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Women's Rights in India: A Feminist Analysis of Justice and Empowerment

Dr. Gunisha Saluja

Assistant Professor, Khalsa College of Law, Amritsar

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ABSTRACT

India is a country where women are enjoying a very high status in theory but behind the veil their position is vulnerable in the society due to cultural, educational, religious, economic, and social reasons. Feminist jurisprudence also known as feminist legal theory is the philosophy that is based on political, economic, and social equality of the sexes. Feminist legal theory has produced a wide range of perspectives on the conditions of women. In India, there are various laws incorporated in the Constitution of the India. Feminist Jurisprudence is basically understanding of the rights of women given in Indian Laws and Constitution of India. Feminists in India, like their feminist counterparts all over the world, seek gender equality, the right to work for equality in wages, the right to equal access to health and education, and equal political rights. They also fought against culture-specific issues within India's patriarchal society, e.g., inheritance laws. This paper attempts to analyse the socio-legal approach towards the Feminist Jurisprudence and Rights of Women in India.

KEYWORDS

Feminist Jurisprudence, Law, Feminist Theory, Women Right

INTRODUCTION

“Yatra Naryastu Poojyante Ramante Tatra Devta” which means God lives there where women is worshipped. India is a country where this well known saying is believed and reflected in our philosophy, religion, smritis and vedas. But, actually, women of our country are struggling for equality of status because of the so-called patriarchal system which is part and parcel of our Indian society. A Feminist legal theory also known as Feminist Jurisprudence is a field of study that critically examine the legal

discourses and the neutrality of laws promoting discrimination against women. In the late 1970s, the first known use of the term feminist jurisprudence was made by Ann Scales during the planning process for Celebration 25, a party and conference held in 1978 to celebrate the twenty-fifth anniversary of the first women graduating from Harvard Law School. The Feminist jurisprudence is based on this notion that a women's subordination is not given by nature rather it is an artificial process created by law. Feminism believe that history of mankind is written from men's perspective since the time men has gained power in politics irrespective of this fact that this power is misused by men to suppress women and for treating them inferior to men. Feminist accepts that the biological difference between men and women is created by nature but not the gender differences. Moreover, laws also become male centric as they reflect the patriarchal system and dominance of men over women in the society.¹

The term feminism and feminist theory of jurisprudence is not easy to define. As per the Oxford English Dictionary, the term 'Feminism' can be defined as "the belief and aim, that women should have the same rights and opportunities as men; the struggle to achieve this aim" Feminism is the belief that women should have equal rights to men. The Merriam Webster Dictionary defines feminism as the theory of the political, economic, and social equality of the sexes. These definitions are not exhaustive. The scope of Feminist jurisprudence is so vast that it cannot be limited to any extent. To understand the concept of feminist legal theory in true sense, it is very important to see the concept from the women's lens.

Major Schools of thought in Feminist Jurisprudence: Some major schools of thought in Feminist Jurisprudence are as follow:

- a. Liberal Feminism:** According to the supporters of this theory, the inferior position of women in society is due to cultural and psychological factors. In 1792, Marry Wollstone Craft has made a link between liberal philosophy and women's equality, whereby it was said that women are also human beings like men. *Liberal feminism is an individualistic form of feminist theory, which focuses on women's ability to maintain their equality through their own actions and choices. They strive for sexual equality through political and legal reform².*

¹ Shivani Verma, Feminist Jurisprudence in India: Manifestation of Judicial Will to Create A Gender-neutral Legal Regime in India, retrieved from <https://lawcolloquy.com › journals › feminist-ju...> last visited on 11 Feb, 2024.

² Mohd Aqib Aslam, "Feminist Jurisprudence and Its Impact in India: an Overview", retrieved from <https://www.legalserviceindia.com › legal › article-185> last visited on 10 Feb, 2014.

- b. Radical Feminism:** *Radical Feminism is also known as dominant feminism. It analyse the issue of gender equality as an issue of domination of men over women. Radical Feminism supporters ask for radical reordering of the society in which male supremacy must be eliminated in all social and economic spheres. Radical feminist believe that men used social system and other methods to suppress and control women. The radical feminist assert that is due to patriarchal system, women are oppressed and discriminated, therefore, this system should be eliminate to liberate all from an unjust society*³.
- c. Cultural Feminism:** *The focus of cultural feminist is just different from the focus of Liberal Feminist. They are not concerned about the women's differences with men. They believe that the important task is to change institutions to reflect and accommodate values that they see as women's nurturing virtues, such as love, empathy, patience and concern rather than to include women into patriarchy system and to prove this fact that they are just similar to men*⁴.
- d. Socialist Feminism:** Socialist feminist believe that women's subordinate status is an outcome of both class and gender. Juliet Mitchell, a socialist feminist, discovered that along with the family, other structures are also important factors in the oppression of women. The development of the idea of private property, the restriction of women to childbearing, and the maintenance of gender disparities were major obstacles to the women's socialist movement. Socialist feminists combine sex and class oppression of women.⁵

FEMINIST JURISPRUDENCE AND WOMEN'S CONSTITUTIONAL RIGHTS

The Constitution of India guarantees under Article 14 read with Article 12 that the State **shall provide equality for all in the eyes of the legal system and equal protection of the law across India and no discrimination on grounds of religion, race, caste, sex or place of birth.** In consonance with this, Article 15(3) also provides the provision where nothing shall prevent the State from making any special provision for women and children. Article 39(a) and (d) of Directive Principles of State Policy also talk about the gender equality. Article 39(a) provides equal rights for men and women for an adequate means of livelihood whereas Article 39 (d) provides equal pay for equal work for both men and women.

³ Gyanendra Kumar Sahu, *Feminist Jurisprudence and Gender Injustice in India*, retrieved from <https://utkaluniversity.ac.in/uploads/2022/08/Femin...> last visited on 11Feb, 2024.

⁴ Ibid.

⁵ S.C. Tripathi and Vibha Arora, *Law Related to Women and Children*, 3rd ed., 2008, 4.

Keeping in view, the socio-economic conditions of women in Indian society, these constitutional provisions are incorporated to give voice to the women, to end up their subordinations to men and to make their active participation in democracy. But due to many social-economic and cultural factors, the participation of women never became effective. Even the Supreme Court in **Bodhisathwa Gautama vs. Subhra Chakraborty**⁶ has admitted that women in our nation are part of a class or group that is marginalized by a number of social constraints.

FEMINIST JURISPRUDENCE AND WOMEN'S LEGAL RIGHTS

Following initiatives are taken for the protection of the Legal Rights of women:

- a. **Live-in-Relationship Cases:** In 1978, the Supreme Court in **Badri Prasad vs. Board of Consolidators**⁷ ruled that “A strong presumption arises in favor of wed-lock where the partners have lived together for a long spell as husband and wife. Although the presumption is rebuttable, a heavy burden lies on him who seeks to deprive the relationship of its legal origin”. In 2001, the Allahabad High Court in **Payal Sharma vs. Nari Niketan**⁸ ruled that it is not illegal for a man and a woman to live together. The HC also drew a distinction between law and morality. It may be considered immoral by society but it is not illegal. In 2006, the Supreme Court in **Lata Singh vs. State of UP**⁹ ruled that two persons of opposite sex living together are not doing anything illegal. In 2010, the SC in **S. Khushboo vs. Kanniammal & another**¹⁰, reiterated the 2006 verdict and noted “A live-in relationship between two consenting adults of heterogenic sex does not amount to any offence even though it may be perceived as immoral”. In 2013, the Supreme Court in **Indra Sarma vs. VKV Sarma**¹¹ ruled that the woman partner in a live-in relationship is protected under the Protection of Women from Domestic Violence (PWDV) Act, 2005. In June 2022, the Supreme Court in **Kattukandi Edathil Krishnan & another vs. Kattukandi Edathil Valsan & Others**¹² ruled “Long course of living together between a male and female will raise a presumption of marriage between them and the children born in such relationship are considered to be legitimate children”.

⁶ (1996) 1 SCC 490.

⁷ 1978 SCC (3) 527.

⁸ AIR 2001 All 254.

⁹ 2006 (5) SCC 475.

¹⁰ AIR 2010 SC 3196.

¹¹ AIR 2014 SC 309.

¹² 2022 LiveLaw (SC) 549.

- b. Dowry Deaths Cases:** Dowry, a very oldest social ritual, is practiced throughout the nation. Though our nation is developing in scientific and technological terms, but still the women of our country are burnt alive due to lack of dowry. The term 'dowry' is defined under Section 2 of Dowry Prohibition Act, 1961 and penalty is fixed for giving and taking of dowry under Section 3 of the Act. The Hon'ble Supreme Court in **Ashok Kumar vs. State of Haryana**¹³ clarified the definition of dowry as any property or valuable security given or agreed to be given either directly or indirectly by one party to another during or after marriage. In **Satbir Singh vs. State of Punjab**¹⁴ the Apex Court held that the property or valuable property given or agreed to be given in connection with the marriage is considered as dowry. But customary payments in connection with the birth of child or other ceremonies are not involved within ambit of dowry.
- c. Equal rights of daughters in coparcenary property:** Hindu Succession Act, 1956 provide right to inherit ancestral property by women. The Hindu Succession (Amendment) Act, 2005 has brought radical change in the present Act. It provides the right of succession in the joint Hindu family property governed by the Mitakshara Law to a daughter whether married or unmarried. In the landmark judgment of **Vineeta Sharma vs. Rakesh Sharma**¹⁵ the Supreme Court held that daughters have equal coparcenary rights in Hindu Undivided Family (HUF) property. The court held that this right arises by taking birth. So when a daughter is born, she also steps into the coparcenary as that of a son. However, a daughter born before can claim these rights only with effect from the date of the amendment, i.e., September 9, 2005, with saving of past transactions as provided in the proviso to Section 6(1) read with Section 6(5).
- d. Rights of Women at Workplace:** Equality amongst gender in the workplace is one of the most difficult and multi-dimensional concepts. Equal pay for equal work seems like a dream when even in the twenty-first century, the women were concerned for their safety at the workplace. The Court very sensitively took cognizance of the matter and provided measures for the safety of women at the workplace by framing very detailed guidelines in the case of **Vishakha vs. State of Rajasthan**¹⁶. The Court directed the employers to ensure not only the safety to women against sexual harassment but also

¹³ AIR 2010 SC 2839.

¹⁴ AIR 2001 SC 2828.

¹⁵ (2020) 9 SCC 1.

¹⁶ AIR 1997 SC 3011.

to provide an unbiased mechanism for the redressal of such grievances. The guidelines of the Court given in Vishakhas's case eventually were transformed and formalised in legislation and enactment by the name of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. It helped the feminist movement to achieve another milestone in the way of absolute equality amongst the genders. In 2020, the apex court ruled in **Punjab and Sind Bank & Ors vs. Mrs Durgesh Kuwar**¹⁷ that sexual harassment at work violates women's fundamental right to equality, their right to live with dignity and to practise any profession. The Supreme Court in **The Secretary, Ministry of Defense vs. Babita Puniya and Ors**¹⁸, ushered for transformative constitutionalism by breaking gender stereotypes in Indian Army. The court said that all women army officers are eligible to be appointed in commanding roles and are also entitled to permanent commissions.

- e. Right to Safe Abortion:** A girl who is under the age of 18 has the legal right, with the permission of her guardians, to end an undesired pregnancy as per section 3(4) of the Medical Termination of Pregnancy Act, 1971. Contrarily, an adult woman, married or not, has the right to end her pregnancy up to 20 weeks if it poses a risk to her life or is damaging to her health. In **State of Rajasthan vs. S**,¹⁹ **the court held that** there is no doubt that a woman's right to make reproductive choices is also a dimension of 'personal liberty' as understood under Article 21 of the Constitution of India. It is important to recognise that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman's right to privacy, dignity and bodily integrity should be respected.

Beside the abovementioned cases, there are various other instances in which apex court has taken a very feminist progressive approach. Like in **Shayara Bano vs. Union of India**²⁰, the Supreme Court has declared the practice of instant Tripal Talaq as against the basic tenets of Quran. The Court directed the Centre to pass legislation keeping in view the judgement, which led to the Muslim Women (Protection of Rights of Marriage) Act, 2019. The legislation prohibits Triple Talaq and makes it punishable with imprisonment, which may extend up to three years and fine. Thereafter in **Indian Young**

¹⁷ Civil Appeal No. 1809/2020.

¹⁸ 2020 SCC OnLine 200.

¹⁹ AIR 2020 Rajasthan 97.

²⁰ (2017) 9 SCC 1.

Lawyers Association vs. State of Kerala²¹ (popularly known as the Sabarimala case) the Court permitted entry to the women of all ages, and conditions into the Sabarimala Temple despite a centuries-old custom banning the entry of menstruating women. In a secular country like India, such legal issues are very complicated as the issues bring in play tangled implications of Articles 14, 25 and 26. But the Court was well determined and upheld the constitutional trinity of liberty, equality and dignity over patriarchy, dominance and belief. Beside it, various other offences against women like Voyeurism²², Stalking²³, Eveteasing²⁴ and Rape²⁵ are very well defined and penalized under Indian Penal Code.²⁶

CONCLUSION

Feminist Jurisprudence includes various theories, philosophies and ideologies around the world. Though the development and evolution of feminist jurisprudence may be different all over the world, but the main aim is to bring gender parity in society. Gender injustice is so deeply rooted in our society that despite 21st century, the women are still suppressed and deprived of many privileges. At the time of framing of the Constitution, the constitutional framers made sure that the women who were deprived of their rights and treated unfairly during the post-independence period must get an equal opportunity and freedom in an independent India. The latest attempts on the part of various government and non-government organizations cannot be ignored as it gives us a ray of hope. The recent legislature and judgment like scraping of 377 of IPC, entry of women in Sabarimala temple has won the confidence of many feminist in India who believe that our country is in transitional stage where we are moving from a patriarchal dominant society to a gender neutral country. No doubt, this Journey to a gender neutral society is long but judicial will is definitely an element that can add rigor to this objective.

²¹ (2017) 10 SCC 689.

²² Section 354C of Indian Penal Code.

²³ Section 354D of Indian Penal Code.

²⁴ Section 354(iv) of Indian Penal Code.

²⁵ Section 375 of Indian Penal Code.

²⁶ Shivani Verma, Feminist Jurisprudence in India: Manifestation of Judicial Will to Create A Gender-neutral Legal Regime in India, retrieved from <https://lawcolloquy.com › journals › feminist-ju...last visited on 11 Feb, 2024.>