
FEMINIST JURISPRUDENCE & INDIAN PERSPECTIVE

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Introduction

Feminist jurisprudence emphasizes the various strands of philosophy and theory. It is a natural extension of female reflections and speech to another area of discourse, namely law, and justice. Before delving into the concept of Feminist Jurisprudence, it is necessary to define the term "Feminism." The author intends to cover the subject comprehensively and provide the reader with a complete picture. This paper examines the feminism waves in India and their impact on the field. Following that, the paper sheds light on the upcoming landmark amendment to the Medical Termination of Pregnancy Act of 1971, which is one of the subjects to understand the development of feminist jurisprudence from an Indian perspective. This paper investigates whether the amendment meets the demand of Indian women and whether the amendment is free of patriarchal morals and values. The paper also identifies instances in which traditional theory has outperformed feminist jurisprudence. Finally, before proceeding to the conclusion, the paper identifies the impediments to the growth of feminist jurisprudence and discusses the changes that feminism and feminist jurisprudence have brought about in India. Feminist jurisprudence is a legal philosophy based on gender equality in politics, economics, and society. Feminists believe that traditional law and practices are based on men's legal perspectives and do not reflect women's perspectives or historical roles¹.

There are three major schools of thought in feminist jurisprudence:

- Cultural feminism: This school of thought focuses on giving men and women a voice for their moral and ethical values. This school values and celebrates the distinction between men and women.
- Liberal Feminism: This school promotes individual freedom, and freedom from age-old male authority beliefs, and seeks to eliminate gender-based distinctions.

¹ Jackson, Emily, *Catharine MacKinnon and Feminist Jurisprudence: A Critical Appraisal*, 19 Journal of Law and Society 2 (2022).

- Radical and Dominant feminism: On some levels, this school is similar to cultural feminism in that they both oppose gender inequality and believe in abandoning traditional practices that were developed from a male perspective and consider men to be superior.

Feminists attempt to call into question laws about domestic violence, rape, divorce, maintenance, reproductive rights, and employment, and they have significantly changed gender-discriminatory laws into gender-neutral laws. One such case is the landmark judgment of *Joseph Shine v. Union of India*², which held that Section 497 of the Indian Penal Code treats women as chattel for this provision, is discriminatory based on sex, and violates Articles 14 and 15 (1) of the Indian Constitution, and thus such provisions should not be pronounced valid.

Lord Macaulay's 1860 Indian Penal Code has the color of patriarchy and represents the male-centric structure of society. Laws enforcing male-centric values can be traced back to the 5th century C.E. when Manusmriti was developed, categorizing the roles and responsibilities of men and women.

Feminist Jurisprudence emphasizes the chasm created by our society and the gender gap. It is a topic that has recently come to light but has been evolving for a long time. This paper aims to examine Feminist jurisprudence from an Indian perspective. By understanding the history of the Feminist Revolution in India and how it has evolved, we can always understand the nature of how society works. One of the examples cited in the paper is the recent Sabarimala judgment, in which there was a constant tussle between women's right to prayer and equality and one's cultural and ethical beliefs.

Feminism in India

The term "feminism" is derived from the Latin word "Femina," which means "woman." The first wave of feminism in the world occurred between 1850 and 1940. The first declaration, Declaration of Sentiments, Grievances, and Resolution, was held in 1848 in the United States of America. The declaration's goal was to achieve the "sacred right of franchise." The first wave of feminism focused on women's legal rights, particularly the right to vote. Following that, the revolution gained momentum and spread throughout the United States, culminating in

² *Joseph Shine v. Union of India*, AIR 2018 SC 4898.

the Women's Revolution. The well-known French Revolution also represents characteristics of a women's revolution and women rising to break down social barriers. The second wave of feminism addressed issues such as political representation, economic representation, sexuality, and so on³.

However, the development of feminism in India differs from that of other countries. In India, the development of feminism occurred in three stages, and unlike in other countries, men initiated this movement.

The First Wave of Indian Feminism, which lasted from 1850 to 1920, uprooted the age-old practice of Sati. Raja Ram Mohan Roy was the first to speak out against the subjugation of women's rights; he openly opposed Sati. Beginning in 1818, he set out to pique public interest in the issue. When the Orthodox Hindu petitioned parliament to deny Bentinck's action prohibiting the Sati rite. Following this, Governor-General Lord William Bentinck issued the Bengal Sati Regulation on December 4, 1829. This proved to be the movement's most significant victory during that period.

And, all of a sudden, a wave of feminism broke out, calling into question the sanctity of laws that prohibited widow remarriage by passing the Widow's Remarriage Act in 1856. Previously, widows were doomed to a life of prayer, drudgery, and fasting; they were a neglected part of society, thought to be unlucky, and were excluded from any celebration. Pandit Vidyasagar was the one who started the fight against the social evil of widow remarriage prohibition. The Widow Remarriage Act was passed by the British-Indian Government at that time. However, with such rapid progress came much criticism, and there was a national form of resistance to any colonial efforts to modernize the Hindu family.⁴

The Second Wave of Indian Feminism can be found between 1920 and 1980 or during the Pre-Independence Era. The reign of the Indian Feminist Movement was in the hands of Indian women. Women's rights became more popular as women became more aware of their rights and stood up to demand them from male members of their families. Women were encouraged to participate in the nonviolent civil disobedience movement against the British Raj by Mahatma Gandhi. Sarojini Naidu took command of the Indian National Congress in 1925 and

³ Meera R Menon & Sidharth A J, *Feminism and Feminist Jurisprudence in India*, 3 International Management of Law Management and Humanities 3 (2020).

⁴ Dr. Kalpana Devi & Prof. Dr. S.N., Sharma, *Feminist Jurisprudence an women rights in India*, Bharati Law Review (2018).

became the organization's first Indian female president; she was a pioneer of women's rights. She travelled throughout India with the Annie Besant Women's India Association to promote women's literacy and education.

During the Indian movement, many women rose to prominence and voiced their opposition to the patriarchy and the British. They urged other women to stand up and oppose them. Matangini Hazra, also known as Gandhi Buri, Bhikaiji Cama, Lakshmi Sahgal, also known as Captain Laxmi, and many others are among the lesser-known women who spoke out against patriarchy and the colonial system.

Article 14 of the Indian Constitution, which states that every citizen of the country should be treated equally, also grants women the right to vote. In contrast to other countries where women fought for these rights.

The Third Wave of Indian Feminism began with a triumph in 1992, when Rebecca Walker declared out loud, "I am the Third Wave," for a magazine. This began with them highlighting the issue of intersectionality and voicing their opposition to harassment. The establishment of the National Commission for Women in 1992 was a significant step toward promoting and protecting women's rights.

Sexual harassment in the workplace was deemed an important topic for discussion. In *Vishaka v. State of Rajasthan*⁵, the Honorable Supreme Court of India enacted the Prevention of Sexual Harassment at Workplace (Prevention, Prohibition, and Redressal) Act, 2013. In the aforementioned case, Bhanwari Devi, a social activist, was brutally gang-raped by five men from the village where she worked in collaboration with the Women's Development Project to educate people about the dangers of child marriage. The session court initially dismissed the case and acquitted the five defendants.

The Supreme Court examined the case through the lens of gender equality and the right to life and liberty, referring to the International Convention on the Elimination of All Forms of Discrimination Against Women, and decided to adopt regulations to protect women's workplace safety.

⁵ *Vishaka v. State of Rajasthan*, AIR 1997 SC 3011.

Similarly, Shah Bano Begum paved the way for thousands of women to make legitimate claims that had previously been denied to them. The practice of talaq-e-bidat and talaq-e-mughallazah was declared unconstitutional by the Indian judiciary. These practices raised serious concerns about gender equality and rights. In the landmark Shayara Bano Case, the Indian judiciary proclaimed the law of equality over personal law. Women of all faiths applauded the amendment.

It also accepted Trans Rights and made them an integral part of its journey. It was open to all ideas, aesthetics, races, and languages. So much so that they began to own terms that were previously considered derogatory, such as the Slut Walk. The movement's emphasis was on intersectionality, transfeminism, sex positivity, and postmodern feminism, among other things.

We are currently in the Fourth Wave of Indian Feminism, and it is a worthwhile journey. We've seen the MeToo movement pick up steam and fight through society's dark side. Since the beginning of the feminist movement in India, we have been ardent supporters of Feminist Jurisprudence. We have made certain that the voice of the voiceless and the discrimination and pain experienced by women are heard.

For example, there were protests during the Nirbhaya Gang Rape Case⁶, which pushed the authorities to file the charge sheet in the case as soon as possible; there were protests when Dr. Priyanka Reddy was brutally gang raped and murdered, which caused a commotion and kept the Hyderabad government and police on their toes to work on the case. All of these examples demonstrate that the feminist movement never died.

The fourth wave is not a unified concept; it means different things to different people. While some were outraged by India's judicial system and demanded better trials, another group was fighting for equal pay, and another group was concerned about LGBTQIA+ people.

The feminist movement in India is rapidly expanding, and we must remember the history of the social activists who participated in the movement and helped us achieve this Incredible India that we have today.

⁶ Mukesh & Anr v. State for NCT of Delhi & Ors, (2017) 6 SCC 1.

Liberal feminism

The 18th century is where modern liberal feminism has her historical roots. Individualism, which refers to the freedom an individual has to do as he pleases without interference from others, was a key tenet of this ideology. Liberal feminism is a sort of individualistic feminism that emphasises women's capacity to uphold their equality via their own choices and actions.

The emphasis is on granting women the same legal and political rights as males. Liberal feminists contend that society discriminates against women in the workplace, public discourse, and the economy because it mistakenly believes that women are inherently less intelligent and physically competent than males. Liberal feminists agree with that girl subordination is rooted in a fixed of commonplace and felony constraints that blocks women's front to and achievement withinside the so-referred to as public world. They try for sexual equality through political and felony reform.

The popular stance of liberal feminism is that societal and felony constraints on women's participation in public spheres of politics and economics are to blame. Liberal feminists declare that given that ladies and men are basically similar, liberals need to adhere to their personal thoughts of equality and usual human rights. They additionally urge that males and females be handled equally. These theories assist the concept that there should not be any boundaries or preferential remedy primarily based totally on a person's gender.

Radical feminism

It is frequently called dominant feminism as it sees gender inequality as a trouble of male dominance over ladies as opposed to certainly considered one among distinction and similarity. A function inside feminism called radical feminism goals for a essential restructuring of society wherein male domination is eliminated in all spheres of life, consisting of social and financial situations. Radical feminists trust that society is essentially a patriarchy wherein men rule and oppress ladies, and that they paintings to give up the patriarchy through wondering regularly occurring social norms and establishments as a way to loose all and sundry from an unfair society. This involves preventing the sexual objectification of ladies, bringing rape and different types of violence in opposition to ladies to the eye of the overall public, and wondering the essential concept of gender roles. Radical feminists posit that, due to patriarchy, ladies have grow to be considered as the 'different' to the male norm, and as such were systematically

oppressed and marginalized. They in addition assert that guys as a category enjoy the oppression of ladies. Patriarchal principle isn't typically described as a notion that every one guys continually enjoy the oppression of all ladies. Rather, it continues that the number one detail of patriarchy is a courting of dominance, in which one birthday celebration is dominant and exploits the opposite for the advantage of the former. Radical feminists trust that guys (as a category) use social structures and different strategies of manage to preserve ladies (and non-dominant guys) suppressed. Radical feminists suppose that removing patriarchy will unfastened all and sundry from an unfair society and paintings to achieve this with the aid of using wondering conventional social norms and institutions. In her words, "the yearning adult males have for the location of oppressor is the genesis and basis of all human oppression," Ti-Grace Atkinson claimed that the preference for energy drives the male magnificence to hold oppressing the girl magnificence.

Cultural and Post-Modern Feminism

Hedonic Jurisprudence

Liberal feminism's emphasis is flipped through cultural feminism. It is centred on how males and females range from one another. It contends that the maximum essential undertaking for feminism is to extrude establishments with the intention to mirror and accommodate values that they see as women's nurturing virtues, consisting of love, empathy, patience, and concern, in preference to consist of ladies withinside the patriarchy and display that they're just like men, can characteristic like men, and meet male norms. A try is made to revalidate what cultural feminists see as overlooked girl traits via the perception of a girl nature or girl essence. It is likewise an ideology that celebrates the differences among males and females. It promotes independence and the improvement of establishments and is based on an essentialist information of the differences among males and females. According to post-modern feminism, equality may be a social construct that was created by social organisation and should be restored victimization feminist principles. the college places a robust stress on the method of self-definition yet because the approach that may increase awareness and provides voice to the unknown aspects of women's expertise. genre feminist legal thinkers trouble each the distinction theory, that holds that ladies and men are primarily different, and therefore the liberal equality theory, which holds that women and men are equal. They understand facts as numerous, obsessed with experience and perspective, and don't have a belief in a single,

absolute reality. philosophical doctrine may be a technique utilized by feminists within the genre movement to uncover hidden biases in legislation⁷.

The notion of utilising hedonistic jurisprudence to demonstrate that these women's experiences of assault and rape were caused by laws that viewed them as less human and granted them less rights than males was developed by feminist legal theory. These feminist legal theorists relied on them to substantiate claims that the law disregards the interests and disrespects the existence of women. They claimed that the instances provided weren't simply an outline of theoretic things but conjointly a symbol of actual happenings.

The Indian Overview

All necessary safeguards are place in situ by our constitution to guard the propers of women. within the case of National Legal Service Authority v. Union of India, it had been determined when analysing the preamble of the constitution that the ideas of social, economic, and political justice, equality of standing and opportunity, and making certain the dignity of the individual enclosed in the Preamble, clearly recognise the right of everyone among the voters to those basic requirements meant to flower the citizen's temperament to its fullest. the thought of equality allows everybody to grasp their full potential. Social justice isn't equating to formal equality below the law however, rather interprets the Preamble-stated spirit of the Constitution. though it doesn't have associate degree actual authority, the preamble provides the constitution a direction. The Preamble reaffirms the importance of "dignity of persons," which has girls' dignity. Our gender-sensitive Constitution, that is the muse for all laws, is sympathetic. it's obvious that the constitution's founders believed in equality and positioned women on an equal footing altogether spheres.

Speaking concerning equality, our constitution has given US variety of shielding for the setting of positivist equalise. The philosophy of our constitution's authors is mirrored in Articles 14 and 15, which once browsed in conjunction with Article twelve additionally protect women against gender discrimination. in step with the interpretation of Article 14 that takes gender equality into account, all people, together with women, are entitled to equal protection beneath the law inside India's territorial jurisdiction. Men and girls ought to be treated equally under the law and in society generally.

⁷ Gary Minda, *Postmodern Legal Movements: Law and Jurisprudence at Century's End* 128-148 (1995).

In contrast, Article 15 of the Indian constitution protects women from all forms of discrimination. Article 15(3) empowers the state to make additional provisions for women and children to uphold the idea of equal protection under the law in situations where equal treatment should have been given but was not. This clause is recognized due to the fact that Indian women have historically faced social and economic disadvantages that have limited their equal participation in the country's socio-economic activities. The rationale of the provision is to give women a voice, end their socio-economic subordination and undoubtedly give them more authority.

Undoubtedly, democracies give everyone an equal opportunity to participate in the decision-making process. Like almost half of the population and free citizens, women theoretically have the right to solve their problems democratically. However, due to socioeconomic factors and cultural norms, they are ineffective participants in the democratic game. Due to the disadvantages of democracy and the dangers of parliamentary majority rule, a women-friendly and anti-subordination interpretation of the constitution and legislation had to be formed, and this provision was also included in the consideration of positive discrimination. In the case of *Bodhisattva Gautama v. Subhra Chakraborty*⁸ then discussed the court's need for regulations that prevent dominance analysis techniques that are prevalent in our patriarchal culture. A woman in our country, unfortunately, belongs to a class or group that is in a disadvantaged position due to a number of social barriers and obstacles and, as a result, has become a victim of male tyranny. The court found that certain laws help to improve the position of women in society and are also constitutionally valid as they fall under the legitimate title of affirmative action, which underlies our constitutional order.

Gender equality is analysed in both Article 39(a) and Article 39(d) of the policy principle of public policy. While the last article defends equal pay for equal work for men and women, the previous article seeks equal subsistence rights for men and women. Basically, the model of state policy is based on the idea of keeping individualism and socialism in check. The DPSP took all necessary steps to address the treatment of women in the postmodern era. The drafters of the Constitution had a long-term vision that enabled them to consider the challenges that women would face as the world changed society. To further support this point, Article 51(a) analyses the clause renouncing practices that undermine women's dignity.

⁸ *Bodhisattva Gautama v. Subhra Chakraborty*, 1996 SCC (1) 490.

There is no going back to the idea that the Constitution has neglected the situation of women in the overall Statute. The drafters of our Constitution have undoubtedly made an effort to include as many clauses as possible which would have led to discrimination if they had not been included.

Approach to protect women laws

Even if there are current rules within the charter that help equality, girls nonetheless face negative aspects within the twenty-first century. Our society remains inflexible and nonetheless sees girls via patriarchal lenses. Despite the Constitution's wide-ranging scope, the patriarchal and conservative shape of Indian subculture has been repeated in how those clauses were interpreted. While deciphering the legal guidelines, the courts themselves make it hard for society as a whole to grasp. The position of the courtroom docket as a way of turning in justice regularly takes on a protectionist quality. An imbalance in society consequences from the translation of various legal guidelines considering girls are susceptible and extraordinary from males. After studying a few things, a regular prudent guy might absolutely trust that ladies are weaker than men and that extra regulations are created for them. Discrimination and patriarchy end up the floor while such philosophy is within the air.

When girls are given the placement of the inferior intercourse, they may be dealt with as not as good as males. The charter specific girls as being of a weaker intercourse in reputation of the ancient prejudice they have got faced. They require policies for development because the financial and sociological biases in their records have made their development fee slow and farther. The Constitution makes no point out of the truth that girls are inherently much less robust than males. These patriarchal perspectives have lengthily been in use.

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Women have been perceived as being beneath the authority of and not as good as males. It took the courtroom docket approximately a hundred and sixty years to recognize that girls aren't

belongings and maximum virtually have identical status to men. The courtroom docket persisted to examine the rules incorrectly even after the equality clauses have been blanketed in article 14. A patriarchal monarchy over the daughter or, for that matter, a husband's monarchy over the wife, the courtroom docket stated withinside the maximum latest segment 497 ruling.

Although the ruling is a step withinside the proper course in the direction of gender equality, it's far absolutely too overdue to undo the discrimination a lady has endured. The courts' failure to comprehend the belief of gender neutrality after the Constitution's provisions have been installed has ended in a prima facie infringement of women's independence.

The Indian Penal Code (hereafter, IPC) changed into amended in *Independent Thought v. Union of India*⁹ through a department bench of the Supreme Court of India. The amended IPC now reads as follows: "Sexual sex through a person together along with his spouse, the spouse now no longer being more youthful than 18 years of age, isn't rape."

Earlier, the age changed into 15 in place of 18, as said withinside the regulation. In addition to being a dehumanising act, sexual attack violates a woman's proper to privateness and her sanctity. The sufferer is degraded and humiliated, and while the sufferer is a defenceless youngster, it leaves in the back of a horrible experience. It is a first-rate blow to her best honour and offends her vanity and dignity.

In this example, "conventional instruction" refers to toddler marriage and the safety of women's rights. The IPC legitimised the instruction with the aid of using allowing a girl toddler's partner to have intercourse together along with her without getting her permission so long as she became older than 15 years old. The Court stated the damage that outcomes from granting her husband whole manipulate over her body, turning her into not anything extra than his assets and destroying the girl toddler's proper to hold her bodily integrity. The IPC further violates the proper of this class of grownup girls to their physical integrity through depriving them the capacity to reject consent to sexual interest with their spouses simply through distinctive feature of being married. As a result, each grownup married girls and baby brides are difficulty to the equal grounds for violating Article 21 as said through the Court itself.

⁹ *Independent Thought v. Union of India*, AIR 2017 SC 4904.

It became critical to make the extrude due to the fact the adult males who have been protected from rape have been being given an unfair edge. The law now stands in contradiction to the prohibition on having intercourse with ladies much less than 18 years old. It became argued that, to the diploma that it does, Exception 2 to Section 375 of the IPC violates the salutary goal of Article 15(3) of the Constitution, which permits Parliament to create unique provisions for ladies and children, through being each arbitrarily implemented and discriminatory. Contrary to the idealistic and beneficial mindset, the woman infant is without a doubt significantly deprived through the passage of Exception 2 to Section 375 of the IPC into the law.

The charter has continually been devoted to protective women, however, the issue is this isn't regularly how it's miles simply applied. The scope is increasing with time, and the offences are being introduced to mild with extra honesty. Only on this example became rape nicely interpreted and categorised as one of the maximum horrible crimes. Rape is one of the maximum bad crimes devoted towards a woman, consistent with Justice Madan B Lokur, who made this announcement withinside the ruling. It denigrates women. It injures a woman's dignity and degrades her honour. Her individuality is dwarfed, and she or he has much less self-guarantee as a result. It infringes on her proper to existence as said in Article 21 of the Indian Constitution.

This ruling, which overturns the patriarchal guidelines that had been previously famous in our nation, changed into primarily based totally strongly at the concepts of equality and equity for women.

Conclusion

The idea referred to as feminist jurisprudence is concentrated at the political, economic, and social equality of the sexes. India has visible an upward push withinside the illustration of girls in all spheres of society. For instance, with the passage of Article 243 D, 33% of Panchayat Raj positions at the moment are precise for girls. In the instances of *Air India vs. Nergesh Meerza*¹⁰ & Ors., *Vishakha v. State*, etc., our judiciary made certain that girls ought to now no longer face process discrimination. As a result, we've got economically emancipated girls. There are programmes to assist and guide girls socially, along with the SWADHAR

¹⁰ *Air India vs. Nergesh Meerza*, 1981 AIR 1829.

programme, the UJJAWALA programme, and a complete programme for stopping trafficking and rescuing, rehabilitating, and reintegrating sufferers of trafficking for industrial sexual exploitation (A Scheme for Women in Difficult Circumstances).

The surges of feminism that India has seen are the culmination of a long journey that honours every woman's battle against sexism and oppressive behaviour in society. By encouraging dialogue around the exploitation of women, they have surmounted obstacles. Some of the excellent results of these battles are highlighted below:

- The Immoral Traffic (Prevention) Act, 1956,
- The Dowry Prohibition Act, 1961, (Amended in 1986),
- The Indecent Representation of Women (Prohibition) Act, 1986,
- The Commission of Sati (Prevention) Act,
- Protection of Women from Domestic Violence Act, 2005,
- The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

These Acts may be visible as turning factors within the improvement of feminist theory. The Hindu Succession (Amendment) Act, 2005 turned into brought if you want to remove the discriminatory clauses and furnish girls the cap potential to inherit assets. Women had no declaration to inherited assets previous to this modification. The Nirbhaya Gang rape case caused the amending of the Criminal (Reform) Act 2013, additionally called the Anti-Rape Act of 2013. The large indignation over the vicious gang rape and the subsequent homicide of a physiotherapy intern in Delhi served because the impetus for the amendment. This legislation aims to provide those guilty of sexual offences against women a speedier trial and harsher penalty. All of these achievements demonstrate that feminism exists in India and is actively working to improve society and eliminate gender inequality.

In our nation, feminist jurisprudence has advanced at its very own rate. However, there are nevertheless sure gaps that should be addressed and a few gaps among the authorities and the terrible should be bridged. The gender salary hole nevertheless exists, there are numerous legal

guidelines that want to be amended, the protection of ladies remains now no longer guaranteed, and the promoting of rape lifestyle in media along with songs, movies, and jokes needs to be stopped. The feminist motion in India additionally wishes extra support.