

## Feminism and Indian Constitution

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### Abstract:

*Feminism is a term which describes a political or cultural movement that has an objective to establish equivalent legal privileges and security for women. It includes many socio-cultural theories and philosophies that involve the issues of gender discrimination. Feminism is a movement of advocacy that enforces to eliminate gender discrimination from our society. According to some eminent feminist like Rebecca Welker and Maggie Humm, history about feminism which can be categorized into 3 waves. The era of nineteenth and early twentieth century is considered as first wave, and the duration of 1960s to 1970s as second wave. After 1990s to the present, it is last wave. There are various provisions in Indian Constitution that talks about equal rights for women and men. There are numerous cases where the rights of women were given much more preference over any others rights. Certain legal provisions for women have also been passed; the Factories Act, Child Marriage Restrain act, Dowry Prohibition Act, Maternity Benefit Act, Protection of woman from domestic violence Act, Equal Remuneration Act, National Commission for Women Act, Medical Termination of Pregnancy Act, Protection of females in contradiction of sexual harassment at workplace etc. in order to keep right of the women in society.*

**Key Words:** *Feminism, Women Movements, Rights of Women, Impact, Indian society*

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## Introduction

From the very historic era to the present, in most of the societies, the women agonized subordination and were allocated a morally purposeful role. According to Confucius, the inferiority of women to man was the best principles of administration. Aristotle believed the region of the man over the woman in the organization of the domestic to be ordinary and essential. The Hindu Sage, Manu, judged women to undying burden. Greeks had their women in home as a prisoner and were not permitted to follow their rights.<sup>1</sup> Even under Mohammedan text of theology and Shariat, the women are considered half of the male in status. Saint Tulsi Das in his famous epic Ram Charit Manasa says that if women are liberated they shall become corrupt, it makes people still believes that female have no right to personal liberty. This concept is contrary to the prevailing concepts of justice which consisted in some sort of equality. Actually the people have wrong perception to the word feminism and also have interpreted it in wrong way. Feminism never means for superiority of women over men, this is what generally the people think. The term feminism actually means for bringing gender equality which means equal legal protection of women as men have. Pre-colonial women's role and social structures disclose that feminism was conjectured inversely in India in comparison to that of west.

It has been recognized in modern times that the constitutions has a major role in ensuring gender justice in any country. The Indian Constitution is a durable device and alive article through which government able to work along with the gender equality.<sup>2</sup> It makes outline describing the procedures, powers, structure, and duties of government institutes and also initiates fundamental rights, directive principles of state policy and the responsibilities of residents. There is responsibility of Supreme law of the land to make a status of woman and answer to the challenges by inspiring the

whole legal system towards a superior anxiety for, and security of women.

The main objective of this paper is to factually find the legal dissertations of India and its following amendments, which have hired an assisting hand to improve the environments of women in society. Now, it has been recognized in some ancient judicial statements of the Supreme Court and other courts in India that the judgements would be in favour of women through the increased visibility and convenience. This movement give the strain to numerous modifications in few of the laws of the Indian Constitution.

## Defining Feminism in the Indian context

*"Feminism is a movement to end exploitation, sexism, sexist and domination".* This is how Feminism has been defined in *Feminism is for Everybody: Passionate Politics*, bell hooks (2000). Feminism, a complex notion, has its different meaning from generation to generation. One of the most used definitions is *"An awareness of women's domination and abuse in family, society, or even at work and sensible act by females and males to alter this situation"*.<sup>3</sup> The role of women in pre-colonial structure reveals that feminism has its different meaning in India then west. Colonial is essential for the "Indian culture" and rebuilding of Indian womankind as the essence of respective nation over social reform actions caused in political theorization in the manner of patriotism, not only feminism alone<sup>10</sup>.

The women's issues in India is different from the western feminist rhetoric on the basis of Historical circumstances and values. The knowledge of females as "powerful" is provide accommodations into male-controlled culture through tradition and religion. This has engaged visibility in all sectors of society; by giving females with old-style "cultural spaces". Another thought is that the west has the notion of self in competitive individualism where individuals are

<sup>1</sup> DR. S.P. DWIVEDI, JURISPRUDENCE AND LEGAL THEORY, 433-34 (5<sup>th</sup> ed. 2012)

<sup>2</sup> Ishwara Bhat, Constitutionalism feminism: an overview, (2001) 2 SCC (Jour) 1

<sup>3</sup> Dwijendra Nath Thakur, Feminism and Women Movement in India, Research Journal of Humanities and Social Sciences (2008)

labelled as "born free yet everywhere in chains", opposite to the India as the individual is typically reflected only just a part of the higher social communal, needy for its survival upon collaboration and self-discipline for the better good.<sup>4</sup>

Indian activist and feminist scholars have to do a lot of struggle in order to make an individual identity for feminism in India. The Indian scholars define the feminism for avoiding the western ideas. Indian women has to convey their survival through collection of cruel male-controlled family structures: ordinal status, age and relationship through family of wedding and breeding as well as male-controlled features – dowry, community, caste, market and the state.<sup>5</sup> While, it must be well-known that numerous groups in India, like the certain Maratha clans, Nair's of Kerala, and Bengali families display caring propensities, having the oldest women as the head of families rather than the old men. Sikh nation is also considered as comparatively gender-neutral.

## Women Constitutional and Legal Rights in India

### *Status of women prior Independence*

*Old Ages:* In Vedic period, women had a fair, equality and freedom in India equality. This period is known as period of feminine glory. The education was gained in the Gurukuls where they learnt Vedas. Rigveda has proven that the woman who live in her husband house was the queen of that house. The term 'Dampati', indicates the women's high status, was mentioned in Vedas, and symbolizes both wife and husband.<sup>6</sup> On liberty, cooperation and equality, women's status was based in ancient India.

But in the Post-Vedic period women's status agonized a hindrance when they faced many restrictions on their rights and had boundaries by Manu. In Vedic period, the girl child birth was not any anxiety but now it has becomes the cause of tragedy for the father. Edification, which was used in

Vedic period for women, was refused and they remained keep away from the edification.

Alexander and Huns were also the cause in degrading the status of women in India. By entering them, the edification and training of women had been stopped. The opportunities was snatched from the women and they became restricted only in the houses and also dined to take part in the community affair. There were many troubles for the women like Child marriage, sati, and female infanticide in Alexander and Huns time.

*British Period:* The attitude and behaviours of men in relation to women, however, changed during the British period. Voice against ill-treatments and discrimination with women was raised. At the time of British ruling the two movements were come which alter the women status. In these movements, first one was the Social Reform Movement of the 19<sup>th</sup> Century and the second was the Nationalist Movement of the 20<sup>th</sup> Century. British period may be seen with enacting number of laws eradicating social evils and removing all disparities, dissimilarities and discriminations against women.<sup>7</sup> These laws were related to the authorization of widow's remarriage act, Child Marriage Restraint Act, recognizing Hindu Women's Right to Property Act etc. Thus, at the time of British Ruling consciousness was shaped for the removal of social illnesses. Many laws rectifying women's unequal position were passed.

### *Constitutional and Legal Rights for Women in Contemporary India*

The Indian Constitution was made and the framer of this was aware about female gender inequality problems. Despite their role in all scopes, the women agonize in silence and belong to a community which is disadvantaged status on explanation of numerous obstacles and impairments. Keeping this in view, the framers, therefore, realized that it is necessary to

<sup>4</sup> Ibid.

<sup>5</sup> Soumik Saha, Women Empowerment in India: Discussing Liberal Feminism and Legal Interventions, [https://www.lawarticles.com/women\\_empowerment\\_in\\_india\\_Soumik\\_Saha.htm](https://www.lawarticles.com/women_empowerment_in_india_Soumik_Saha.htm)

<sup>6</sup> Supra note 1

<sup>7</sup> Ankita Chakraborty, Gender Justice Under Indian Constitution, International Journal of Legal Developments and Allied Issues (2012)

encourage the education and financial attention of women to remove disparity and to offer prospects for the human rights' exercise. The aim of the nation is to defend the females from inequality as well as exploitation, and also provide the social justice. All these principles were merged in the constitution's Preamble which determined to protect all its residents justice-social, financial and political; right of thought, faith, expression, confidence and adoration; fairness of position and chance; and to promote between them group, assuring the dignity of a separate and the unity of the nation.<sup>8</sup> To achieve these aims, the Constitution assurances certain fundamental rights and liberties, such as liberty of expression and speech, security of life and private liberty. The females of India are recipients of these human rights in the similar way as men.

Constitution's Articles 14, 15, 16 and 21 states about the right to equality in which life and livelihood of both women and men covered. Representing the guiding principle of Fairness (equality) earlier Law, Article 14 states that the State shall not refute the equality of any person before the law or the equal security of the laws within the region of India.

Prohibiting judgement on the ground of sex, Article 15 states that<sup>9</sup> (1) *The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.* (2) *No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to—(a) access to shops, public restaurants, hotels and places of public entertainment; or (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of general public.* (3) *Nothing in this article shall prevent the State from making any special provision for women and children.* (4) *Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the*

*advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes.*

In the case of *Vishka v. State of Rajasthan*, Supreme Court framed the guidelines for the preventions of sexual harassment at workplace in 2013 which occur in the absence of law or deficiency of effective supervision by the employer. For eliminating all the form of discrimination against women, the court gathered feminist vision as an input, these are as directive principles of state policy, the idea of human dignity, affirmative action policy under *Article 15(3)*. Constitutional feminism needs an alternative approach towards the law that relates to prostitution, rape, pornography and dowry-related offence.

To provide equal chances regardless of gender, and eliminating discrimination in contradiction of women, *Article 16* clearly states<sup>10</sup>, *Equality of opportunity in matters of public employment—(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. (2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be eligible for, or discriminated against in respect of, any employment or office under the State.*

In the reference of right to protection of life and personal liberty, *Article 21* provides that *No person shall be deprived of his life or personal liberty except according to the procedure established by law.* This Article is very similar to the Magna Carta's clauses that states "No man shall be taken or imprisoned, disseized or outlawed, or exiled, or in any way destroyed save...by the law of the land."<sup>11</sup>

Directive Principles' provisions discuss about the livelihood, protection against the moral and values, equal pay for equal work and material abandonment nutrition, maternity leave and equitable supply of material sources of production and respect for global

<sup>8</sup> Tauffique Ahmad and Anil Kumar Mishra, Legal status and rights of women in Indian Constitution, *International Journal of Advanced Education and Research* 6.1 (2010)

<sup>9</sup> MAHENDRA PAL SINGH (ED.), V.N. SHUKLA'S CONSTITUTION OF INDIA, 87-88 (12 ED. 2016)

<sup>10</sup> *Supra* note 9

<sup>11</sup> Meenakashi Lekhi, *Feminism the Indian Constitution*, <http://www.theweek.in/columns/Meenakashi-Lekhi/feminise-the-indian-constitution.html> (April 20, 2017)

agreements have important worth in constructing the quantity of legitimate feminism. Reservations for women in Panchayati raj institutions are aimed at improving the participation of women in democratic process.

The Article 39 of Indian Constitution which states that the equal pay for equal work for both women and men, and also the parliament has passed *an Act of Equal Remuneration in 1976*. The concept of “equal work” is affected by various factors like skill, responsibility, skill, and condition of work. In enactment of the aims of the nation for protecting the human conditions of work and for maternity welfares as preserved in the Indian Constitution, the Parliament has passed *The Maternity Benefits Act of 1961*.<sup>12</sup> Through this act, women are able to live with equality as they can be work before and after the child birth and also take the benefits of maternity and other. According to the *Article 51(A) (e)*, it is the fundamental duty of every citizen to abandon practices offensive to maintain the dignity of women.

Apart from, various protectional law, too, have been passed and also came into forced, for example, the, *Suppression of Immoral Traffic in Women and girls Act, 1956, Dowry Prohibition Act 1961, Commission of Sati Prevention Act, 1987, Muslim Women’s (Protection of Rights on Divorce) Act, 1986 etc.* The request for the registration of 33% chairs for females in Parliament and State Legislatures has been gaining ground to be brought as an important Act safeguarding the rights of women.<sup>13</sup> While a uniform civil code is a dream regardless of numerous guidelines of the Court, the performing of certain regulations such as the Pre-natal Diagnostic Methods (Regulation and Prevention of Misuse) Act, 1994 has been carried by the Parliament for the prevention of female infanticide and Foeticide.

## Judicial Trends and Practical Reality

### *Fundamental Rights and Women:*

The Indian Constitution assurances equal rights to its all citizens irrespective of their gender. Women thus

enjoy the Right to freedom, the Right to freedom of religion, the Right to Equality, the Right against exploitation, Cultural and Educational Rights and the Right to Constitutional remedies. Let us have a deeper look at the take of judiciary on the aforementioned provisions of the constitution and whether the learned judges have been successful in turning the status of de jure equality to de facto equality.

### *Nargesh Meerza vs Air India Case:*

In the milestone case of *Nargesh Meerza vs Air India*<sup>14</sup> it was finely pronounced that on the basis of gender discrimination, a woman shall not be rejected employment. If occur, it leads to the destruction of Article-14 of the Constitution. In the present case, an air hostess of Air India was ordered not to marry within 4 years at the time of joining due to which she challenged the service rules of Air India. The rule further detailed that the air hostesses would lose their jobs if they pregnant and they would be retired at the age of 35 years there is exception where managing director extends her tenure by 10 years at his own discretion. The Apex Court ruled that that even however the first provision is sensible while the second and third provisions are unpleasant, illogical and unauthorized.

In the case of *C.Rajakumari vs Commissioner*<sup>15</sup> of Police, Hyderabad the critical query was raised up before the Andhra Pradesh High Court belong to the point whether the beauty competitions which offensively shows a women’s body, figure and form is in violation of Article -15 of the Constitution. The court states that if in any beauty competition, the body is showed in a way of offense and is harmful to community ethics then such beauty competition would be considered as the violation of the provisions of Offensive Demonstration of Females (Prohibition) Act, 1986 and also unauthorized as it interrupts Articles 14, 21 and 51A.

## Directive Principles and Women

<sup>12</sup> Supra note 7

<sup>13</sup> Supra note 8

<sup>14</sup> 1981 AIR 1829, 1982 SCR (1) 438

<sup>15</sup> 1998 (1) ALD Cri 298.

The constitution part IV are called the Directive Principles of State Policy which have certain provisions which deal with the wellbeing and growth of female.

Under the Article 23, the framers of the Constitution banned forced labor in any form involving beggar and trading of human beings. In *Neeraja Chowdary vs State of Madhya Pradesh*<sup>16</sup>, Bhagwati, Judge stated that females and children cannot be bound to work in unhygienic settings as it is prohibited under article 21 and article 23 of constitution.

In the case of *Randhir Singh vs Union of India*<sup>17</sup>, the Apex Court spoke about the source of equivalent pay for equivalent labor. It was held that this principle is valid for both the genders under article 39(d). But on the other side, Article-37 says that directive principles give the liberty to live by own principles and rules. But when the pay scales of government workers is based on irrational grouping which disturbs Art-14 and Art-16 of the Constitution, the courts are permissible to impose the principle of equivalent pay for equivalent work. Thus, the court state that the principle of equality is preserved in the provisions of the Equal Remuneration Act, 1976.

### ***Women and politics***

As already mentioned an attempt was made for satisfactory illustration of females in politics and for that Art-243D as well as Art-243T was brought which carried a kind of weapon of feminism with it. But it did not affect much to the women situation in country as many States did not implement the provision. Mostly the elected women were so prejudiced by their male lineages that they only used to represent their views and advice in the council, it enforces us to think that even though the provisions make look useless but the woman demonstrations are simply acting as rubber stamp figures. There is lack of actual contribution by them in the party-political scope.

### **Issue and Challenges for Women's Empowerment in India**

There has been many cases of advancements of woman but still there remains many pertinent problems which shows that though these rights have been implemented on paper the rights and the opportunities are not fully given to the women and they still cannot exercise their rights fully. They are still considered as the less strength section of the inhabitants and consequently require support to purpose at par with the male section.

There are religious laws, personal laws and custom laws which conflict with the rights of a woman given in the Indian constitution and these traditions and customs are accepted and obeyed by people for the past hundred years or more. Despite the conflict of rights and acclamation of the position, the government of India does not inhibit with these peculiar or religious laws. Religion like Hinduism, they expect the women to be total devotees towards their God and husbands. As they are termed, *Pativrata*, it means that the wife has accepted to serve her family and husband as her eventual duty and religion. There is great decree of influence of the categorized systems within Indian communities and families and these chain of command can be broken down into gender, age, kinship relationships, occupations, lineage, caste, wealth, and relationship to governing control contained by the communal.<sup>18</sup> Girls, mostly in financially challenged relations undergo the bearing of the stability and vulnerability of the emergence of hierarchies of social convention and economic need within the family. It has been seen from ages that from the birth of the girls, they are only entitled to get less than the boys in anything and everything starting from playtime to food to education. They are not provided equal facilities to their brothers. They are considered to be the liability to the family and this liability is gets rid of by marrying them off at an early age. They have few contact to the family's earnings and properties which only aggravated the underprivileged and the Indian families. After the birth of the girl itself, it is presumed that they are a burden over their families and so they will be loaded with arduous exhausting

<sup>16</sup> AIR 1984 SC 1099

<sup>17</sup> 1982 AIR 879, 1982 SCR (3) 298

<sup>18</sup> Supra note 7

duties and work of their families for the rest of her lives till she dies with no recompense and credit of her dedication or hard work towards her family.

### ***Patriarchy society***

The word Patriarchy is associated with the meaning, law of the patriarch or father and it is helpful to refer to a male dominated family or whose hierarchy are traced through the males of the family. Usually, the patriarch of the family was the senior most male supporter of the family whose domain included the rule over the women of the families, junior male member, children, slaves and other domestic servants. Presently the term patriarch is more used to refer the supremacy of the male member over the others where the men dominate the women to characterize a system where women will always be their subordinate and in different ways.

India also follows the Patriarchal system of hierarchy where the males of the family who are either the father or husband are assumed to be the official head of the house. The kinship and the lineage and the legacy are outlined over the masculine line which is considered as the patrilineal system and are only responsible for the distribution of the family resources.

As these traditions are followed since ages, it has been a way of Indian life and this type of lifestyle is expected by woman as they are accustomed to this. As the education is mostly neglected for the women, they are not properly aware of their rights and powers provided by the constitution of India and as a result they do not properly use their rights. They are also not made aware of their voting rights because of their low knowledge and awareness of the political system for which they lack the sense of political efficacy.<sup>19</sup> Neither women are informed about the contemporary issues nor they are encouraged to be aware of those as the men always have a fear of losing their dominance over them. As a result of this the political parties do not invest much time in the women candidates they are unable

to see the potential or the zeal or the promise within them and thus they see them as a wasted investment.

### **Material and Methods:**

Doctrinal legal research method has been used for this topic. The sources of this topic have been depicted from books, journals, articles etc. The research is presented after the thorough readings of the primary and secondary sources. Multiple websites from the internet also played a major role to conduct research in this project.

### **Conclusion**

In post-independence era, although much has been done for liberation and betterment of women, yet it cannot be said that they are fully free from the clutches of male domination. In practice, there is no equality between man and woman. It is true that establishment delivers equivalent chances for women indirectly as they are appropriate to all individuals regardless of their gender, but the court realize that respective article reproduce only equivalence towards women. They also have not considered to speed up de facto impartiality to the amount of Constitution proposed. Replicating this in *Dimple Singla v. Union of India*<sup>20</sup>, the Delhi High Court uttered its nervousness that except, elimination and attitudes change of judgment in contradiction of women cannot be attained. There is also a significant space between rights of Constitutional as well as its use in everyday lives of maximum women. Accordingly, it is also truthful that the females are employed in jobs which are previously entirely majority of male domains. Hence, there are consisting occurrences which reveal absence of self-assurance and confidence in their competence and productivity. There remains an extensive and persistent doubt concerning their capabilities to fulfill the challenges of the assigned job. These misgivings disturb the self-respect of those women who are working.

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<sup>19</sup> Supra note 8

<sup>20</sup> (2002) 2 AISLJ 161

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