



FEMINIST JURISPRUDENCE: A TOOL FOR WOMEN PROTECTION

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Abstract:

The movement of feminism began in 19th and early 20th centuries across the world. At that time the focal point of the movement was gaining women's suffrage i.e. Right to vote. From then the movement flourished and the focal point shifted to racism and body shaming against women in 1960-70. In parallel, there was a rising reliance on the idea that the main cause of women's historical subordination was the law. Such a conviction served as the foundation for feminist legal theory and jurisprudence. In the opinion of the feminist philosophy of law, there is an influence of patriarchal norms and masculinity standards on the legal system.

In India, the first wave of feminism started in 1850-1920 when the sati system was abolished. In the pre-independence era, the second wave of feminism started and the popularity of women's rights grew. The women were coming forward and setting forth their opinions against patriarchy and the British. With the beginning third wave of feminism in 1992, harassment and the issue of intersectionality became the centre of attention. The establishment of a national commission for women proved to be a milestone in the journey of feminist jurisprudence in India.

The judgement of the Bhawari Devi case of Rajasthan, the Shah Bano case, the Mary Roy case of Kerela, the Suhas Kutti case of Tamil Nadu, and The CEHAT v. union of India case deepened and strengthened the roots of feminist jurisprudence in India. Currently, we are in the fourth wave of feminism where empowerment of women has become the focal point. The Indian legal system has benefited much from the feminist legal thought. "A variety of laws, including the Protection of Women from Domestic Violence Act, the Dowry Prohibition Act, the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, the Maternity Benefit Act, the Medical Termination of Pregnancy Act, the Indecent Representation of Women Act, and the Equal Remuneration Act", have made it possible for women to advance in all spheres of life. In this paper, the author has made an attempt to discuss the concept of feminist jurisprudence, how India was affected by the movement, the influence of judicial decisions in the light of feminist legal theory on society and the protectionist interpretation of laws for women.

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Introduction:

The book "A Vindication of Rights of Women" dealing with women's education was authored by Mary Wollstonecraft in 1792. She used the word "feminism" in her book for the first time hence she is considered to be the founder of the word "feminism".

The word feminism has two different uses. Some have used it as a philosophy highlighting the injustice, injury and wrong done to women by men. Secondly many people use it to indicate the historic socio-political movement led by women of United States and Europe. The word "Jurisprudence" is theoretical study of law.



Jurisprudence derives from Latin word “jurisprudentia” meaning knowledge of law. It is related with the regulations of external order which people are mannered to obey. Therefore, etymologically jurisprudence is that science which imparts to us the knowledge about “law”. The origination of Indian Jurisprudence related back to ancient concept of dharma which was considered to be the best way to discipline the mind. In the words of Salmond, a profound jurist, jurisprudence is a science of first principle of civil law.

Feminist Jurisprudence or Feminist Legal Theory comments on how law in a legal system affects women in the state. The theory works on two frontiers, first being how law oppresses the women and second being how can law be used to improve the position of women in society i.e., how can we bring women at par with men. The legal reasoning arrogated by our law makers is more inclined towards the male perspective. There is a need of female perspective of law.

The feminist jurisprudence identifies the widespread influence of patriarchy and masculine standard in a legal structure which further leads to oppression of women and more often leading, to see women as a commodity or an object.

In a nutshell feminist jurisprudence is the perspective of a female on methodology of law.

A Brief History of Feminist Jurisprudence:

Back in nineteenth and early twentieth century marked the beginning of first wave of feminism in western world. This wave focused much on getting bare minimum and basic legal rights which we the Indian women cannot imagine living without. In the west, women were considered the second class citizen. They were confined to households and were considered as property of their fathers and later of their husbands. They had no right to vote and even if some women

were working they were only allowed to hold certain low key position. Women suffrage was the main goal of this particular wave.

With the formation of American Equal Right Association (AERA) IN 1866 followed by formation of National Women Suffrage Association (NWSA) in 1869a little advancement was seen in upliftment of women as they started taking part in higher education. The second wave began in 1960’s and the focal point shifted from women suffrage to public and private injustice. Concerns regarding rape, reproductive rights, workplace safety domestic violence were brought Forward. A huge effort was made by the women involved in the movement to mend and improve the inferior and negative portrayal of women to a more realistic and positive one. This movement escalated through films, books, music etc.

Another distinguished feature which could be seen in this wave was through legal measures. Women were allowed to take contraceptive pills in 1961 which helped them to take a step Forward towards their career instead of being forced into family life. This approval was made by The Food and Drug Administration in the US.

The statutes like the “Equal Pays Act of 1963”, “The Title VII of Civil Rights Act of 1964” were noteworthy steps taken to attain equality between the sexes. The rulings of the supreme court in “Griswold V. Connecticut”¹ and “Roe V. Wade”² furthered the cause.

“The National Organization for Women took Forward the legal battle and got victories like the passing of execution order which gave a full affirmative action to women rights “The Women’s Educational Equality Act”, 1972 and 1974 provided a greater educational equality to women. “The Title X of 1970” addressed health and family planning and the “Equal Credit

¹ 381 US 479(1965)

² 410 US 113(1973)



Opportunities Act, 1974”, “The Pregnancy Discrimination Act, 1978” were notable reforms.”

Here it can be observed that how the feminist legal theory made its way.

The feminist legal theory pointed out that law played a fundamental role in subordination of women. The male-dominated legal system has historically kept women in a subordinate position. Feminist jurisprudence works on two main fronts:

- a) First, it aims to highlight and explain how laws have contributed to the oppression and marginalization of women.
- b) Second, it focuses on transforming women’s position in society by rethinking and reshaping laws, as well as their approach to gender—an effort that became especially visible during the second wave of feminism.

Feminism in India:

Evolution of feminism is a bit different as compared to growth of feminism in western countries, in India, unlike other countries the movement was commenced by men there are 4 waves in feminist movement first from 1850-1920 second being from 1920-1990 third from 1990 to 2010 and currently, we are in the fourth wave.

In the first wave of feminism practise of sati was opposed Raja Ram Mohan Roy was the first person to speak about feminism and Bengal sati regulation was passed in 1892 by William benedick, the then governor general. This was the greatest victory for the people of that era. Second biggest victory in the first wave was the passing of widow’s remarriage act 1856. Pt. Vidyasagar, an Indian educator was foremost person to fight against the evil of prohibition of widow remarriage.

The second wave of feminism came during 1920s to 1960s which is also known as pre independence era. Now, the movement had shifted from the hands of men to women during this time women were getting aware

of their rights. In 1925 Sarojini Naidu came forward and became India’s first female president of Indian national congress. She has contributed a lot to the field of women rights she with Anne Besant preached women literacy and education by travelling throughout India.

Matangi Hazara, Bikaji Came, Laxmi Sehgal were prominent personalities who came forward and spoke against patriarchy and colonial system.

The third wave of feminism began in 1992 when Rebecca walker a feminist and activist said, “we are in third wave”, for a magazine. The focal point for this wave was issue of intersectionality and voicing against harassment. Year 1992 was marked as one of the most important year because national commission for women was established in 1992 which was paramount move on the way of women’s rights.

Currently, we are in 4th wave of feminism in India it began around 2012 in this the focal point has shifted to women empowerment and using internet as a tool. Internet activism became a crucial factor of 4th wave social media worked as a platform to speak freely on sensitive topic, the problems they faced and their personal stories. Another point on which 4th wave argues is equal pay for equal work. It also talks about body shaming, rape culture. Somewhere in 4th wave, the philosophy of feminism is seem to be toxic in nature as fake rape cases, fake cases of domestic violence and fake cases of dowry are growing. As per statistics 10,864 false cases in 2013 under section 498A of Indian penal code and “National Crime Records Bureau’s (NCRB)” Crime in India report 2020, less than 8% of all cases under investigation for rape were found to be 'false', we have seen how a woman along with her friends tried to frame 5 men in rape charge due to property dispute on 26 April, In 2022, a woman who had accused her husband of raping her before their marriage was fined by the Allahabad High Court for filing what was found to be a false FIR against him.



²What is clearly visible is that people somewhere have started losing the sense of respect for the philosophy of feminism because earlier it was a “for women” movement but now it is “against men movement” and this can be seen when women were being criticised for beating a Zomato driver on a busy road in 2021. A very case from Noida when a drunk woman assaulted the guard in a residential society, 2022. To recently women created ruckus in Rishikesh, when stopped from drinking alcohol near holy ganga in April 2026. Women taking disadvantage of the laws made for them is tarnishing the image of feminism.

Protectionist Approach for Women by State:

Judiciary has acted as a change agent for gender equality. Indian judiciary has played a dominant role in strengthening the position of women in society. The decisions made by Indian courts has helped women to get what is due to her as a matter of right. Through the decisions taken by the Indian judiciary, the enactment of policies and statutes and by implementing the same the state has shown that discrimination against women was not tolerated and will not be tolerated in culture of Indian society.

The provisions of constitutional and various other laws gets their real meaning when the courts interpret them. The provisions of various statues in the Indian legal system imparts the protective discrimination in the favour of women which associated with several aspects of their social. Political and economic have come up before courts.

The constitution provided equality, liberty and justice to all irrespective of their genders, it can be clearly seen in various provisions of constitution as-

- “Article 14 talks about the principles of equality before law and equal protection of laws.”
- “Article 15(1) and (2) prohibits the state from discriminating against any citizen on the basis of any one or more of the points such as religion, race, caste, sex, place of birth or any of them.”
- “Article 15(3) is exception of the above mentioned provision, it allows the state to create special provisions for protecting the interests of women and children.”
- “Article 15(4) allows the State to create special arrangements for promoting interests and welfare of socially and educationally backward classes of society.”
- “Article 16 provides about the equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.”
- “Article 39 talks about the State to direct its policy towards securing for men and women equally the right to an adequate means of livelihood [Article 39(a)];, and equal pay for equal work for both men and women [Article 39(d)].”
- “Article 39A directs the State to promote justice, on the basis of equal opportunity and to promote free legal aid by suitable legislation or scheme or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.”
- “Article 42 directs the State to make provision for securing justice and humane conditions of work and for maternity relief.”
- “Article 51A (e) enjoins upon every citizen to renounce practices derogatory to the dignity of women.”
- “Article 243 D (3) and Article 243 T(3) provide for reservation of not less than one third of total number

* Shivam Kumar Pal v. State of U.P. & 3 Others(Criminal Misc. Writ Petition No. 11560 of 2023)



of seats in Panchayats and Municipalities for women to be allotted by rotation to different Constituencies.”

- “Article 243 D(4) T(4) provides that not less than one third of the total number of officers of chairperson in the Panchayat and Municipalities at each level to be reserved for women.”

Apart from the aforesaid constitutional provisions there are some provisions under the Bhartiye Nyay Sanhita, 2023 and some special legislations which talks about crime against women like-

1. Kidnapping (Sec 86,137)
2. Eve Teasing (Sec 79)
3. Chain snatching (Sec 304)
4. Rape (Sec 63,64,65,66)
5. Sexual Harassment (Sec 75)
6. Domestic Violence (Sec 85)
7. Dowry death (Sec 80)
8. Acid Attacks (Sec 124,125)
9. Stalking (Sec 78)
10. Assault to outrage modesty (Sec 74)
11. Women trafficking (Sec 141,142,143,144)
12. “The Immoral Traffic (Prevention) Act, 1956
13. The Dowry Prohibition Act, 1961 (28 of 1961) (Amended in 1986)
14. The Commission of Sati (Prevention) Act, 1987 (3 of 1988)
15. Protection of Women from Domestic Violence Act, 2005_
16. The Sexual Harassment of Women at Workplace (PREVENTION, PROHIBITION and REDRESSAL) Act, 2013
17. The Indecent Representation of Women (Prohibition) Act, 1986”

From the perspective of feminist legal theory, the threenew criminal laws namely,—“the Bharatiya Nyaya Sanhita, 2023 (BNS), Bharatiya Nagarik

Suraksha Sanhita, 2023 (BNSS), and Bharatiya Sakshya Adhiniyam, 2023 (BSA)”—represent a mixed outcome for women. On the positive hand, sections like 63 (rape) and 69 (sexual intercourse by deceit) under BNS have broaden the scope of protection for women, recognizing various forms of sexual exploitation beyond traditional definitions, and reforms in Bhartiye Saksha Adhiniyam regarding evidentiary rules aim to reduce biases in assessing women’s testimony. These changes reflect a progressive attempt to enhance women’s legal rights and ensure greater accountability. However, certain areas highlight that few provisions, such as marital rape continue to be exception under Section 63, perpetuate structural inequalities by failing to fully recognize women’s autonomy within marriage. Procedural aspects under Bhartiye Nagrik Surakhsa Sanhita, including investigation and trial mechanisms, may still subject women to secondary victimization, undermining the dignity and agency that the laws are meant to protect. Thus, while these laws mark an important step forward, from a feminist jurisprudential viewpoint, they remain partial reforms that require deeper structural change to genuinely empower women in the criminal justice system.

Recently, the new Labour Codes (2024–2025) provided a comprehensive legal safeguards and empowerment measures for women workers. Under these codes, gender equality at the workplace is mandated, including equal remuneration for equal work and protection against gender-based discrimination. Women are legally permitted to work in all establishments and occupations, including night shifts, subject to their consent and strict employer obligations for safety, transport, and security. The codes enhance maternity benefits, guaranteeing 26 weeks of paid leave, nursing breaks, and compulsory creche facilities for establishments with 50 or more



employees. They also grant women representation in internal grievance committees and extend social security coverage, ensuring access to health, insurance, and retirement benefits. Collectively, these provisions establish a legal framework that promotes women's safety, economic independence, and workplace dignity.

Influence of Protectionist Approach : A Way Forward for Feminist Jurisprudence:

By The impact of protectionist interpretation of law made by the judiciary can be distinctly seen in the judgements that how the judges have made a positive discrimination between the genders so that women can be brought at par with men.

³⁴Following are the judgements in which the concept of feminist jurisprudence is embedded-

- **Regarding acid attacks**

The directions regarding curbing and restricting the sale of acid throughout the country were given by judiciary to “Home Secretary, Ministry of Home Affairs, Ministry of Chemical and Fertilizers” in the case of Lakshmi v. Union of India³. Two important provisions namely sec 326A and 326B were inserted in IPC and section 357A and section 357C were added in the “Code of Criminal Procedure”. The apex court also provided that the at least recompose of 3Lacs were to be given to acid attack saviour.

- **Regarding property rights**

The Court may a times in “Pratap Singh v. Union of India⁴, Jagannathan Pillai v. Kunjithapadam Pillai⁵, ThotasheshaRathamma v. Thota Manik yamma⁶, C. Masilamani Muddaliar v. Idol of Sri Swaminathaswami⁷, and Velamuri Venkata Siva

Prasad v. Kothuri Venkateswarlu⁸ highlighted that gender equality is the main concern in interpretation of statute conferring property rights on women.”

And in 2005, The Hindu Successions (Amendment)Act, has recognised the coparcenary property rights of women.

Recently, In N.P. Rajani & Ors. v. Radha Nambidi Parambath & Ors. (2025) The Kerala High Court clarified that daughters have the same coparcenary rights as sons in Hindu Undivided Family (HUF) property, even within the state of Kerala. It emphasized that the Hindu Succession (Amendment) Act, 2005—which grants daughters these rights by birth—overrides the earlier Kerala Joint Hindu Family System (Abolition) Act, 1975. This is because, under Article 254(2) of the Constitution, the central law takes precedence over conflicting state laws.

In Khushwant Kaur v. Gagandeep Sidhu, the Delhi High Court clarified that a woman's right to reside in a shared household under the Protection of Women from Domestic Violence Act, 2005 does not automatically come to an end merely because she is living separately from her husband or because the property is owned exclusively by her in-laws. The Court emphasized that once it is proven that she lived in the household within a domestic relationship, ownership of the property becomes irrelevant under Section 17 of the Act. It further held that she cannot be evicted from the premises except in accordance with due legal process.

- **Regarding exploitation of women**

Article 23 and 24 of Indian constitutions grants the rights against exploitation

³ 2014 4 SCC 427

⁴ AIR 1985 SC 1695

⁵ AIR 1987 SC 1493

⁶ 1991(4) SCC 312

⁷ AIR 1996 SC 1697

⁸ 2000 (2) SCC 139

**2025: KER:49346



“Article 23- Prohibition of traffic in human beings and forced labour

(1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purpose, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them”

“Article 24- Prohibition of employment of children in factories, etc

No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment Provided that nothing in this sub clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub clause (b) of clause (7); or such person is detained in accordance with the provisions of any law made by Parliament under sub clauses (a) and (b) of clause (7)”

In the case of *Gaurav Jain v. Union Of India*⁹, the supreme court passed a noteworthy judgement regarding the children of prostitutes and held that they also have right to equality of opportunity, dignity, care, protection and rehabilitation so as to be part of mainstream social life.”

- **Regarding female feticides**

Several directions Were given by SC as for sex selection and sex selective abortion, the court held

for bona fide implementation of Pre-natal Diagnostic Technique Act. The court also pointed out that Female foeticide as a heinous act against women.

- **Regarding compound ability of rape offences**

In the case of *State of Madhya Pradesh v. Madan Lal*¹⁰ SC held that rape cases are non-compoundable hence they cannot be compromised or mediated.⁵

- **Regarding matters of employment**

SC again and again in case “*Peoples Union for Democratic Rights v. Union of India*¹¹, *Randhir Singh v. Union of India*¹², *Sanjit Roy v. State of Rajasthan*¹³, *Uttarakhand Mahila Kalyan Parishad v. State of Uttar Pradesh*¹⁴ and *Mackinnon Mackenzie and Co. Ltd. v. Andrey D’ Costa*¹⁵ laid stress upon the Article 37(a) that focus is equal pay for equal work. The court have played an active role in strengthening the constitutional goal. Matters like *Vishakha v. State of Rajasthan*¹⁶, *Air India v. Nargesh Meerza*¹⁷, *A.N Ramana V. State of Kerala*¹⁸ are land mark cases where the SC gave a positive discrimination in interpretation of laws in favour of women.”

- **Regarding sex workers**

In the case of In “*Budhadev Karmaskar vs State of West Bengal*”.***, the apex court comprising the bench of L. Nageswara Rao, B.R. Gavai and A.S. Bopanna issued directives by under Article 142 to implement out and out justice when the law is absent on the subject of “rehabilitation, protection, and upliftment of sex workers to several authorities to strictly adhere to the directions till the law is made on this part”

⁹ 1990 AIR 292, 1989 SCR Supl. (2) 173

¹⁰ Criminal Appeal No. 231 of 2015

¹¹ AIR 1982 SC 1473

¹² AIR 1982 SC 879

¹³ AIR 1983 SC 328

¹⁴ AIR 1992 SC 1695

¹⁵ 1987 AIR 1281

¹⁶ AIR 1997 SC 3011

¹⁷ 1981 AIR 1829

¹⁸ AIR 1962 Ker 78

***2022 SCC Online SC 704.



- **Regarding menstrual health**

The Supreme Court in *Dr. Jaya Thakur v. Union of India* (2026 INSC 97)(Writ Petition (Civil) No. 1000/2022 (often associated with W.P.(C) 456/2022 or W.P.(C) 1000/2022 in related orders)) recognized menstrual health as an crucial part of personal liberty under Article 21, Commenting upon the deficient facilities and policies regarding menstruation can lead roundabout to gender discrimination. It directed the government to frame pertinent instructions regarding safe, hygienic, and non-discriminatory conditions for menstruating persons, and called the attention over the importance of sensitivity toward menstrual health in public and private institutions.

Obstacles Faced by Feminist Jurisprudence and its Solutions :

There is no doubt that feminist jurisprudence has come along a long way but still there are some visible hurdles in its pathway.

- **Gender roles:**

Women are considered to be a backbone of a family and from years we are seeing that women are kept into a role of a home maker and they are limited to that zone only because of such a social construct a lot of talent, which would have been come up and helped others is restricted to a place. Home making Is a very difficult job, though, it is a job without leave and pay. It should depend upon the women whether she wants to be a home maker or a working professional. A women can be a proud home maker but the problem arises when the women wants to contribute outside the limits of house is constrained. Not only this, but gender role , In a wide perspective , should be avoided in schools like girls are generally pumped by society to take up arts, languages, literaturae, music and dance and on the

other hand boys are encouraged to take up physics and mathematics. The judiciary is coming up with guidelines to break these stereotype between men and women. The SC stated the following points should be avoided while setting aside an order of Madhya Pradesh High Court-

- women are physically weak
- men are the head of the household
- women should be obedient

In another case, *Secretary, Ministry of Defence v. Babita Punia*¹⁹, the SC held that men and women working are equal and they should work as ‘equal citizens’ for a common mission.

- **Marriages**

Generally, in a society marriage is considered as one of the most important aspects of one’s life. No doubt the constitution of marriage is necessary to keep the society on track but the problem arises when people fall into the wrong no turn that “marriage comprises of life”, instead “life comprises of marriage”, women are prone to such wrong notions as the conditioning which they receive from the society is more of marriage oriented

Many girls below 18 years are married and not given a single opportunity to introspect themselves, know about themselves, they are not given any opportunity to think about their career etc. falling in the trap of marriage in such at early age results in only losses on the part of girl. Recently, to resolve the issue the government had put up the “Prohibition of Child Marriage (Amendment) Bill, 2021” under which the actual age of marriage of girls will be increased from 18 years to 21 years irrespective of age provided under the personal laws. It will not help the girls to take up their education and career but also correct the infant mortality rate, maternal mortality rate, total fertility rate etc.

¹⁹ 2020 7 SCC 469

- **Less representation of women**

Less representation of women is one of the biggest hurdles in the way of feminist jurisprudence. Feminist Jurisprudence itself contends the law from women's perspective but if there is no woman leading how can the goal of feminist legal theory be achieved. As per the data of Election Commission of India in October 2021, woman representation is 10.5% of total member of parliament and for member of legislative assembly across all state assemblies the national average is 9%. In the house of people the representation of women has not crossed by even 10% in Last 75 years of independence. Again the reason for low representation goes back to gender role, the stereotypical conditioning by society, the unfriendly environment at workplace, unevenly distribution of family care responsibility, there is lack of political education.

The solution to this can be deconstruction of the stereotype that woman is limited to household responsibilities only, working on women quotas, ensuring minimum number of women candidates in state legislatures and parliament, the female law makers on panchayat level can be taken up to state level for law making. The women should work on getting aware about their rights by themselves.

Conclusion:

Even after having so countless legislations, policies, programs, judicial pronouncements, guidelines for betterment of women, only a tiny amount of betterment can be seen in the position of women. Paramount cause is uninterest shown on the part of women herself. It is the need of the hour that women should make themselves aware, well everyone has that means nowadays, cooperation among the family members would prove to a good step. An aware and orientated women who is conscious about herself, her values, can not only help her family to grow but also help others to

get into good direction of life. It is the high time to change the definition of “good women”. Meaning of which is a submissive women should be swapped with a conscious woman, a women who is aware about herself and the society around her, a women who not only can think about betterment of herself but also of her family and later for the society.

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