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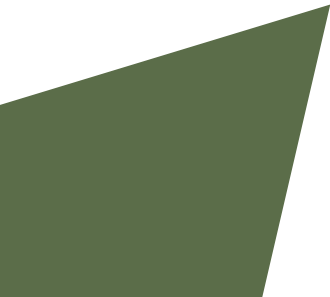
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GENDER JUSTICE: A struggle for Equal Rights, Freedom and Justice

Namitha KJ

ABSTRACT

When there is harmonisation and equalisation of privileges that both the sexes receive, it is known as the attainment of gender justice. The struggle for equal recognition of rights and duties between both the genders in all aspects, to attain freedom, a just and fair living environment has been going on since times immemorial. This study explores the various dimensions of gender justice by understanding the struggles of women in India and looking into whether it is possible for India to achieve gender justice in the coming future. This study tries to achieve solutions to the problems of misconstrued meaning of feminism, deeply rooted patriarchal mentality of Indian society, aligning Indian feminist movements to that of the worlds and exploring loopholes in Indian laws protecting women. Analysis of these issues in detail has given the reasoning that in a culturally diverse country like India, it will take aeons to achieve gender justice and India should strive towards the same with more focused efforts through proper laws and movements.

Keywords: Equality, feminist movements, patriarchy, Indian laws, gender justice.

INTRODUCTION

All babies are born into this world from a mother's womb irrespective of what race, colour, or sex they belong to. Every single individual is equally entitled to all the rights and freedoms in this world. Apart from man-made laws, nowhere it is written that men are in a dominant position over women. But unfortunately, with each progressive stage in human civilisation, there has been a decline in the role of women in all arenas. Women started to get confined to the four walls of a house, they were reduced to just being capable of doing household chores. Through achieving Gender Justice, we strive to create a world where all human beings, women and men, boys and girls are valued with equal importance. The world can be divided into two halves- Men and Women and when both these genders get equal recognition in all spheres of life, it will be an ideal world. From abolition of *Sati* to the *Sabarimala* issue, there has been a lot of feminist movements in India. People of India are adjusting to the idea of rising feminism in the country and Indian Feminist Movements are getting to the level of international movements. As noted by historian *Linda Gordon*, feminism is "an analysis of women's subordination for the purpose of figuring out how to change it."¹

Martha Albertson Fineman's "*Feminist Legal Theory*" is one study that emphasises on some of the key points relating to feminism. It discusses some of the diverging viewpoints of feminism in approaching the study and critique of the law. The author address the issues of schism in feminism surrounding gender difference and engagement with law and economics elaborating on the correlation between law and feminism. The author goes on to say, "Many feminists have gravitated towards law and legal reform as objects of study and action". Even though there were women in Law before 1970s, they joined law mainly with a political agenda. The issue of gender difference is one area which emerged early in the intonation of legal approach to feminist theory but still is relevant in today's time. The author describes different views of different groups of feminists. One emphasized on the women's sameness rather than difference with men, next group stressed on the fact that even facially neutral laws could be discriminative, and final group's attack was directed at laws and legal institutions that failed to reflect differences between men and women. The author concludes by stating that there is continuous evolution in feminism hence one should refer to the "tasks of the moment" when advocating feminists issues.

What are the differences between women and men? How are they to be addressed? The majority of early feminist legal theorists adopted a *discrimination model* to the issue of gender. Their

¹ Linda Gordon, The Struggle for Reproductive Freedom: Three Stages of Feminism, in CAPITALIST PATRIARCHY AND THE CASE FOR SOCIALIST FEMINISM 107 n.1 (Zillah R. Eisenstein ed., 1979).

objective was to outlaw biased treatment and provide laws that allowed women equal opportunities with men.²

Women have been side kicked since a long time now and people cannot continue to remain silent. There are numerous efforts from many, to end this discrimination at least in the coming decades.

The following problems have been identified:

1. What is the progress in equality of treatment of women and men when looking into the timeline of India?
2. Is feminism as a term wrongly interpreted and has this been used to target feminists?
3. What are the struggles of women in India for gender recognition?
4. What are the laws in India protecting women and what changes are possible to be made to make them more effective?

Here we try to understand the possibility of creating an ideal situation in India where men and women are given equal worth, by evaluating the evolution of the struggles of women.

INDIA – PAST AND PRESENT

In India, it is believed that women enjoyed an equal status to men in the Vedic Period. The education of women held considerable significance, as seen in the works of Katayana and Patanjali. The Upanishads and Vedas have cited women as seers. In the epic age, the women were honoured and educated. Women were heeded for counsel and advice in social and political life. However, statistics show that the status of women dwindled in the corresponding period in the Puranas. In the Rig Vedic times, people were free. Women had the freedom to educate herself, pursue fine arts, wear what they wanted, and choose their husbands. Even though Aryans preferred a male child to a girl child, girls were given equal significance. Unmarried daughters had rights to her father's and mother's property just like the sons. It was a free society. It was during the time of Manu and his Smriti when women actually started losing honour and value. Women are deprived of the Upanayana ceremony and thereby of education. Manu relegates her to an entirely subservient position. He preaches self-negation as the highest ideal of a wife. She is asked to serve and worship her husband even if he is not a person of all virtue and character. Since service and worship of the husband are the primary duties of a wife, by so performing she can hope to attain heaven. Manu had a very low opinion about women and therefore reduced her status by depriving her from socio, political and economic privileges. Sati, Jauhar, Purdah and Devdasis, child marriage, polygamy, girl killing, ill treatment of widows, female infanticide and many such practises

² See, e.g., *Reed v. Reed*, 404 U.S. 71, 76 (1971) (holding that the Equal Protection Clause of the Fourteenth Amendment forbids states to give "mandatory preference" to a man over a woman as executor of an estate).

began to disrupt the balance between men and women in India. By the time of colonisation and mainly due to colonisation, the conditions of women declined to a very low. The advent of British-ruled era in India brought many changes in the conditions of women. Britishers took advice from Moulavis and Pandits in matters relating to trade, law and order, and civil matters; who are men. Women's advice were not taken into consideration even in matters which concerned them. Women were denied basic rights like equal matrimonial rights to property, rights to widows to remarriage, and adoption and divorce rights. It is found that colonisers opposed to many of these practises as they were a barrier to cultural reformation and development. Hence the queen declared they will not interfere in these matters. Then came the time of intellectuals and strongly educated, opinionated minds within India who wanted see a reformative change in the country. These men fought for the oppressed women and brought in changes like:

1. abolition of Sati in 1829
2. passing of the Hindu Widows Remarriage Act XV of 1856
3. passing of the Child Marriage Restraint Act, 1929

Even after 73 years of independent India the status of women in India still remains the same. Many rights and freedom were granted through the Constitution, various laws and landmark judgements but proper execution of these were not there. Earlier patriarchal system was followed and women were made to confine to their houses and look after the children. But now with changing societal norms, attitude, increased awareness, and high education the role of women has undergone a paradigm shift which has allowed women to develop a status in the modern society.

MEANING OF FEMINISM

Feminism is the state when both men and women are treated equally and when there is equal recognition of both genders. Over the years there has been a lot of misconceptions about what feminism actually means. There are many types of feminists: - the vocal, the silent, the moderate, the extreme, and many more. The manner in which each of these groups of feminists define feminism give will be somewhat different from how the others define feminism. This has led to the misconception that the main objective of feminism is to over-throw or over-power men. Wherein the fact is that it is the upliftment of both men and women. The 'feminine' in 'feminism' should not be the only reason to throw hate at the term and the matters revolving around it. Men, women, or transgender people irrespectively can be an active feminist.

Unfortunately the term feminism is related to a lot of stereotypes such as:

1. Feminists hate men.
2. Feminists are angry.

3. Feminists are unattractive and not feminine.
4. All feminists are lesbians.
5. Feminists are all pro-choice.
6. If you are a feminist, you cannot be religious.
7. All feminists are career women and do not support stay-at-home moms.
8. Feminists can only be women.
9. Feminists do not believe in marriage.

These stereotypes can only be changed if people who are aware or literate enough to know, start to educate the ignorant and correct them. Feminism should not be misconstrued to this level. Feminism is a concept that should be universally accepted, irrespective of gender, race, caste, religion, etc. Every human being having a drop of humanity in their heart should be a feminist. Feminism is not a hate-speech against the men of the world. It seems so because men in the past have stood as a hinder to equal recognition of women because of which feminists had to target them under those circumstances and feminists will have to target men in the future if any man stands in the way of progress. Around recent times, even women are going against women and to eliminate that, movements like “*shedeforshe*” are coming up. So be it a man or a woman, if one comes and obstructs the process of achieving gender justice, they should be stopped.

The Merriam-Webster dictionary defines feminism as: “The theory of the political, economic and social equality of the sexes.” Hence, ‘Feminism’ is a theory which demands harmony in mankind by attaining equality of men and women

EVOLUTION OF FEMINIST STRUGGLES

First Wave of Feminism

The first wave of feminism was from 1848 to 1920s. This marked the time when women started to fight for suffrage. The first full-fledged movement was the Seneca Falls convention of 1848, where 200 women met in a church to discuss the social, economic, religious problems. Women of colour like Sojourner Truth, Maria Stewart, and Frances E.W. Harper were major forces in the movement, working for women’s suffrage.

Second Wave of Feminism

The second wave of feminism was from 1963 to 1980s. This kick-started with *The Feminine Mystique* by Betty Friedan and *Second Sex* by Simone de Beauvoir. The Equal Pay Act of 1963 and a series of landmark judgements resulted from the set of movements. Unmarried women’s right to use birth control, educational equality, and women reproductive freedom were protected during this time.

Third Wave of Feminism

The third wave of feminism began during the 1990s. This time is pegged to two things: the Anita Hill case in 1991, and the emergence of the riot grrrl groups in music scene. Numerous sexual harassment complaints started to come up, just like the *#metoo* movement and many *Harvey Weinstains* were outed. These set of feminists wanted to make the fight threatening and empowering.

Fourth Wave of Feminism

Fourth wave of feminism is the present-day movements. With *#metoo*, *#heforshe*, *#sheforshe* movements, this era is rich with hashtags, taglines and thus becoming more and more related to the technological era. Compared to the past, feminism and feminists movements have attracted a lot of supporters in the present. If this continues in the same pace, the world wouldn't need a fifth wave of feminism.

INDIAN LAWS

The laws in India have played a tremendous role in the making of India's Feminism. There are many articles in our constitution that has helped in the destruction of gender inequality and creation of gender neutrality. Part III and Part IV of the constitution, Fundamental Rights and Directive Principles of State Policy, two of the gemstones of Indian constitution have many provisions in them which can aid present day women.

Article 14 in the Constitution of India 1949

Equality before law.³

Article 15 in the Constitution of India 1949

Prohibition of discrimination on grounds of religion, race, caste, sex, place of birth or any of them.⁴

Article 19 in the Constitution of India 1949

Protection of certain rights regarding freedom of speech etc.⁵

Article 21 in the Constitution of India 1949

Protection of life and personal liberty.⁶

Article 23 in the Constitution of India 1949

Prohibition of traffic in human beings and forced labour.⁷

Article 38 in the Constitution of India 1949

³ Art. 14 of the Indian Constitution.

⁴ Art. 15 of the Indian Constitution.

⁵ Art. 19 of the Indian Constitution.

⁶ Art. 21 of the Indian Constitution.

⁷ Art. 23 of the Indian Constitution.

State to secure a social order for the promotion of welfare of the people.⁸

Article 42 in the Constitution of India 1949

Provision for just and humane conditions of work and maternity relief.⁹

These are some of the provisions in the constitution to help in the empowering of women. There are other acts like *the POCSO Act 2012, the Prohibition of Child Marriage Act 2006, the Special Marriage Act 1954, the Dowry Prohibition Act 1961, Indian Divorce Act 1969, Maternity Benefit Act 1861, Medical Termination of Pregnancy Act 1971, Indian Representation of Women (Prevention) Act 1986, National Commission for Women Act 1990, and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013*. India needs more laws like that to reach the dream of achieving gender justice.

CONCLUSION

Admittedly, in India there is *de-jure* equality but not *de-facto* equality. The significance that women receive in the laws should be converted to literal significance and people need to realise that it is high time women come to the forefront and shine. A country will not be led to success if half of its talent is hidden behind closed doors. India has had great women personalities like *Vijayalakshmi Pandit, Indira Gandhi, Sarojini Naidu* which makes for a strong feminist base and still has personalities like *Nirmala Sitaram, Indra Nooyi, Priyanka Chopra* who have uplifted India's name in the world. Role of women in the educational, economical, and political sectors should be concentrated and women in the rural community should also be given more employment opportunities for the overall development of women. More acts specifically targeting women should be made in the coming times to empower them to the same status of men.

The reality is that women have been subjected to countless number of atrocities since long back and still continues to face the cruelties thrust upon them. India, a country where women are worshipped as goddesses, is victim to these as well. One can only dream to see an India where women can walk freely in the night without a single shred of fear.

Women are the future of this world; every generation is nurtured by mothers and sisters and it is necessary that they are capable and empowered enough to nurture the world. This should be the vision of every human being and when everyone works for it, the dream would come true because perception is what becomes one day a reality.

⁸ Art. 38 of the Indian Constitution.

⁹ Art. 42 of the Indian Constitution.