therefore it would seem that the law is not different from morality but rather an extension of it, which would clearly contradict the basic assumptions of this theory. Grundnorm also gets invalidated with the advancement of technology and the technological laws that are connected to it. These laws are in existence for mere convenience and not because of any basic norm for its support. Yet, it would be preposterous to say that law is completely a-moral. With the provisions of mercy petitions and the very existence of a choice of punishment with its

minimum and maximum prescribed prove that laws have their roots in morality and law is not completely apathetic.

Saving‘s theory is about law and its origin from the will of the people. The law is but the spirit of its people and that the collective national conscious that has evolved along with its society is the root of its legal system. He popularized the German term by J. G Herder, volksgeist that means ‗the spirit of the people‘. The core contention was that law is an expression of will of the people. It doesn‘t come from deliberate legislation but arises as a gradual development of common consciousness of the nation.[32] While the concept of collective conscience of people as source of law seems closer to the reality, it is also filled with flaws. While asserting that law has its origin from the spirit of the people, it must be noted that people hardly have a collective consciousness. Every individual perception of law would be fueled by a selfish motive and something with a selfish motive cannot evolve to become an unbiased law. Besides, collective conscience is not the only source of law. And finally to Dworkin‘s claim that morality can veto a law [33], morality essentially arises from the society, and if the society happens to have a ‗bad‘ moral, that would imply that it is justified to have bad laws in that particular society. That is to say that in a cannibalistic society, murder would be perfectly moral and hence legal. This would mean law for barbarians and hence no law at all.

If all these theories fail, then where do they fail and why? The basic mistake happens when we connect law to ambiguous and subjective terms like morality or justice. Something as definite as law cannot be related to something as subjective as morality or justice. Then what is law? Law is the residue from cultural and traditional practices modified by people‘s changing views on what are and ought to be right and wrong. Law of a land can be well explained by the monkey experiment. In a 2011 PT blog post called "What Monkeys Can Teach Us about Human Behavior", Michael Michelob described an experiment involving five monkeys, a ladder, and a banana. An experimenter puts 5 monkeys in a large cage. High up in the cage, bananas are placed which can only be accessed by a ladder. But every time a monkey climbs the ladder, other monkeys are sprayed with cold water, that they soon started beating up any monkey who attempts to climb the ladder. Now one by one, monkeys are removed and new monkeys are introduced to the cage. The new monkey is beaten on its attempt to climb the ladder. By the end of the experiment, none of the original monkeys were left and yet, despite none of them ever

experiencing the cold, wet, spray, they had all learned never to try and go for the bananas. If monkey could talk, they would have told you that ‗it's the way things are done here'. This is exactly what law is about. A common code of conduct prescribed generations back and modified with time that it loses its initial intention and ends up being entirely different in its form. Law is not any of these theories but a perfect mixture of all these theories. In right amount, all the theories have their implications and none the full.

7. Conclusion

In those previous pages we have seen many examples of how law seems to fail to explain the so called anomalies in the concept of justice. As to why they arise, one can only presume and hypothesis on the probabilities and examples.

So, based on the above examples, the author has arrived at the following conclusions.

- Many Indian laws are sexually prejudiced and some even encroach upon the fundamental rights prescribed under article 21 of the Indian constitution. In short it means law is not about what justice is or what logically justice should be but rather what the better part of the society thinks it is. This leads to the last assertion of this project Existence of gender biased laws and ‗anti-homosexuality' laws point to the religious roots of law and the inherent ‗fear' of change in Indian legal system. According to Marmora, law is a social phenomenon, not a natural one. This is evident from the laws in IPC as well as personal laws. Constitution despite of its abundance in laws encouraging female participation and strengthening of the position of females in the society, it tends to be silent about the blatant injustice that in fostered in those laws due to societal compulsion. Justice seems to be a vague and ambiguous term which is like, as Shakespeare so wisely quoted, ―It is like a barber's chair that fits all buttocks, the pin-buttock, the quench-buttock, the brawn buttock, or any buttock.‖[34] The Indian law seems to be diplomatic in its usage cozying down its ever so violent ‗conservatives, ready to spring at slightest provocation and at the same time, attempting to protect its less fortunate and deprived who has only the right and justice to hold up against those fervent popular opinion.
- Cultural influence is inevitably present in every law made and laws are more customized to suit the popular opinion than what would be prescribed as justice i.e. laws are factor of mass social consent than what would essentially be called as natural justice. In order to explain this further, we would have to refer to the theories by Rudolf Von Jeering, a pioneer of Sociological School of

jurisprudence. Law is essentially as a projection of the society. There is a silent admission that the grundnorm exists without possible explanations for its existence and that it has may be from the preexisting beliefs of the people In short it means law is not about what justice is or what logically justice should be but rather what the better part of the society thinks it is. This leads to the last assertion of this project Existence of gender biased laws and ‗anti-homosexuality' laws point to the religious roots of law and the inherent ‗fear' of change in Indian legal system. According to Marmora, law is a social phenomenon, not a natural one. At the very beginning of his book Interpretation and Legal Theory, he says that law ―is one of the most interesting and complex social phenomena of our culture‖.

References

Austin, John (1995). The Province of Jurisprudence Determined. Ed by Wilfred E. Cambridge University Press. Cambridge.

Bentham, Jeremy (1970). Of Laws in General, edited by H.L.A Hart. Athlone Publishers. London Colemen, Jules (2001). Hart's Postscript: Essays on the Postscript to the Concept of Law. Oxford

University Press. New York

Dworkin, Ronald (2006) Justice in Robes. Harvard University Press USA. Dworkin, Ronald (2011) Justice for Hedgehogs Harvard University Press. USA.

Freeman, Michael Mindus, Patricia (2012). The Legacy of John Austin's Jurisprudence. Springer Science & Business Media. London

George, Robert P (1999). The Autonomy of Law: Essays on Legal Positivism. Oxford University Press. Oxford

Hart, H.L.A (1997). The Concept of Law 2nd Ed., Oxford University Press. Oxford

Parekh, Bhikhu (1993). Jeremy Bentham: Critical Assessments, Volume 3. Routledge

Publishers. London

Stone, Julius (1965). Human Law and Human Justice, Stanford University Press. California

Vonx, Lars (2007). Hans Kelsey's Pure Theory of Law: Legality and Legitimacy. Oxford University Press. Oxford.

Wacks, Raymond (2015). Understanding Jurisprudence. Oxford University Press. Oxford