

Feminism and Indian Constitution

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Abstract:

Feminism is a term which describes a political or cultural movement that is aimed at establishing equal legal rights and protection for women. It involves 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 imminent feminist like Rebecca Welker and Maggie Humm, history regarding feminism can be divided into three waves. The first wave was started from nineteenth and early twentieth century, and then the second was in the 1960s and 1970s. After that the last wave from the 1990s to the present. There are various provisions in Indian Constitution that talks about equal rights for women and men. There are several cases where women's rights were given much more preference over any others rights. Certain legal provisions for women have also been enacted, viz: the Factories Act, Maternity Benefit Act, Dowry Prohibition Act, Equal Remuneration Act, Child Marriage Restrain act, Medical Termination of Pregnancy Act, National Commission for Women Act, Protection of woman from domestic violence Act, Protection of women against 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 everywhere suffered subordination and were assigned a purely functional role. According to Confucius, the subordination of women to man was one of the supreme principles of government. Aristotle deemed the dominion of the male over the female in the organisation of the family to be natural and necessary. The Hindu Sage, Manu, condemned women to eternal bondage. The Greeks, in their period of highest culture, imprisoned their women within their houses and denied them all rights.¹ 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 reveal that feminism was theorized differently in India in comparison to that of west.

It has been recognised 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 a living document which makes the government system work along with gender equality.² It lays down the framework defining the procedures, structure, powers and duties of government institutions and sets out fundamental rights, directive principles of state policy and the duties of citizens. It is most important that the supreme law of the land should meaningfully address for upbringing the status woman and respond to the challenges by stimulating the whole legal system towards a greater concern for, and protection of women.

The main aim of this paper is to historically trace the legal discourses of India and its subsequent amendments, which have lent a helping hand to improve the conditions of women in society. It also draws on some historic judicial pronouncements of the Supreme Court and various other courts in India, which have upheld some landmark judgments in favour of women's increased visibility and accessibility. This in turn also lays stress on the various amendments in some of the laws of the Constitution of India.

Defining Feminism in the Indian context

"Feminism is a movement to end sexism, sexist exploitation, and oppression". 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 oppression and exploitation in society, at work and within the family, and conscious action by women and men to change this situation"*.³ Women's role in pre-colonial structure reveals that feminism has its different meaning in India in then it has in west. Colonial essentialization of "Indian culture" and reconstruction of Indian womanhood as the epitome of that culture through social reform movements resulted in political theorization in the form of nationalism rather than as feminism alone¹⁰.

Historical circumstances and values in India make women's issues different from the western feminist rhetoric. The idea of women as "powerful" is accommodated into patriarchal culture through religion. This has retained visibility in all sections of society; by providing women with traditional "cultural spaces". Another consideration is that whereas in the West the notion of "self" rests in competitive individualism where people are described as "born free yet everywhere in chains", by contrast in India the individual is usually considered to be just one part of the larger social collective, dependent for its survival upon cooperation and self-denial for the greater good.⁴

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

² Ishwara Bhat, Constitutionalism feminism: an overview, (2001) 2 SCC (Jour) 1

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

⁴ Ibid.

Indian activist and feminist scholars have to do a lot of struggle in order to carve a separate identity for feminism in India. They define feminism in space and time in order to avoid Western ideas. Indian women have to negotiate their survival through an array of oppressive patriarchal family structures: ordinal status, age and relationship to men through family of marriage and procreation as well as patriarchal attributes - dowry etc. - caste, community, market and the state.⁵ It should however be noted that several communities in India, such as the Nair's of Kerala, certain Maratha clans, and Bengali families exhibit matriarchal tendencies, with the head of the family being the oldest woman rather than the oldest man. Sikh culture is also regarded as relatively gender-neutral.

Constitutional and Legal Rights for Women in India

Status of women prior Independence

Old Ages: During the Vedic period, women in India enjoyed a very fair amount of freedom and equality. This period can be best termed as the period of feminine glory. They studied in Gurukuls and enjoyed equality in learning the Vedas. In the Rigveda the wife has been to live as a queen in the house of her husband. The word 'Dampati', signifies high status of women, was used in Vedas, characterises both wife and husband.⁶ The status of women, thus, in ancient India was based on liberty, equality and cooperation.

But in the Post-Vedic period women's status suffered a setback when many restrictions were imposed on their rights and privileges by Manu. The birth of a daughter which was not a source of anxiety during the Vedic period now becomes the source of disaster for the father. Education, which has been an accepted norm for women, was neglected and later on girls were completely denied access to education.

With invasion of India by Alexander and Huns, the position of women was further degraded. Their education and training came to a stop. Women's movement was restricted and thus was denied opportunities to take part in community affair. Social

evils like sati, child marriage, and female infanticide were on rise.

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. During the British rule, there were two major movements which largely affected the status of women. Of these the first was the Social Reform Movement of the 19th Century and the second was the Nationalist Movement of the 20th Century. British period may be seen with enacting number of laws eradicating social evils and removing all disparities, dissimilarities and discriminations against women.⁷ These included an Act legalizing widow's remarriage, Child Marriage Restraint Act, an Act recognising Hindu Women's Right to Property etc. Thus, during the British rule awareness was created for the removal of social malaises. Many laws rectifying women's unequal position were passed.

Constitutional and Legal Rights for Women in Contemporary India

The framers of the Constitution of India were aware of the problems faced by the female sex. In spite of their contribution in all spheres, they suffer in silence and belong to a class which is disadvantaged position on account of various barriers and impediments. Keeping this in view, the framers, therefore, realised that in order to eliminate inequality and to provide opportunities for the exercise of human rights, it was necessary to promote education and economic interests of women. It became the objective of the state to protect women from exploitation and provide social justice. All these ideals were incorporated in the Preamble of the Constitution which resolved to secure to all its citizens justice-social, economic and political; liberty of thought, expression, belief, faith and worship; equality of status and opportunity; and to promote among them fraternity, assuring the dignity of an individual and the unity of the nation.⁸ To attain these objectives, the Constitution guarantees certain fundamental rights and freedoms, such as freedom of speech and expression, protection of life and personal

⁵ Soumik Saha, Women Empowerment in India: Discussing Liberal Feminism and Legal Interventions, https://www.lawarticles.com/women_empowerment_in_india_Soumik_Saha.htm

⁶ Supra note 1

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

⁸ 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)

liberty. Indian women are beneficiaries of these rights in the same way as men.

Articles 14, 15, 16 and 21 of the Constitution attempts to give equal treatment of life and livelihood to both men and women. Embodying the guiding principle of Equality before Law, Article 14 states that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Prohibiting discrimination on the ground of sex, Article 15 states that⁹ (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.*

Concerning private actions like sexual harassment at workplaces and institutions which arise in the absence of law or due to lack of effective supervision by the employer, a set of stern guidelines has been framed by the Supreme Court in *Vishaka v. State of Rajasthan*¹⁰ case (subsequently, Parliament enacted the Prevention of Sexual Harassment at Workplace Act in 2013). The court gathered feminist vision as an input for its reasoning from convention on elimination of all forms of discrimination against women, directive principles of state policy, affirmative action policy under Article 15(3) and the idea of human dignity. Constitutional feminism requires an unconventional approach towards the law relating to rape, prostitution, pornography and dowry-related crimes.

Providing equal opportunities irrespective of sex, and prohibiting discrimination against women, Article 16 clearly states¹¹, *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.*

Enumerating the 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 keeps very closely to one of the most celebrated clauses of the Magna Carta, which 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.”¹²

The provisions in *Directive Principles* about equal entitlement to livelihood, equal pay for equal work, protection against moral and material abandonment, maternity leave, nutrition, equitable distribution of material resources of production and respect for international conventions have significant value in building the corpus of constitutional feminism. Reservations for women in Panchayati raj institutions are aimed at enhancing women's participation in democratic process.

In view of the constitutional provision of Article 39 which specifically directs the states to secure equal pay for equal work for both men and women, the Parliament has enacted *The Equal Remuneration Act 1976*, which provides for payment of equal remuneration to men and women workers for the same work or a work of a similar nature and for the prevention of determination on grounds of sex. The notion of “*equal work*” depends on a number of various factors such as responsibility, skill, effort and condition of work. In pursuance of the objectives of the state in order to secure just and human conditions of work and for maternity benefits as enshrined in the Constitution of India, the Parliament has enacted *The Maternity Benefits Act of 1961*.¹³ This Act

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

¹⁰ (1997) 6 CSS 241

¹¹ Supra note 9

¹² Meenakashi Lekhi, Feminism the Indian Constitution, <http://www.theweek.in/columns/Meenakashi-Lekhi/feminise-the-indian-constitution.html> (April 20, 2017)

¹³ Supra note 7

regulated the employment of women in certain establishments for certain periods before and after child birth as well as provides for maternity and other benefits. The constitution of India imposes a fundamental duty on every citizen through *Article 51(A)(e)* to renounce practices derogatory to the dignity of women.

Apart from, various protectional law, too, have been enacted and enforced, for instance, the *Commission of Sati Prevention Act, 1987*, *Dowry Prohibition Act 1961*, *Muslim Women's (Protection of Rights on Divorce) Act, 1986*, *Suppression of Immoral Traffic in Women and girls Act, 1956* etc. The demand for reservation of 33% seats for women in Parliament and State Legislatures has been gaining ground to be brought as an important Act safeguarding the rights of women.¹⁴ Although a uniform civil code is still a dream in spite of various directions of the Court, the enactment of certain legislations like the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 has been brought by the Parliament to prevent the female Foeticide and Infanticide.

Judicial Trends and Practical Reality

Fundamental Rights and women:

The Constitution of India guarantees equal rights to all its citizens irrespective of their gender. Women thus enjoy the Right to Equality, the Right to freedom, the Right against exploitation, the Right to freedom of religion, 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 landmark case of *Nargesh Meerza vs Air India*¹⁵ it was finely pronounced that a woman shall not be denied employment merely on the ground of her being of the feminine gender. This leads to violation of Article-14 of the Constitution. In the present case, an air hostess of Air India challenged the service rules of Air India wherein an air hostess would be barred from getting married within a period of 4 years from the date

of their joining. The rule further stated that the airhostesses shall lose their jobs if they become pregnant and also that they will retire at the age of 35 years (exception can be made only if managing director extends the term by 10 years at his own discretion). The Apex Court ruled that that even though the first provision is reasonable, the second and third provisions are cruel, arbitrary and unconstitutional.

In the case of *C.Rajakumari vs Commissioner*¹⁶ of Police, Hyderabad the critical question was raised before the Andhra Pradesh High Court pertaining to the fact whether the beauty contests which indecently represents a women's body, figure and form is in violation of Article -15 of the Constitution. The court held that if in any beauty contest the body is represented in such a way that it is indecent and is injurious to public morality then such beauty contest would be violation of the provisions of Indecent Representation of Women(Prohibition) Act,1986 and also unconstitutional as it violates Articles 14,21 and 51A.

Directive Principles and Women

The Directive Principles of State Policy enshrined in part- IV of the Indian Constitution contains certain provisions which deal with the welfare and development of woman.

The framers of the Constitution prohibited forced labour in any form including beggar and trafficking of human beings under Article-23. In *Neeraja Chowdary vs State of Madhya Pradesh*¹⁷, Justice Bhagwati held that women and children cannot be compelled to work under unhygienic conditions because it is a kind of bonded labour which is prohibited under Art-21 and Art-23 of the Constitution.

In the case of *Randhir Singh vs Union of India*¹⁸, the Apex Court talked about the doctrine of equal pay for equal work. It was held that the doctrine is applicable in case of both the genders. Art-39(d) of the Indian Constitution provides that there shall be equal pay for equal work for both men and women. But Article-37 on the contrary says that directive principles are not enforceable in nature. But when fixation of pay scales

¹⁴ Supra note 8

¹⁵ 1981 AIR 1829, 1982 SCR (1) 438

¹⁶ 1998 (1) ALD Cri 298.

¹⁷ AIR 1984 SC 1099

¹⁸ 1982 AIR 879, 1982 SCR (3) 298

of government employees is based on unreasonable classification which violates Art-14 and Art-16 of the Constitution, the courts are allowed to enforce the doctrine of equal pay for equal work. Thus the court held that the principle of equality is enshrined in the provisions of the Equal Remuneration Act, 1976.

Women and politics

As already mentioned an attempt was made for adequate representation of women 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 influenced by their male relatives 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 futile but the woman representations are merely acting as rubber stamp figures. There is lack of actual participation by them in the political sphere.

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 weaker section of the population and therefore need assistance to function 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 Indian government does not interfere with these personal 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 husband and family as her ultimate religion and duty. There is great degree of influence of the hierarchical systems within Indian families and communities and these hierarchies can be

broken down into age, sex, kinship relationships, caste, lineage, wealth, occupations and relationship to ruling power within the community.¹⁹ Girls, mostly in financially challenged families suffer the impact of the vulnerability and stability 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 less access to the family's income and assets which only aggravated the poor 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 burdened with arduous work and exhausting responsibilities of their families for the rest of her lives till she dies with no compensation and recognition of her dedication or hard work towards her family.

Patriarchy society

The word Patriarchy is associated with the meaning, rule of the father or the patriarch and it is used to describe 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 member 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 inheritance are traced through the male line which is known as the patrilineal system and they 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

¹⁹ Supra note 7

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.²⁰ 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 constitution provides equal opportunities for women implicitly as they are applicable to all persons irrespective of sex, but the court realise that these article reflect only de jure equality to women. They have not been able to accelerate de facto equality to the extent the Constitution intended. Reflecting this in *Dimple Singla v. Union of India*²¹, the Delhi High Court expressed its apprehension that unless attitudes change, elimination of discrimination against women cannot be achieved. There is still a considerable gap between Constitutional rights and their application in day to day lives of most women. At the same time it is true that women are working in jobs which are hitherto exclusively masculine domains. But there are still instances which exhibit lack of confidence in their capability and efficiency. There remains a long and lingering suspicion regarding their capacities to meet the challenges of the job assigned. Such doubts affect the dignity of working women.

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²⁰ Supra note 8

²¹ (2002) 2 AISLJ 161