

“Women’s Rights in India: Feminism Redefining their Status”

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ABSTRACT

The basic understanding of ‘Rights’ are ‘needs that are legally enforceable’. In the Indian Context, these Rights have been enshrined in the Indian Constitution under Part III of Fundamental Rights which are subsequently guaranteed through legal remedies provided by the Supreme Court and High Courts under Articles 32 and 226 respectively. Out of all the Fundamental Rights laid down, the three most demanded as well as overlooked, and in certain cases even violated, are Articles 14, 19 and 21- the “Golden Triangle” of the Constitution. There is only one single reason behind the popularity of this trio, *that is*, the three individually and collectively fulfil the indispensable principles crucial to a ‘good’ human life, founded on the concept of equality, equity and good conscience. Now, the idea of a good human life nowhere discriminates against any group or class but the world has observed throughout its history that social, economic, political, financial and educational backwardness has prevailed among certain groups on grounds of gender, sex, caste, race, etc. and continues even to this day. India is no exception to that- women and girls have been at the receiving end of much injustice for decades. In this paper, the researcher focuses on the issues that have shaped Women’s Rights and the effect of the Feminist movement upon the interpretation, expansion and efficacy of the laws created to protect the interests of Indian women. The article comprises of landmark legal verdicts as well as social and legal philosophy regarding the co-relation between Gender Rights and holistic social development.

Keywords: Women, Rights, Feminism, Evolution, Society, Constitution, Law, Socio-legal.

INTRODUCTION

Historical accounts have shown that since time immemorial women have been oppressed to a point where they continue to be deprived of their share of equality in every possible aspect to life even in the 21st Century. What in reality is normal has been glorified- strong, independent, powerful women are applauded for just doing what their male counterparts have been generally doing for years. This is more or less a product of the internalization of the belief that a woman’s job is only to serve her husband, family and procreation. What started as a belief which may as well be justified during the ancient period for the sake of the argument soon hardened itself into a distorted ‘fact’. This ‘fact’ was perpetuated by men with authority by means of emotional and mental manipulation to subdue any form of challenge to the authority they hold by women who may be equally competent to an extent where fear plays an active role in letting this pass on for legacies.

Fast forward to today’s era, the effect of ‘toxic masculinity’ and ‘patriarchy’ have been understood by those studying the sociological impact these two phenomena. To overturn the

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ripples spread under the influence of these two intangible negative traits of the society, Feminism spread like wild fire among those fighting for equal rights for women. The ideology's foundation was in Europe but it was not long before women from all walks and parts of world became an active catalyst in its propagation. Indian thinkers and social activists were inspired by the positive effect of the movement on paving way for a forum where women can openly talk about how they have been wronged and what can be done to rectify it.

Feminism as a movement and ideology as not only made its space in the social atmosphere but has managed to seep through into the legal atmosphere as well. It started off as formulation of laws and provisions to women challenging the loopholes in the pre-existing laws and redefining the applicability of new laws to accommodate latest issues. But how does an ideology as critical as Feminism mingle with a legal system riddled with conservatism and bureaucratic play of power?

STATUS OF WOMEN IN INDIAN HISTORY

Understanding the definition of feminism is necessary but more so is understanding the circumstances responsible for prompting the ideology to emerge. The most prominent reason behind the emergence of this ideology is the economic and financial condition surrounding the fair sex and that is because there is an inherent belief of one's power and/or assertiveness being weighed in terms of their financial stability and autonomy. For ease of comprehension, this segment has been bifurcated into three broad time periods-

1. Ancient & Medieval Epoch

The status of women from ancient history changes across two broad time periods- Vedic and Post-Vedic period. In Ancient India², specifically Pre-Vedic and Vedic era, women were respected and revered for their contribution towards the welfare of family and society. Opportunities for attainment of higher intellectual and spiritual standards were provided too. Although polygamy was not unacceptable for the wealthy, monogamy was prevalent. In one way, this can be inferred as a symbol of further honouring a wife's undisputed right over her husband as well as the bond two people are bound by. A noticeable detail is the absence of evil practices like sati and child marriage. However, in the later Vedic era, women were deteriorated to a mere position of a wife, a property of their husbands. This was on a basis of deprivation of education, property rights and other facilities that could depict them as equal to men.

During the Mauryan period, restrictions upon women had increased ten-fold. With the introduction of the purdah system, polygamous marriages and sati, they were driven to a point where permission from their husbands was quintessence to their free movement. The Gupta period saw further decline with the dictations by Manu reducing women to nothing more than puppets to the men in their life- fathers during childhood, husbands during youth

² Radhika Kapur, *Status of Women in Ancient India*, University of Delhi (2019) (January 17, 2021), https://www.researchgate.net/publication/330220793_Status_of_Women_in_Ancient_India.

and sons in old age. Also, he had not even considered widows to be a part of the society. Another detrimental development during this period was the rampant prevalence of prostitution and Devadasi system which still exists in South Indian states, though the cases have gone down. The Devadasi system was not inherently aimed to dehumanise women, as during the Chola Empire, Devadasis were respected, revered and socially appreciated along with holding high positions. In the last few years, this practice pushed young girls into prostitution; since they had become part of the custom even before they hit their puberty, six or seven years being the youngest, they did not consent to it. Even if it is argued that the child had *indeed* agreed, by law, a minor's consent is not a valid consent.

Also, the roots of patriarchy were sown in this period. If one would notice, it was only the women who were refused property rights and dependent upon the male members of their families. Even a widower was not restricted in any way close to the widow's. Widows were not given the right to remarry irrespective of the fact that the widow was young and had a life ahead of her to rebuild her life and start anew. Widower was not barred from marrying again. It was in the year of 1856³ that widows were given the legal right to remarry but unfortunately, the stigma associated with a widow's (or divorcee's) remarriage continues to be shared by the community till date. The predominant reason why men were allowed to remarry as well as be the decision-maker of the family was because it was a belief that a family tree expands from the males only and thus, male child was preferred over a female. This was also the reason female infanticide became a rage and has been in practice since centuries.

In the Medieval period⁴, the status of women was not distinct from the Ancient period. As if they had not been affected enough, foreign conquests resulted in women being mistreated and ridiculed. The medieval age is considered to be the 'Dark Age' for Indian women since more evil practices like dowry and compulsory *streedhan* (which the women had lost access to) led to higher rates of female infanticide. Also, caste system played a crucial role in determining the facilities a woman could have access to. Sexual exploitation of women was uncontrolled since women had been portrayed as an object to fulfil sexual desires of male.

In short, these two time periods had formed the backbone of whatever forms of mistreatment the society witnesses against women from patriarchy to sexism and exploitation.

2. Colonial rule

During the British Raj, some of the gross evils of the Indian society had come out of their closet- social practices like sati and child marriage were heavily criticised by English as well as Indian reformers including Raja Ram Mohan Roy, Jyotirao Govinrao Phule, etc. Another gross human rights violation upon women was female infanticide. These practices have been addressed rigorously in the present-day but not completely eradicated. The logic given by the practising groups have remained constant throughout the centuries- females were looked as

³ The Hindu Widow Remarriage Act, 1856 passed by Lord Canning (drafted by Lord Dalhousie).

⁴ *The Status of Women in Medieval India*, Patna University (January 17, 2021) https://www.patnauniversity.ac.in/e-content/social_sciences/home_sc/MHomescience47.pdf.

financial burden. The families who had young and unmarried female members wanted to rid themselves of the package they brought with their birth, *that is*, dowry. In those days, it was a taboo for women to be in the forefront of any commercial activity so even if they did participate in economic activities like agriculture (being the primitive economic activity back then), they could not bring any significant income on the table. Therefore, female offspring became a nightmare to maintain- there were more mouths to feed but a perpetual shortage of money. The only solution was to get them married young since the younger the bride, the lesser will be dowry demanded by the bridegroom's family. Reformers like Keshab Chandra Sen⁵ and BM Malabari⁶ fought hard against the social current to eradicate this practice of child marriage. Their continued struggle led to the *Sharda Act of 1929*⁷ where the minimum age of marriage was raised to 14 as opposed to the usual ages of 5-7 (after independence, the age was raised to 18 years). In extreme cases of discrimination and social stigma, female foetuses were killed in the mother's womb altogether. What people did not understand was that the practice took a massive toll upon the mother's body and health- reproductive and physical. Witnessing the destruction of one's own child, unborn or not, seriously damages one's mental health but the times were such where mental health was a matter swept under the rug.

With respect to Sati, it was not mandatory for the widow to go through with it but the conditions for her survival within the society after the death of her husband and refusal to undergo the practice would be so hellish that in most cases, women chose to burn themselves to death on the pyre with their deceased husband rather than live. Just in case a widow manages to spare herself from the practice, she would be ousted from the society and live a life worse than an animal- historians have said that such widows will be given one meal for the entire day, which in itself would either be too less or devoid of any nutrition necessary to survive; she would be banned from any form of social gathering especially the religious or pious ceremonies depriving them from their right to form any kind of relations; in some cases, the widows would spend their days and nights outside the house, under the sun and with poorly made clothes failing to protect from the cold. In short, the life of a surviving widow amounts to nothing other than a slow and painful death from diseases, dehydration, starvation, etc. all which can be treatable. The understanding behind the popular preaching of this practice by the Brahmans was that it is the duty of the wife to serve her husband and a good wife shall give away her life the moment her husband passes onto the afterlife since she is morally and spiritually duty bound to him and he was the sole reason behind her living. This was believed to prove the loyalty and how good of a wife a woman was, those who survived were seen as the opposite of good- they failed to honour the integrity of their husband.

In other words, the status of women however high or low were marred by-

⁵ Keshab Chandra Sen, a Hindu philosopher and social reformer.

⁶ Behramji Merwanji Malabari, an Indian social reformer known for advocating protection of women's rights and against child marriage.

⁷ The Child Marriage Restraint Act, 1929, passed by the Imperial Legislative Council of India.

- ❖ Social stigma associated with the warped understanding of an ‘ideal’ wife
- ❖ Being perceived as financial burden by the family
- ❖ Social ill-treatment through practices like Sati

The Brahmanical authority played a key role in the preservation of such evils through their spiritual and religious teachings. Along with them, as ironical as it may sound, women were also perpetrators to the value-based atrocities being committed against them. Call it lack of education or systemic brainwash, women have always been portrayed as upholders of values and beliefs (as related to the ancient scriptures that have defined a family comprising of two units- external factor (father/male) and internal factor (mother/women)). Values and beliefs are elemental to any widespread custom or tradition. Accounting for the same, when one generation of women is manipulated into defending inherently wrong beliefs, them staying true to the image they have been painted in, subject the next generation to the same. Men learn that they are superior and women are taught into submission. This again brings the notion of fitting into the category of an ‘ideal’ wife otherwise marriage prospects for a young women will be highly unlikely which will exacerbate the economic crisis her family would face to maintain her for a longer period of time, specially where poverty or financial crunch rules the family dynamics.

3. Post-Independence

Post-1947 the issues faced by the public had soared high. India was an economically struggling country, having been dependent on the British to work the Indian economy. India’s new independence had left a major chunk of the population confused since the focus was highly inclined towards political soundness but economically, issues regarding poverty and unemployment were not being tackled properly. For sound politics, the economy also needs to sustain its efficacy. Moreover, the Indian economy in itself had social issues concerning women- as per report⁸, women constituted nearly 24.1% in 1955 and 17.5% in 2017 of the overall labour force, and the average age was 20 years and above. However, they were paid less than men, the latest statistic estimating the percentage to be 19% as of 2019. Furthermore, women labour force participation has gone down in agriculture sector and increased in the sectors of hospitality which has limited scope for career progression. In other words, young women with potential of full working capability have been found to join occupations with low income, career prospects and job security fuelling underemployment. There are three major reasons behind the overall decline of female labour force participation while increase in opting for unorganised service sector jobs-

- ❖ **Introduction of mechanised forms of agriculture:** the traditionally labour-intensive industries of India like agriculture and mining have gone under tremendous mechanisation which, combined with the innovations brought by the LPG policies

⁸ Mitali Nikore, *Where are India’s working women? The fall and fall of India’s female labour participation rate*, South Asia @ London School of Economics blog (2019) (January 15, 2021), <https://blogs.lse.ac.uk/southasia/2019/10/22/where-are-indias-working-women-the-fall-and-fall-of-indias-female-labour-participation-rate/>.

enabled India to increase aggregate output for global competition, inevitably put quite a good number of its labour force out of jobs and most of them were women. First, since it has been already stated that women generally went for unorganised labour, it was easy to exploit them. Second, men have always been preferred over women for the same post/job because of the traditional belief that men have a better work aptitude. With increased automation being introduced in every possible labour-intensive sector, a greater proportion of women are being expelled due to the variations of the abovementioned points given as sound reason. In a sense, automation has somehow provided a means for sexist selection criteria to prevail among the industries concerned.

- ❖ **Women as Secondary Income earners:** traditionally men have always been the sole bread earners of a family. They looked after the business, finances and monetary aspects of the household while women were incarcerated into the typical role of mothers and daughters. For decades, this has been passed on to the next generations as the correct order to be followed. Psychologically speaking, once a recurring observation has been internalised since one's childhood to adulthood without any form of firm challenge to it, it leads to a fixed mindset. Indian society presents itself as its perfect example- even after seventy-three years of independence and over two decades since modernisation started in the country, women are still placed below men. In a family, the husband is still perceived to be the bread-earner and the income earned by the wife is considered as 'extra'. Funnily enough, the same occurs in households where the wife may be earning more than the husband, be it marginally. Another point causing the continued opinion of women as secondary earners is because women have a higher dropping out rate compared to men as shown by the statistics⁹ showing rate of female labour participation to have gone down from 30.28% in 1990 to 20.52% in 2019. This was a result of the 'income effect hypothesis', *that is*, as the average wealth of a household increases invigorated by economic growth, need and demand for supplementary income ebbs low. Women being the carrier of supplementary income no longer deem them rendering services necessary and resign to fend for their families.
- ❖ **Family as an interfering social institution:** family plays an imperative role in the determination of positions and functions played by its members, and a lot of it has to do with the pigeonhole concept of gender roles. Globally 43% of women have had to leave their work due to the pressure of conforming to the roles as mothers and wives. In India, 73% of new mothers leave their jobs and only 27% return but a mere 16% advance since their rejoining. As per the report¹⁰, the fundamental reason snubbing women from working is marriage, children and familial obligation. Women have

⁹ *Female labour force participation rate across India from 1990 to 2019*, Statista Research Department (2020) (January 17, 2021), <https://www.statista.com/statistics/983020/female-labor-force-participation-rate-india/>.

¹⁰ *Predicament of Returning Mothers*, Genpact Centre for Women's Leadership, Ashoka University (2018) (January 21, 2021), <https://www.thequint.com/news/india/working-mothers-in-india-report-ashoka-university#read-more>.

been cornered to feel ‘guilty’ for their unwillingness to ‘compromise’ on their career aspirations to fulfil their duties toward their families. Moreover, with such low rates of participation, very few remain at the top of their game in the workplace. As a consequence, they either get promoted slower or not at all since their bosses cite reasons like inefficiency, inconsistency or uncertainty of their regularity at the job.

Upon deeper study, one will ascertain that all these factors contribute to the increasing wage gap India has been facing since late 2000’s.

WHAT IS FEMINISM? IS IT EQUAL TO GENDER EQUALITY?

Feminism as a movement and ideology basically holds that both genders are equal with the same rights and liabilities. Initially, the movement was concerned with the upliftment of women in relation to the status of men, both socially and economically. In the recent years, it has become more about how *everyone* ought to be treated equally and fight the effects of patriarchy on the valuation of ostracised members of the society- women and the LGBTQIA community. Equality is an abstract concept, for one it has more to do with finances, for another with societal norms. It is also a utopian concept because in life, no two persons can ever be equal but Society strives to create an environment with equality in order to mend the gap between all the sections. It is an established idea that just like no one is truly perfect even equality is never truly achievable. Nevertheless, while one may not be perfect, they will be perceived as perfect by someone. Similarly, a society is never in the state of true equality but it will be perceived as equal. This is achieved through regular efforts to treat each individual on a micro level as equally as possible and a group/section on the macro level as equally as possible. Therefore, it is incorrect to say that our society has achieved equality- the person assuming this may come from a part of the society where the constant effort to close the gap is more prominent but if the same person is to observe this assumption as a third entity, detached from his/her privilege, on a national level, they would see that equality in the lived reality is a lopsided phenomenon.

Feminism, in this regard, deals with the constant struggle of uplifting women (the subject of this paper) to that of men’s status. Feminism is necessarily dealing with empowering women at par with men. Feminism is not *equal* to gender equality, a misconception spread by celebrities like Emma Watson who once said “If you stand for equality, you are a feminist”. The reason being that it is an obvious fact that women have suffered due to patriarchy in more ways than realized. Patriarchy has benefited men for long so certainly a movement which is independent of men is called upon because however pleasing it may be to have the support of the ‘dominant’ section, the motif of Feminism is to teach the society the all-rounded actuality that women are independent of men; they can do everything a man does *without* the involvement of men in the task. In other words, making Feminism about gender equality defeats the purpose of making the society take note of women’s struggles; it invalidates, nullifies the entire point. The prime example to understand this can be taken in light of the recent Black Lives Matter (BLM) movement in the United States after the death

of a Black man due to police brutality. The White Supremists along with those unaffected by the event had countered with “Every life matters” and “Blue life matters”. The highlight is on the former argument- there is no denying that every life matters but Blacks have been at the worst end of the stick. Statistics¹¹ show that more Whites die than Blacks but Blacks die for being who they are, which is not the case for Whites. Therefore, just like how ‘Every life matters’ invalidates the Black Lives Matter movement, making Feminism all about gender equality overlooks the struggle the second sex has been facing since years.

Feminism is a movement for females. By saying that Feminism is gender equality, it boils down to respecting both masculinity and femininity within the social gender constructs. But this will render the movement toothless because Feminism is all about fighting these gender constructs which have been continually oppressive towards women. It is a sub-section to Human Rights is alright but Human Rights in itself is an indeterminate term¹²; it includes issues like Refugee crisis, poverty, armed conflict, etc. all of which talk of various forms and shapes of discrimination. Considering this, if we simply call Feminism, not Feminism but an issue of Human Rights violation, it will only be recognised, not realized.

If one digs deeper into the subject, they would see that Feminism is male-centred equality because of the way it has been advocated by many. It talks about women being uplifted to be equal to men, meaning thereby women ought to measure themselves against the standards set by men. But that is impossible because biologically, mentally and physically women are different from men. This biological difference like the ability to give birth, menstruation, etc. have been manipulated by patriarchal norms to be looked as a weakness. The objective behind this movement is to prove the validity and worth of women because of these differences- it makes women more human. Women do not have to be the *same* as men to be considered capable, an incorrect alteration advocated by those who want equality within a system inherently unequal; as a means to avoid challenging the male-centric norms all the while giving the illusion of gender equality.

Keeping all these points in mind, Feminism has opened the conversation to question the ‘normal’ of the society. Some of the common observations propagated by media and other audio/visual platforms are-

- The taboo surrounding female sexuality and sexual health
- Body shaming and fat-phobia
- Criticism for not conforming to the desired beauty standards (too much makeup versus plain Jane argument)
- Commercialisation of insecurities faced by women
- Stereotypical shows, scripts, etc. following the ‘rich man loves poor girl’ trope
- Equating femininity with submissive/subservient behaviour

¹¹ DeGue, S., Fowler, K. A., & Calkins, C. (2016). Deaths Due to Use of Lethal Force by Law Enforcement: Findings From the National Violent Death Reporting System, 17 U.S. States, 2009-2012. *American journal of preventive medicine*, 51(5 Suppl 3), S173–S187. <https://doi.org/10.1016/j.amepre.2016.08.027>.

¹² Chimamanda Ngozi Adichie, a Nigerian novelist

School & Education an integral part

Education also plays a key role in the empowerment of women. But how does it really equip women to become aware of her rights? There is a difference between literacy and education, Literacy in the literal meaning means ‘the ability to read and write’ as well ‘competency in a specific field’, on the other hand, education has more to do than just going to schools or universities and books. It is the ability to apply what one learns to build one’s career. Accordingly, the ideal atmosphere of a school is where students are given ample opportunities to express themselves as creatively as they can. Subjects like sociology, history, political science, among others provide a glimpse how the society is formed, origin, importance, functions and how its institutions affect the generations to come. This is relevant because school is one of the most fitting examples of society. In school, social spheres like friends, classmates, teachers and branches of the board represent different segments of a society on a miniature scale. All these components affect an individual’s decisions, thought-process and actions. Schools also place great importance upon the grooming of the students-girls are taught how to embrace their femininity to channelise traits like elegance and modesty; boys are taught to be level-headed to channelise their innate qualities of leadership and management. Of course, since schools have the same curriculum for all students, it is obvious that boys and girls both develop into confident and aware people but it is the subtle difference in the lived reality that sets both the genders apart. Certain remarks like “sit properly”, “keep your legs closed” and associating any form of interaction with the opposite sex as a way to “attract their attention” are common for girls from the moment they step into their adolescence. Whereas boys are taught to be gentle towards girls since they are *fragile* and interact less with them as they can be *distracting*. Young minds observe even the tiniest of details and it is not late when they pick up these gestures and assimilate them into their personalities. Another topic which perpetuates discrimination against women and girls is the awkwardness around topics of female sexuality and anatomy like menstruation as well as the fact that most of the derogatory slurs are associated with females and their genitalia. What any person can learn from these daily occurrences is that a female body has to be hidden away, its aspects not be discussed. Moreover, people believe that any abuse targets the thing the other person respects or values the most, it is true but inevitably, propagates the idea that the object of use is the weak link. Therefore, women are the weak link becomes a rigid assumption, the ultimate result of patriarchy.

Proper education gives a voice to the youth to be brave enough to ask the question of “why?” and it necessarily need not be confrontational. In schools, a platform is provided through activities like debates, group discussions, declamations and other speaking-listening skills to open a matter for the audience to ponder upon. Sociology delves deep into exploring the forces at play which have defined how an individual and society interact, Political Science talks about politics framing the outlook of the society and History recites the events which crystalised the social norms prevailing. All of these humanitarian subjects combine together to give a comprehensive idea driving individuals to form coherent questions, demanding answers to why something which happens, continues to happen. Young girls by participating

in activities which compel them to brainstorm on critical subject-matters develop into adults who learn to not simply accept something as it is and think about the rationale behind it. They learn that vocalisation of their mental notes is significant to spread awareness of an event. They learn that gender roles are not negative, rather forcing one to conform to the gender roles is. They develop the understanding through picturing school as a society of its own that just as education in itself has undergone evolution over the years, the connotations attached to its subjects have also evolved. Moreover, education helps one to build self-esteem.

During the historical times, women and other vulnerable groups were defenestrated from the frontline of Society and hence, were robbed of the prospect to debate their rights. Leaders after realizing that the holistic development of the country can only be realized with inclusion of marginalised groups hand-in-hand with feminism planned out the emphasis of proportional representation in politics to address their issues on the State and National level. However, only 13% of the parliamentarians are women. This brings out the point that most of the development regarding gender equality apart from the few women in the Indian Parliament are inspired either by the social workers/activists or the West which has been more forward with the movement's impact on all spheres of life. This is also because in the Western countries, education is more gender-neutral as well as there is a collective understanding of *dignity of labour*. How can education be gender-neutral? First of all, education is not always with respect to the students. It has a lot to do with the atmosphere present as well. How well versed the female teachers are with the differences girls and boys face in their lived reality improves the approach they take in teaching them with practical knowledge. Also, as the world has become more competitive and commercial, the value for industry-ready youth has shot up. Here comes the internship atmosphere which again reeks of male-dominated workforce, *that is*, there is a tendency for male interns to be graded and/or promoted better and faster over female interns. But if a woman is educated to identify the unjust treatment, she can retaliate against it. Irrespective of the end result, what is necessary is the acknowledgement that an act is wrong/hurtful.

Precisely, education is a must for every child, every individual because it not only helps in the character and personality development but also compels the person to think critically by navigating through day-to-day interaction with different individuals and make unbiased observations on how things are and how they ought to be. Education not only introduces young minds to the world of books but also backs common sense, concepts of morality and order with coherent and analytical reasoning.

The reason education of girl child has been argued to be fundamentally required is because Feminism gives life to the ideal principles taught in schools which, if not in practice, are nothing more than utopian ideas- only good in theory.

Indian Legal System: Feminist Jurisprudence

Law has a lot to do with how the oppressed can be brought out of their shells because law goes beyond the social norms to dictate through reason, logic, ethics and morality to confer rights and remedies upon its subject to compel the interfering forces to let up. Punishment,

penalties, sanctions, etc. are all words for repercussions one would have to face when they violate the *natural rights* of others. Natural rights are minutely set apart from Fundamental Rights and Human Rights- natural rights are something humans are born with which the government is supposed to protect from infringement and borne out of customs and practices, Fundamental rights are specific rights necessary to live a life of dignity enshrined in the Constitution and Human Rights are rights a government is obligated to provide and they can change with the circumstances. Fundamental rights may be expanded or confined to an extent but are not changeable.

In India, one of the cases which talked of curbing practices based on patriarchal notions in the case of *Bodhisattwa Gautam v. Subhra Chakraborty*¹³. The case also elaborated on the need to formulate laws to secure the position and status of women. This case elaborated on positive discrimination and reasonable classification as a means to bridge the gender gap.

The case was also the perfect balance of Article 14 and Article 15 which state that all persons are equal before the eyes of the law and shall enjoy equal protection of it, and the latter talks of prohibition of discrimination on the grounds of gender, sex, etc. all the while empowering the State to make separate provisions for women¹⁴. This may seem as discrimination *prima facie* but it is in reality a case of reasonable classification aiming towards the realization of Article 14, *that is*, equality.

In the 2018 judgement regarding striking down Section 497 of the Indian Penal Code which dealt with adultery, the main issue raised was does the Section not make women the property of men since it's only the husband who can sue the man having an extra-marital affair with his wife but not the wife in the case of her husband? It also provided impunity to the woman who was equally liable for forming such illicit relations with a married man. It brought Article 15 and Article 19 into question. For the wife, adultery only remained as a ground for divorce but she could not sue her adulterous husband or the woman her husband had been cheating with. This judgement was well-received but at the same time, feminists argued that previously men had been given the opportunity to sue their spouse for their adultery but a wife has been robbed of it. Another argument was that adultery in itself is a crime, hence rather than decriminalising it, the law should have been made gender neutral. A similar situation was reflected in the case of *W. Kalyani v. State Tr. Insp. Of Police & Anr.*¹⁵ where the court had held that only a man can be prosecuted for the crime of adultery, not a woman. The entire argument also includes Article 14 in its entirety.

In 2017, the highly debated case of Triple Talaq was decided declaring the practice as unconstitutional with a 3:2 majority. This case had come in wake of the issue Muslim women (wives) were facing due to the abuse of the practice of talaq-e-biddat by their husbands. Husbands were divorcing women not only on baseless grounds but in the most erratic manners too- via text messages or phone calls. It not only questioned the value our society

¹³ 1996 SCC (1) 490.

¹⁴ India Const. art. 15. cl. 3.

¹⁵ CRIMINAL APPEAL NO. 2232 OF 2011

has associated with marriage as a holy bond between two persons but also questioned the rights a wife has over her husband as well as her own security and stability within such a relationship.

Another landmark judgement is the case of *Independent Thought v. Union of India* where the apex court has held that sexual intercourse with a girl below 18 years of age amounts to rape irrespective of her marital status and further elucidated that Exception 2 of Section 375 of the Indian Penal Code 1860 violates principles of equality and harms a girl child's (between the age of 15 to 18 years) right to bodily integrity along with mental trauma.

From these cases, it has been noted that the aggressive Feminist movement has provided some relief to women but a lot is yet to be done. In rural India cases of dowry death, child marriage as well as female infanticide is still to be addressed. What is worrisome is that over 65% of India's population lives in the rural areas meaning that whatever progress we are witnessing is limited to the urban and sub-urban regions. This is where the Government has to come into the picture and implement radical methods to raise awareness and resolve such matters which find their roots in customs and traditions.

CONCLUSION

"We realise the importance of our voices only when we are silenced" – Malala Yousafzai¹⁶

This famous quote by the youngest Nobel Prize laureate Malala Yousafzai has quite aptly summed up the entire motif behind the need to recognise the rights of women and that such rights are not confined only to protection from sexual violence. It certainly forms a major part of the argument but with higher awareness among the young females of the generation along with better education, the fight has also shifted its attention to unchartered areas of mental and psychological abuse women have faced since childhood. Another contention that has been highlighted is that the portfolio-holders in the Society including lawmakers, administrative officials, politicians, etc. should not wait for an event, aimed to stifle the voice of women, to occur in the first place; with an enhanced education system, pragmatic yet sensible leadership and taking history as an example, a hypothesis of probable negative and/or criminal occurrences can be chalked out. Sketching out such blueprints by experts of the field will assist the national heads in the formulation of laws, regulations and policies, therefore, not compromising the safety and harmony prevailing in the society all the while not being ignorant of gender-based hate crimes and promoting false sense of security.

Moreover, what goes on in the political arena culminates into disturbing the social and economic spheres particularly for the group being targeted. Therefore, in order to realize the objective laid down by various laws, judgements, policies and collective actions expressed in philosophical contexts, discussions, etc. the first step should be toward dismantling the mentality of our leaders because only when they correct themselves of their stereotypes and prejudice, will the same be reflected by the society as a whole.

¹⁶ Malala Yousafzai, a Pakistani activist for female education.