

## **Femininity: A Sociological Nightmare**

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**Abstract:** *The history of rise and fall of human civilization assures us that masculinity is the summum bonum of the modern culture. The secular and scriptural literature never discriminate femininity against masculinity yet the history reveals that in the beginning of social evolution the basis of marriage was romantic sexual attraction, harmony of tastes and interests. The consent was a closed phenomenon like being vested in female but scarcely to be used by her. This was the cause of subservience and subjugation of women to man. No sooner the free choice of man and woman in marriage was recognized and gained momentum the masculine grip began to loosen but this time with a difference.*

*Man vigorously followed the dictum – dominate the woman peacefully if possible, forcefully if necessary. The classical liberalism was a political bluff which woman took easily because she never read in political / private coronation of man. Though it proved a turning point in the sense that women organisations in the West fought against discrimination as a result the period between sixteenth and seventeenth century is marked with liberalization and emancipation of woman where “free consent assumed significance in marriage, yet it gained strength with woman’s right to suffrage being recognized one major achievement has been that the problems relating to women began to precipitate and masculinity in all its forms was subjected to scathing criticism. Women begin to see through the vicious game of man disempowerment at all levels and hence the institutions of impoverishment became the focal point of criticism.*

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### **I. Introduction:**

Woman had yet to assimilate the desserts of her struggle against masculinity which man had exhibited in the form of stringent laws designed to regulate the female conduct that new dimensions of her misery appeared complicating her struggle against inequities. As such her struggle both against man and societal attitudes has become unending. The gumption has paid him, since the very inception of social organization man appears to have prepared a frizzy frame to encase woman, irrespective of her status as a daughter, sister or wife and hold her tight. The laws so the social taboos if any, favourable to woman failed hitherto, to take cognizance of her misery because societal conditions were structured to favour man rather than woman. This condition did not change even after marriage because in her matrimonial home she looked on herself as a vanquished and disarmed soldier bound by the dictates of the victor albeit husband in order to protect the so called masculine culture. This condition had not changed for the better that industrialization together with technological developments leading to modernization generated pressure on her in the contemporary society. One of the major effects of great sociological significance has been that traditional value system and group solidarity suffered severe stress and strain, as such, challenging the traditional institutional constructs, and thereby raising the apprehension of its getting torn apart at a great troublesome cost. It is not out of the place to mention that on account of tireless effort of women organisations in Europe and the West the otherwise criminal male behavior, which was for a long time under the carpet, has become visible on the sleeves of man. It is officially acknowledged now that because of the forces of disorientation let loose by man, woman has retrospectively been bruised both in body and spirit. Though what has come to limelight is merely a tip of the iceberg, yet it is sufficient to send shivers down the spine of people in general. Despite this, woman has long waited a new dawn to break open but still it remains a hope against a hope, because she continues to be a stranger in her own home and an alien in her matrimonial home. Where the whole misery of her’s is epitomized it throws a question: is this not a state of anomie a woman is pushed into? <sup>1</sup>

The same assumes lot more credence where the position of woman is synthesized in the developed economies. Though, least suggestive that the developed economies are problem free, but the difference is one of priority and the degrees only. Does it mean that economic development is at the root of this anomie that is imposed on the society by man whose sole target has historically been the woman? Or the very masculine

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<sup>1</sup>*Emile Durkheim, Suicide (1897), p.252 as cited in John Hagan, Modern Criminology, McGraw (1987), p.149*

culture is at the roots. This is because in the words of Emile Durkheim<sup>2</sup> “ It is not true that human activity can be released from all restraint. ....Its nature and method of manifestation depend not only on itself but on other beings, who consequently restrain and regulate it. . .”

What are these other beings to which in the course of time woman gets exposed to face the humiliation and disgrace that finally ends up in misery and gruesome violence against her both in the home and outside? But all things remaining the same in 21<sup>st</sup> century there appears a failure of norms right in the nose of the culture that has retrospectively been masculine. With the legislation on lesbian and homosexual marriages and the innovation of cohabitees unions, it remains to be explained that what kind of family of traditional family has slowly but definitely been losing its meaning. The day is not far away when this criterion might sound irrelevant and pass like a shibboleth down the history of familial jurisprudence. At the same it is not easy to remain oblivious to the growing trends and demands of the society. At present more emphasis is laid on the need to recognize not only the rights of the cohabitees but also that of spouses<sup>3</sup>. Does this show that the revival of the institutions of antiquity is being promoted in the name of modernization or individualism? <sup>4</sup>.

For example, the Wolfenden Committee Report, in England, appears to have constructed a new pathway for the homosexuals and lesbians, for it lays down: “The homosexual behavior among the consenting adults in private should no longer be criminal offence (para-16). . . .which we believe to be decisive namely the importance, which the society and the law ought to give to individual freedom of choice and action in matters of private morality and hence a new postulate public/private divide has been put afloat”<sup>5</sup>.

As a result, the very society in the West appears to have been virtually sexualized. In this regard Professor Katherine’s views are inspiring. All the same it does not become clear whether she satirically describes male as hetro- sexual dyad only to high light male sexual behavior in its essence or she intends to lament that biological differentiation would continue to subsist as the basis of marriage<sup>6</sup>. Whatever be the case, it is undeniable that in the name of individualism new trends and developments taking place in the West are likely not only to change the meaning of marriage but the same may impose a change on the etymology of the expression “wife”. This becomes clear from the empiricism in this area. As a result of this, between 1971-1991 the number of marriages in U.K has fallen by not less than 24 percent<sup>7</sup>. It is no wonder that as a result of this shift, the percentage of cohabitees who are generally non- married men and women in their mid-twenties is on gradual increase<sup>8</sup>. This proves the correctness of the data since 32 percent of children in England, it was established empirically, were from unmarried parents and one in five mothers with dependent children was lone mothers<sup>9</sup>.

The sexualisation of society has shot up, and 90 percent between 16- 19 have confessed having engaged in sexual activities<sup>10</sup>. This apart, gay and lesbian marriages are no longer an abomination or deemed to be opposed to general policy of law<sup>11</sup>. Then is it not a kind of sociological nightmare we stand face to face in the contemporary times? Where do we go from here is a million dollar question thrown to sociologists and jurists and laity awaits to know----- the definition of woman? This has surfaced on account of changing of roles in contemporary society and it is likely to be the last nail in the coffin of social engineering where Roscoe Pound emphasized on the protection of institution of marriage<sup>12</sup>. Apparently the variables like chromosomal sex, gonadal sex, hormonal sex, genitals assigned sex determine the biological divide<sup>13</sup>. But it is undisputed that no one particular theory has hitherto emerged that could either justify to preclude the classification or replace it. It is therefore legal compulsion if not necessity to hold to the biological divide or follow the essentialist view which the court appreciated in Corbet’s case<sup>14</sup> which revolved around sex-conversion, and laid emphasis on consummation of marriage not on gender identity or its social appearance. Within this premise the man and

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<sup>2</sup>*Ibid*

<sup>3</sup>See generally, Ryden & Jackson, *A Guide to Family Law Act (1996*

<sup>4</sup> Sheikh M.H.Kidwai, *Supra n. 12*

<sup>5</sup>R.M.Dworkin (Ed), *The Philosophy of Law*, Oxford University Press (1977), pp.66-67.

<sup>6</sup>Katherine O’ Donovan, “*Is the Legal Individual Male?*” in *Women’s Rights : Human Rights (1994)*, p.80

<sup>7</sup>*Social Trends (1995)*, p.36

<sup>8</sup>*1993 General Household Survey (1995)* p.36

<sup>9</sup>*Ibid*

<sup>10</sup> Elise F.Johnes et.al., *Teenage Pregnancy in Industrial Countries (1986)*, p.104

<sup>11</sup>See *Family Law Act, 1996, s.3 which recognizes the right of cohabitees at par with spouses for the purpose of protection of their rights.*

<sup>12</sup>See *R.W.M Dias, Supra n. 10, p.431.*

<sup>13</sup>*D.K.Smith, “Trans-Sexualism, Sex Re Assignment, Surgery and the Law”, 56 Cornell Law Review 969 (1971) as cited in Katherine O’ Donovan, Supra n. 33, p.61.*

<sup>14</sup>*Corbett v. Corbett (1970) 2 A I I E.R.33 at p.15*

woman were projected as closed categories. What the Court ruled was never a swing but all the same some ripples were caused in the stagnant waters of familial jurisprudence. Academicians interested in feminine cause began to pull up their socks to discover an alternate theory that is more logical and would replace biological divide albeit penetration rules. These rules are only marriage specific, whereas the general effects namely legal and social bias, which begins to flow from the time of registration of the baby within either category, was touched the least. The most confusing situation arises in particular in the cases of transvestism that confounds the confusion on account of error in sex classification at the time of registration<sup>15</sup>.

Article 8 of the European Human Rights Convention lays emphasis on the right of respect for private life, which is endorsed and explained further by the European Human Rights Court, not to mean just a right to live without publicity. For 'it comprises also to certain degree the right to establish relationship with other human beings especially in the emotional fields for the development and fulfillment of one's personality'<sup>16</sup>. The Court moved in the instant case because trans-sexual was asked to carry travel documents of identity manifestly incompatible with personal appearance. The court was certainly inspired by the state practice that lays emphasis on cluster concept approach where persons are classified according to appearance and the gender they are pleased to choose and not the other way round. It appears that Court was moved by the views of Martens J., who in fact put forward the cluster concept model in the dissenting judgement. In *Cossey v. U.K.*,<sup>17</sup> the court observed that human dignity and human freedom imply that a man should be free to shape himself and his fate in the way that seems fit his personality the best. A trans-sexual does use only those very rights. Additionally, the case of lesbians become somewhat confusing because it does not fulfill the criterion of the essentialist model that revolves around biological divide and penetration rule. This case may be well recognized under the cluster concept but still it is not free from problems. The latter may be as such viable alternative to essentialist approach, but at the same it may contradict the domestic legislation as and when it is juxtaposed with some of the aspects of laws dealing with crime, social security, employment and sex discrimination.

These are not the only issues which concern the western society. This list may get multiplied as and when it receives recognition from the developing societies. The problem is not only one of changing the orientation of the sex laws but resolving the issues that stem from the reorientation of laws. For example, it may be difficult to explain rape vis a vis an active lesbian or passive homosexual or trans-sexual prostitute who can't be punished for hetro-sexual soliciting. All the same, it may finally cause abandonment of the cluster concept theory in favour of essentialist theory. This would become necessary because it is impossible to explain rape, adultery, or prostitution in a form other than the one that revolves around the biological divide. It is correct that industrialization together with technological development has brought about prosperity and fortune to mankind, but the pressure it has generated on the conventional institutions is more alarming in magnitude. Marriage that gives birth to the primary institution of social organization namely family is generally being obliterated. It seems because the conditions like prohibited degrees, adultery and fornication, lesbianism, homosexuality and the like sound out –dated and out of tune. The same is written off as worn out truth, no matter, that in the yester years it worked well to regularize the institution of marriage albeit family thus served well both to the individual and the state. But why this U-turn in behavior at personal level? Is it because the morality that travelled inward with the advent of analytical positivism appears to have vanished and lost in the positivist abyss so much so it is hard to determine the criterion that may be said to be the basis of public interest and public policy?

The individualism is stretched by pseudo individuals beyond the imaginable parameters making it very difficult to see where does the state interest lie in protecting the people from the consequences of their personal relationships. Since an activity undertaken either in public or in private leaves behind something in the form of its effects, only explicable in abstract terms but which can't be always quantified – still all this is legalized in the name of sexual pleasure only –<sup>18</sup> why? However some might for the sake of realism even question the desirability of the state to grant licenses for such relationships. This has to be judged on the basis whether or not such an activity ameliorates or obliterate the interest of the state.<sup>19</sup> Those who plead that an individual should be left free in this area forget that modern state continues to be positivist in frame. Notwithstanding the dilution of the sovereignty and rigour of law, the vibrant heart that throbs in its chest is still positivist and can not be transplanted easily with unpredictable heart of social reality.<sup>20</sup> But the answers in any case can not be deferred because of developed / developing or oriental / occidental divide. The phenomenon like these have existed in one form or other at all the times in the recorded history of mankind but in contemporary times it has become an important issue liable to acceptance or rejection thus bringing conventional familial jurisprudence under

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<sup>15</sup> *Ibid.*

<sup>16</sup> *Van Oosterwijck v. Belgium*, 3 E. H.R.R 584 (1980)

<sup>17</sup> *Series A, No; 184.*

<sup>18</sup> *D 'Emilio and Estelle B; Freedom, Intimate Matters – A History of Sexuality in America (1988), p.327.*

<sup>19</sup> *Supra n.10, p.443*

<sup>20</sup> *Ibid.*

pressure. The same have to accommodate new trends without itself undergoing any change until that the traditional approach is the only alternative available to address the problems. It is undeniable that traditional approach to law was developed at a time when women were alien to legal profession or judiciary, or their number was only nominal, were not legal subjects at all, they could not vote as citizens, or their opportunities for paid work were narrowly confined.<sup>21</sup> It is under these circumstances the law was evolved and not much could be expected from it as being rooted in male psychology.

However, long before a solution might emerge to the contemporary legal issues it has to be clearly elucidated that the law as a symbol of sovereignty is the epitome of people's will. But whose will? What does it mean that sovereignty belong to people? Should not the female who constitutes half of the world's population be included within it?<sup>22</sup> This augmented for two reasons: first, though the women generally possess right to vote and exercise it equally yet they are un-represented or under represented. This is supported by the fact that sovereign institutions like Parliament etc., which matter in the law making, are filled with male representatives mainly and legal systems bear male orientation. The laws generally possess masculine nature and continue to protect male interest rather than catering to female conditions.

## II. Women and Masculinity of Law:

This panorama opens up on a note of caution that masculine nature of law is responsible for the disappointment of women in general and hence a path-way needs to be constructed to usher in an era of dignity for women. This is quixotic theme nevertheless efforts are under taken to achieve it without imposing a metamorphosis that would end up in hurting the male susceptibilities because, an irreversible social confusion that can be cured neither by tightening the grip of law nor by applying the principles of wisdom. The debate about the masculinity of law suggesting the overtaking of dissimilarities is found groping whether or not law should be sex neutral rather than neuter in terms of orientation and application? In the course, many groups favouring non-sexiest society that has roots in social role than the biological divide have spawned.<sup>23</sup> They emphasize that rating similarities is the demand of justice and further promote the idea while arguing that the things that do not conform to some neutral or masculine norm should be suppressed<sup>24</sup> It is so far so good an idea so long as we remain contented with the things conforming to sex-neutral language, not that conformity with masculine norm emerging as a check stone. The fact nevertheless remains that in patriarchal accounts, the choice, the choice for many women is between dependence on an intrusive and insensitive bureaucracy or dependence on a controlling or an intrusive and insensitive bureaucracy or dependence on a controlling or an abusive man. In either case it amounts to sleeping with the enemy.<sup>25</sup>

The literature on political philosophy and jurisprudence amply demonstrate how the law based on masculine norm worked havoc vis a vis female interest that even from mid seventies the law continues to exclude women in many respects as full legal subjects.<sup>26</sup> This is visible in most developed economies of the West rather than in the developing world where people in general lack basic necessities of life. Many developed societies, which claim to be champions of equality, have fallen prey to the theory of male-female divide that further permeates into diverse aspects of social life like labour market and education. As a result of this, the U.S Labour Department, for example, has documented the "glass ceiling" in every business and professional sector.<sup>27</sup> The institutions of learning are not even spared by this cultural rag.<sup>28</sup> In the face of such contradiction to

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<sup>21</sup>For a detailed discourse, see M.Mossman, "The Paradox of Feminist Engagement with Law", in N.Mandell (Ed.) *Feminist Issues: Race, Class & Sexuality*, Prentice Hall, Scarborough (1994). See also M.Mossman, "Invisible Constraints on Lawyering and Leadership: The Case of Women Lawyers", 20 *Ottawa L.Rev.* 567 (1988).

<sup>22</sup>For example until 1920 American Women were denied even Right to Vote though the same was granted to Blacks in 1870.

<sup>23</sup> *Supra n.* 33, pp.76-78

<sup>24</sup> *Id.*, p. 78

<sup>25</sup>Wendy Brown, "Finding the Man in the State", 18 *Feminist Studies* 11 (1992); Sharon Presley and LynnKinsky, "Government is Women's Enemy", in Wendy Mc Elroy (Ed); *Freedom, Feminism and the State, The Independent Institute* (2<sup>nd</sup> edn- 1991) p-35 at pp.77-78.

<sup>26</sup>See C.Pateman and E.Criss (Eds). *Feminist Challenges: Social and Political Theory* (1987); J.B.ElshstainPublicman, *Private Woman: Woman in Social Political Thought*, Princeton University Press (1981). The female bias in laws has been amply highlighted in Katherine O' Donovan, "EngenderingJustice: Women's perspective and the Rule of law", 39 *University of Toronto Law Journal* 127 (1989).

<sup>27</sup>See U.S.Department of Labour, *A Report on the Glass Ceiling Initiative*, (1991) pp.4-5

<sup>28</sup>See Kristine Burniller, *The Civil Right Society*, pp.27-52 (1988), Faye J.Crosby, *Relative Deprivation and Working Women* (1982), pp. 163-64, Melvin J. Lerner, *The Belief in A Just World* (1980), pp- Vii- Viii; also

the rule of law that restrains any arbitrary action, the jurists tolerate the classification of women under one pretext or the other only because it conforms to the masculine hue. For example, NagineNaffine<sup>29</sup> shows that this masculinity is visible in legal profession, nature of legal education and a particular style of legal argumentation appreciable both to the bench and bar.<sup>30</sup> It is true that the rule of law revolves around equality and equality demands equal respects for individuals the denial of it on whatsoever pretext tantamount to denial of the right to life<sup>31</sup>. The same question has been thrown to the prudent where it is argued that law ignores women so much that legal definition and behaviours have male orientation.

Does it not suffice to show, as some argue women's difficulty in fitting into the pre-existing legal definitions with men in mind or it is the societal failure to put the same in such expressions and terminology that would obliterate distinction and the divide?<sup>32</sup> Is it not an invisible discrimination we are, then, talking about the contradicts of the rule of law? Or is it only a new dimension of discrimination and should de novo attract the attention of jurists to flash the light on the theme under hand, consequently hitherto no commotion is witnessed either in legal or sociological circles. The fact remains that emergence and persistence of discrimination in new forms are a new challenge to the social model, fundamental values and social justice. We need not remind sociologists and jurists that social breakdown that takes different forms costs more than the fight against discrimination, which thwarts the growth here by, becoming more expensive. These people are supposed to be in knowing the truth that investing in equality is investing in research and development, as it creates new wealth and contributes to the culture and humanity.<sup>33</sup> However maximum shall depend on the type of political order the people prefer to follow. In this it is generally seen that the state appears to protect male power in areas like criminal and personal laws more than in any other area. For example it is claimed that the marriage laws mainly dealing with conditions of marriage which prescribe monogamy in essence is culturally exploited against the interests of women. Similarly the legal rule that regulates the economic consequences of marriage also manifest the male orientation and fails to project the actual condition of female in the wage market, and in the house as an un-paid labourer. This ultimately registers an adverse impact on women's ability to compete with man and comes to the utter dismay of women that the identity of women is strongly connected with motherhood and the domestic realm whereas the man's career determines his identity<sup>34</sup>. These are the illustrative situations to show that the equality is only a male cultural norm.

It is surprising that married men makes more than single man does, whereas married women earn less than single woman. Most wives are earning far less than their husbands<sup>35</sup>. Monogamy rules on women. It is correct that monogamy rules create economic and safety incentives to women to marry and remain sexually faithfully in marriage. But does it not virtually cause the subordination of women at home and diminish her ability to be a good wage earner outside the home? Is the expression "monogamy" as such sex-neutral or it is more male oriented than female specific? The monogamous expression again loses its sex-neutral character where it comes to explaining the extra marital activity of a monogamous male who may very easily escape the net of law for his promiscuity with an unmarried female. Should not this prerogative be extended to the married women? Will masculine norm condone it if the same is endorsed? Perhaps the answer in all probabilities might be in the negative<sup>36</sup>. It is this aspect that has impressed some jurists to expose the real face of monogamy that

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see Deborah L. Rodhe, *The No Problem Problem : Feminist Changes and Cultural Changes*, 100 *Yale Law Journal* 1731-33,, 1775 (1991). See also Women's Action Coalition, *The Facts about Women* (1993) p.59.

<sup>29</sup>NagineNaffine, *Law and the Sexes: Exploitation in Feminist Jurisprudence*, (1990), p.275.

<sup>30</sup>*Ibid.* Katherine O' Donovan has discerned this topic at length. She avoids to plunge into the problem head along and get caught into the cultural and acultural mesh but prefers to scratch the widen silt that has accumulated on the "Women" in abstract terms, therefore she steers the ship of her ideas through these wet lands safely by avoiding to side with either view but at the same does not give her mind what "further measures....." She would recommend to solve the problem, See *Sexual Divisions in Law*, London, (1985), pp. 60-80.

<sup>31</sup>*Munn v. Illinois*, 94 U.S.113. In this Case Field J., Summed up the essence of Right to Life in the following words. "By the terms as here used something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed". The provision equally prohibits the mutilation of the body by the amputation of an arm or leg, or the putting out of an eye or the destruction of any other organ of the body through which the soul communicates with outer world".

<sup>32</sup>*Supra* n.33, p.75

<sup>33</sup>See Report on the Former and Working on European Social Policy, 27<sup>th</sup> -30<sup>th</sup> March (1996).

<sup>34</sup>Arlie Hochschild observes: "Compared to their husbands, married Women who work full time an extra month of 24 hour days a year on domestic chores"., *The Second Shift* (1986) pp.6-7; see also Joan William "Is Coverture Dead? : Beyond New Theory of Alimony," 82 *Geo L.J.*2227, 2239 (1994).

<sup>35</sup>Joan Williams, *id*; p.2229.

<sup>36</sup>For ex:See *Indian Penal Code, Act XLV of 1860, s.497.*

woman is safe with the man she marries than against the man in the street? Does the law take care of monogamous wife who is subjected to cruelty for a fault or no fault of hers? In either case woman is made either to live with a violent male or sleep with a sterile male. Is monogamy still a sex neutral proposition of law? Monogamy imposes than evolves some kind of passivity as a model of female sexual conduct<sup>37</sup>. Thus monogamy appears to be more a cultural language that has masculine charm than being a sex neutral postulate which emphasizes on similarity of sexes. Any attempt to search in it unconventional meaning or quantifying its sexual content is useless because any male cultural language in all circumstances should be presumed to be male specific. The object is achieved by choosing appropriate expressions, which admit pun and help to mask its real contours. The strategy so adopted passes like an unbroken thread through the raiment of institution of marriage. For example, like monogamy the masculine cultural norm permeates even to the bedroom, as such, it is a priori assumed that woman has given consent not only to marriage but has acquiesced in obliging the husband as and when he desires to play the sex game with her. Correspondingly, she appears to have consented to assaults and injuries which she may receive if she fails to please her man.

On this premise, a major question may arise that what should be the definition of rape. Apparently consent to marriage does not imply that wife has consented even to the coercive sexual advances of the husband. It would result in obliterating the line that divides the lawful and unlawful sexual conduct. On the face of it, there is no difference between the imposed sexual conduct whether same be of a husband or a stranger and the voluntary one, yet the law exonerates the former and absolves him of any criminal liability while it punishes the latter. In this scenario wife suffers psychologically besides withstanding the coercive act while as law takes no notice of the “innate disinclination of the husband” that fails to please his demanding wife<sup>38</sup>. This ought to have considered the unwillingness of the wife at parity with that of a man than changing its meaning to “nagging” and recognize the same as an irretrievable breakdown of marriage. This position has rightly been summed up where Katherine O’ Donovan claims that the theory of consent to sexual intercourse so long as the marriage lasts runs counter to any idea to treat marriage partners as equals. This shows that, though the consent is only skin deep sex neutral, yet under its skin are spread the masculine blood filled veins. This can also be seen in expressions like cruelty, which apparently is sex-neutral, yet continues to subserve the male needs and demands than serving any major female interest. Again, it is not surprising to notice that assault outside the home is punishable both as crime and tort, but inside the matrimonial home it is neither of the two. With this flowers, a new aspect of matrimonial life namely physical security. Should we allow men to flourish and enjoy liberty at the cost of dignity and autonomy of a woman within the home? It has attracted more attention because an impression is given that law spares man and treats him as sovereign in the matrimonial home. The same is attested by the fact that among police officers, prosecutors and judges, assumptions persist that family violence is a “family matter”<sup>39</sup>. This happens in most of the cases notwithstanding the fact that pompous claims are made that law does not recognize the private realm and hence the sovereignty of husband is slightly eroded and not whittled down. Beyond doubt, in contemporary times the husband who assaults his wife is treated not less than a stranger to enable the law to keep the promise. Besides, a wife can now give evidence against her husband<sup>40</sup>. All the same, it should be seen, as only a step towards the end because weeding out violence from the sweet home is impossible to achieve without changing the cultural psyche of people<sup>41</sup>.

### III. Conclusion:

The history of rise and fall of human civilizations assures us that masculinity is the summumbonum of the modern culture. The secular and scriptural literature never discriminate femininity against masculinity yet the history reveals that in the beginning of social evolution the basis of marriage was romantic sexual attraction, harmony of tastes and interests. The consent was a closed phenomenon like being vested in female but scarcely to be used by her. This was the cause of subservience and subjugation of woman to man. No sooner the free choice of man and woman in marriage was recognized and gained momentum the masculine grip began to

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<sup>37</sup> Mary Joe Frug, “A Post Modern Feminist Legal Manifesto (An Unfinished Draft), 105 *Harvard Law Review* 1064-66 (1992).

<sup>38</sup> *Supra* n.59.p 119

<sup>39</sup> *Gender Bias Commission, Supreme Judicial Court (1990), p.745 Naomi R.Cahn& Lisa G.Lermann, “ Prosecuting Women : Abuse in Women Battering”, in Michael Steinman (Ed.), (1991), pp-95-96; Joan Zorza, “ Criminal Law of Misdemeanour Domestic Violence” 83 *Journal of Criminal Law and Criminology* 46 (1990).*

<sup>40</sup> See Lorna Smith, *Domestic Violence : An overview of the Literature, Home Office Research & Planning Unit Report, HORS; 107 (H.M.S.O).*

<sup>41</sup> *The violence is rooted in cultural history of family because most of the times justification for it has been “ private realm” and on occasions it was let alone on “double victimizing that the formal and informal institutions that would help to weed it out have been constructed around masculine norm, therefore, making the change of the same necessary. For ex.; see S.Schecher, Women Asunders.*

loosen but this time with a difference. Man vigorously followed the dictum – dominate the woman peacefully if possible, forcefully if necessary. The classical liberalism was a political bluff which woman took easily because she never read in political/private divide her own subjugation and coronation of man. Though it proved a turning point in the sense that women organisations in the West fought against discrimination as a result the period between sixteenth and seventeenth century is marked with liberalization and emancipation of woman where ‘free consent’ assumed significance in marriage, yet it gained strength with woman’s right of suffrage being recognized. One major achievement has been that the problems relating to women began to precipitate and masculinity in all its forms was subjected to scathing criticism. Women began to see through the vicious game of man being woven around her disempowerment at all levels and hence the institutions of impoverishment became the focal point of criticism. Although the courts implicitly felt guilty of discrimination against women, yet in *Reed v. Reed*<sup>42</sup> the Court in United States made an attempt to rationalize it by saying that it is an attitude rooted in ‘romantic paternalism’ which in practical terms puts woman not on a pedestal, but in a cage. The Court observed that this paternalistic attitude became so firmly rooted in our national conscience that exactly a century ago a distinguished member of this court was able to proclaim in *Bradwell v. Illinois* :<sup>43</sup> “The paramount destiny and mission of women is to fulfill the noble and benign offices of the wife and mother. This is the law of the creator”.

Within this frame the institution of marriage along with masculine norm guarding its veneration retrospectively emerged as a major front making it an uphill task for woman to dislodge. The efforts to change the masculine character of such institutions surfaced on the top of women’s agenda. It is deemed necessary to fight male dominance, which could not be achieved without the language and orientation of the cultural norms that shape the social institution and direct their functioning. The same could be achieved provided the masculine norms are presented in sex neutral language as a result for example, though the conditions of marriage were reduced to sex neutral language yet the objective could not be achieved because these conditions are more male specific expressions, which appear to be sex-neutral, only to mask the reality. Women were only half way in their struggle that new developments surfaced in the western world. Now femininity becomes mutilated since a new genus namely “cohabittees” that include lesbians and homosexuals too began to claim rights at par with spouses thereby causing confusion in the identities and roles. In either case the confusion got confounded since woman in the ultimate appears to have lost the identity resulting into undermine her dignity and integrity. This leads to her social, economic and psychological disempowerment which in the aggregate is nothing less than a sociological nightmare because it calls for a metamorphosis without indicating the probable cost which might be quite high.

Women empowerment is therefore, only a prologue to any social model aiming at correction of discrimination against women who got hitherto educated in masculine norms both in the school and in the backyard where she plays and learns the basics of social roles and their adaptation. As such woman is made to follow masculine norms of the game both in the home and outside. All this can be dispensed with only through female psychological empowerment, in particular, which means the recognition of self-determination of women. This would help women participation in decision making processes that would in the ultimate result in balancing diverse interest in the society in general and women’s rights in particular.

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<sup>42</sup> 404 U.S. 71 (1971)

<sup>43</sup> 83 U.S. (16 Wall) 130.