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FEMINIST JURISPRUDENCE: IMPACT ON THE MODERN ERA

“Feminism is not just about women; it’s about letting all people lead fuller lives.”

- Jane Fonda

India is a country that believe in the philosophy of “yatra naryastu poojyante ramante tatra devta”, i.e., God lives there, where women are worshipped.¹ India has a patriarchal society, where women face gender discrimination in all spheres of life, even in the modern era, i.e., 21st Century. Women are considered as social ornaments, and a mere object for sexual gratification. Feminist Jurisprudence has developed a lot from past centuries, but a lot more areas need to be covered to ensure equal rights for women. Indian judiciary had already made certain laws regarding women protection, but more developments are yet to come. The word “feminism” is derived from the Latin word ‘femina’ which means ‘woman’.² The word “jurisprudence” is derived from Latin word “jurisprudentia” which means ‘knowledge of law’. Feminist Jurisprudence is a philosophy of law, that is based on the political, economic and social issues of equality.³

Origin of feminist jurisprudence:

i. First phase (1850-1915)

Reformists began to speak in favour of women’s rights and facilitated reforms in women education and other customs involving women. In this phase, the age-old

¹ Dr. Shivani Verma, *Feminist Jurisprudence in India: Manifestation of Judicial Will to Create A Gender-neutral Legal regime in India*, 1 LCJLS 1, 1-2 (2021)

² Mohd. Aqib Aslam, *Feminist Jurisprudence and its impact in India: An Overview*, LEGAL SERVICES INDIA (Feb.09, 11:17 a.m.) <https://www.legalserviceindia.com/legal/article-1859-feminist-jurisprudence-and-its-impact-in-india-an-overview.html>

³ LEGAL INFORMATION INSTITUTE, https://www.law.cornell.edu/wex/feminist_jurisprudence#:~:text=Feminist%20jurisprudence%20is%20a%20philosophy,jurisprudence%20began%20in%20the%201960s. (last visited Feb. 06, 2023)

practice of 'sati' was uprooted by Raja Ram Mohan Roy and The Widow Remarriage Act, 1856 was also passed .⁴

ii. Second phase (1915-1947)

This phase witnessed the emergence of three organizations, the Women's India Association (WIA), the National Council of Women in India (NCWI) and the All India Women's Conference (AIWC).⁵ Mahatma Gandhi encouraged women participation during non-violent civil disobedience movement against British Raj.⁶ In the year 1925, Sarojini Naidu became INC's first female President, who was a pioneer of women's rights.

iii. Third phase (1947 – present)

The establishment of the National Commission for Women in 1992 was a significant step for protection of rights of women by enacting many legislations and reforms are also made.⁷

Schools of Feminist jurisprudence:

a) Liberal Feminism

This school believes that men and women are equal in all footing and so, they should be given equal opportunity in all respect.

b) Radical Feminism

According to this school, gender equality is a matter of male dominance over women. In this perspective radical feminists believe that there is a need for radical reorganization of the society, i.e., male dominance must be abolished in all spheres.⁸

c) Cultural feminism

It grew out of radical feminism. According to them, the main idea is to emphasize significance of the moral and ethical values of men and women, while appreciating the distinctiveness of men and women.

d) Postmodern feminism

⁴ Sonal Beniwal, Growth of feminist jurisprudence in India, IPLEADRS (Feb 06, 20:59 p.m.)

https://blog.ipleaders.in/growth-feminist-jurisprudence-india/#Feminism_in_India

⁵ Helena George, *Feminism in Jurisprudence*, JOURNAL FOR LAW STUDENTS AND RESEARCHERS (Feb. 06, 2023, 21:07 p.m.) https://www.jlsrjournal.in/feminism-in-jurisprudence-by-helna-george/#_ftnref3

⁶ Sonal Beniwal, Growth of feminist jurisprudence in India, IPLEADRS (Feb 06, 20:59 p.m.)

https://blog.ipleaders.in/growth-feminist-jurisprudence-india/#Feminism_in_India

⁷ Helena George, *Feminism in Jurisprudence*, JOURNAL FOR LAW STUDENTS AND RESEARCHERS (Feb. 06, 2023, 21:07 p.m.) https://www.jlsrjournal.in/feminism-in-jurisprudence-by-helna-george/#_ftnref3

⁸ Mohd. Aqib Aslam, *Feminist Jurisprudence and its impact in India: An Overview*, LEGAL SERVICES INDIA (Feb.09, 11:17 a.m.) <https://www.legalserviceindia.com/legal/article-1859-feminist-jurisprudence-and-its-impact-in-india-an-overview.html>

According to them, equality is witnessed as a social construct and a product of patriarchy, hence feminist reconstruction is needed. This school also emphasizes the process of self - definition and the method that will raise consciousness and give voice to oppressed women.⁹

Feminism and Constitution:

The Constitution of India, 1950 have certain provisions safeguarding women's rights and protection of women's rights –

- a. Article 14 – right to equality.
- b. Article 15(2) – State can make special provision for women and children.
- c. Article 21 – protection of right to life and personal liberty.
- d. Article 39A – free legal aid
- e. Article 39(d) – equal pay for men and women.
- f. Article 42 – maternity relief
- g. Article 51A (e) – duty to renounce practices derogatory to the dignity of women.
- h. Article 243 – need for women to be part of local governmental structures.

Feminist Jurisprudence with reference to judicial decisions:

In the modern era, feminism still stands on a misconception that men and women are equal, but actually in the true sense, women are bound intricately with the shackles of the society. The Indian judiciary has played a vital role in exercising and explaining women's rights in India.

- Vishaka v. State of Rajasthan, AIR 1997 SC 3011 addressed the issue of sexual harassment of women at workplace and through this case the Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013.
- Shayara Bano v. Union of India, (2017) 9 SCC 1 abolished the practice of instant Triple talaq, also known as Talaq-e-Biddat and gave protection and security against exploitation of women by their husbands.
- In Indian Young Lawyers Association v. State of Kerala, 2018 SCC OnLine SC 1690 (popularly known as Sabarimala Temple case), Court allowed the entry of women of

⁹ *Ibid.*

all ages in the temple, despite the ban of menstruating women, as per their age-old customs.¹⁰

- The Secretary, Ministry of Defence v. Babita Puniya, 2020 SCC OnLine 200 highlighted the importance of participation of women army officers in commanding role. It was held that women army officers are eligible for permanent positions, they are at par with their male counterparts in respect of promotion, rank, etc. This judgment broke the stereotypes that women are weaker sections in the society.¹¹
- Vineeta Sharma v. Rakesh Sharma, 2020 SCC OnLine SC 641 gave daughters the right to be coparceners in the Hindu Undivided Family (HUF) since birth like the sons.
- State of Jharkhand v. Shailendra Kumar Rai (2022), abolished the two-finger test on a sexual assault victim, as it violates right to privacy of a woman, enshrined under Article 21 of the Constitution.
- X v. Principal Secretary, (2022) ruled that all women regardless of their marital status are entitled to safe and legal abortion up to 24 weeks of pregnancy and gave them right of reproductive decisional autonomy.¹²

Conclusion:

There are a variety of cases, where Indian judiciary had already given protection to women. But still we have a lot more to achieve. Laws can be made, but it is the duty of the society to implement them by expanding their horizon of thought. Instead of thinking women as their subordinate, they need to be respected in every walk of their life. The main objective of feminist jurisprudence is to break the gender-stereotype. This problem is deep-rooted, but measures must be taken to eradicate it completely. Feminism is not about considering women as superior, but treating men and women equally. Journey to gender-neutral society is a long way.

¹⁰ Dr. Shivani Verma, *Feminist Jurisprudence in India: Manifestation of Judicial Will to Create A Gender-neutral Legal Regime in India*, 1 LCJLS 1, 9-11 (2021).

¹¹ *Ibid.*

¹² Dipika Jain, *Supreme Court of India judgement on abortion as a fundamental right: breaking new ground* 31 SRHM 1, 1-3 (2023).

