Patriarchal mind set of the legal system

Why in news?

Sessions court in Kerala observed that the offence under Section 354A of the Indian Penal Code is not prima facie attracted when the de facto complainant was dressed in 'sexually provocative dresses'.

What is the background of the issue?

- The case is related to alleged sexual harassment.
- Sessions court in Kerala granted anticipatory bail to an author and social activist in the State.
- The sessions court had relied on photographs submitted with the bail application of the accused showing that the de facto complainant was wearing a dress that was 'sexually provocative'.
- The observation was clearly an affront to a woman's constitutional right to dignity, life and personal liberty, and privacy.
- **Other instances:** The judiciary's patriarchal mind set was evident in its judgments on Section 498A (dowry harassment) of the IPC where it said the law was being misused.
- In rape cases where the court asked why the women raped acquiesced and did not protest.
- **Section 64 of the Criminal Procedure Code (CrPC)** states that when a person on whom summons are to be served is not found, a duplicate of the summons may be left with an adult male member of the family.
- **Section 98 of CrPC** is a substantive provision which states that a district magistrate has the power to compel the restoration of an abducted female child to her husband or parent.
- **Section 129(2) of CrPC** states that an executive magistrate may require the assistance of any male person in dispersal of an unlawful assembly.

What is Section 354A of IPC?

- It relates to sexual harassment and punishment for sexual harassment.
- When a man commits the following acts, it is considered as a sexual offence:
    - Physical contact and advances involving unwelcome and explicit sexual overtures
    - A demand or request for sexual favours
    - Showing pornography against the will of a woman
    - Making sexually coloured remarks
- **Punishment:** rigorous imprisonment for a term which may extend to three years, or with fine, or both.
- For sexually coloured remarks the punished is an imprisonment for one year, or with fine, or both.

What is known as Freudian slip?

- The ratio decidendi (rationale behind the decision) proclaimed by the sessions court judge is a (patriarchal) Freudian slip.
- In psychoanalysis, a **Freudian slip** is defined as an error in speech, memory or action that occurs due to the interface of an unconscious subdued wish or internal train of thought.
- Terming a woman's dress as 'sexually provocative' is a result of the objectification of woman as an erotic quiddity.
- In this case, it is an unwitting sparking of a patriarchy that affected not only the individual judicial officer but also the entire socio-legal system.

What is the Aprna Bhat vs The State of Madhya Pradesh Case?

- Advocate Aparna Bhat and eight other lawyers filed the appeal against the impugned decision issued by the Madhya Pradesh High Court.
- The accused of sexual assault was ordered to visit the victim's home on Raksha Bandhan with Rakhi and be tied by her as a condition of release.
- The Supreme Court observed that: the use of language which diminishes the offence and tends to trivialize the survivor [in gender violence cases] is especially to be avoided under all circumstances.
- The controversial comment of the Kerala sessions court judge is a clear violation of the guideline given by the Supreme Court of India.

What are the struggles faced by women in availing justice?

- The process of going to court is hard for women.
- It is even harder when women do not have financial or emotional support from their family, custom or the present reading of the law.
- The representation of women in the Indian judiciary too is poor.
- Justice Indira Banerjee, the senior-most woman judge in the Supreme Court, highlighted how the top court (since its inception in 1950) has seen **only 11 women judges**.
- For women, ensuring human dignity is still a broken promise.
- In **Bradwell vs The State [of Illinois] (1872)**, the Supreme Court of the **United States** held that 'god designed the sexes to occupy different spheres of action'.
- It also observed that 'it belonged to men to make, apply, and execute laws, and regarded it as an axiomatic truth'.
- The fact of the case was that Myra Bradwell, residing in the State of Illinois, made an application to the judges of the Supreme Court of that State for a licence to practise law.
- The Supreme Court denied her the permission and was of the opinion that "the paramount destiny and mission of woman are to fulfil the noble and benign offices of wife and mother.
- In the **Hadiya Case**, the judgement saw Hadiya as property whose parents could decide whom to hand her over to.
- In India, the antediluvian attitude that women are the children of a lesser god, is still

ruling the judicial roots.

What is the need for feminist jurisprudence?

- It is a philosophy of law based on the political, economic, and social equality of sexes.
- A remedial measure to cure the patriarchal mind set of the socio-legal system would be the inclusion of feminist jurisprudence in the curriculum for law students.
- Feminist philosophy of law applies insights from feminist epistemology, relational metaphysics and progressive social ontology, and feminist political theory.
- It helps to understand how legal institutions enforce dominant gendered and masculinist norms.
- It is an effort to examine and reformulate legal doctrine to overcome entrenched bias and enforced inequality of the past as it structures human concepts and institutions for the future.
- Choice of dress is an integral part of an individual's freedom of privacy and dignity.
- Judging a person's dress is not the business of a judge; nor is the dressing style of a woman, a licence to outrage her modesty.
- Understanding the legal conundrums with the assistance of feminist jurisprudence would definitely help debunk the patriarchal delusions.
- The law of the land should not to promote prejudice and gender bias.

What has been the historical status on women dressing?

- In 1583, King Henry III of France decreed that fabrics such as velvet, satin and damask to be limited to the elite class.
- The king stressed that god was angry because he could not recognise a person's status from his clothes.
- A similar royal order was issued by King Edward IV of England in 1463 stating that God was displeased by excessive and inordinate apparel.
- In 1429, Joan of Arc adopted male clothes; this wearing of male attire was among the charges against her when she was tried by the Bishop of Beauvais.
- Donning male attire was contrary to the modesty of women and prohibited by divine law.

What is the way forward?

- The inclusion of women in the judiciary would ensure that the decision-making process is more responsive, inclusive and participatory at all levels.
- A judge of the Indian Republic who is committed to the trinity of liberty, equality and fraternity, should not be a reincarnation of Henry III, Edward IV or the Bishop of Beauvais.
- The judiciary which interprets laws passed by legislative bodies is supposed to be neutral.
- A change could be brought about through awareness and gender sensitisation.

Reference

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