

## FEMINIST JURISPRUDENCE AND WOMEN RIGHTS IN INDIA

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**Loca Rashmika Reddy\***

### INTRODUCTION

Feminist jurisprudence is also known as, feminist legal theory. The term 'feminist' refers to 'an advocate of women's rights' and jurisprudence means 'study of law.' Feminist jurisprudence is the philosophy that is based on political, economic, and social equality of the sexes. This basically sums up the theory of the law is in the hands of males and is not and has never been neutral. Laws regarding areas where women are violated have been supported by this insight of feminist jurisprudence, implying that there would be less chance of evolution if it wasn't for feminist jurisprudence. Feminist jurisprudence criticizes the law by comparing the ongoing relationship between gender, sexes, sexuality, and the rights of an individual in society as a whole. In usual times, people do not clearly understand what it means to be a feminist. A feminist is a person who stands for equal rights for all genders, not just women and not just men.

### HISTORY

Feminism as a concept emerged in the late nineties to early twenties. Feminists also believe that history was written by a male-dominated society, so all it consists of is views, laws, and social arrangements which are biased towards and mostly towards men. As time passed, feminist jurisprudence began and it included a lot of debates on inequality against women, gender-based discrimination, reproductive rights, and laws relating to sexual offences.

Early on in the development of feminist legal theory, scholars concentrated on the ways that both substantive and procedural laws discriminated against women. They said that legal notions like coverture, which believed that after marriage, a woman's legal identity became merged with her husband's, continued to uphold women's subordination in society. They also criticised legal requirements, like the need to demonstrate discriminatory intent, that made it more challenging for women to file claims of harassment or discrimination.

As time went on, feminist legal experts widened their scope to analyse the entire legal system, contending that patriarchal beliefs and presumptions affected the law. They

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\*MAHINDRA UNIVERSITY, HYDERABAD.

contended that the law did not reflect or support gender inequity but rather was neither neutral nor objective. For instance, they cited the fact that the legal system had been established by and for males and that men were frequently given preference when the law was implemented.

The intersections between the law and other types of oppression, such as race, class, and sexuality, were also highlighted by feminist jurisprudence. According to scholars, the legislation frequently operated in ways that marginalised women who belonged to other underprivileged groups as well. For instance, they made note of the fact that black and poor women sometimes faced greater criminal punishments than middle-class, white women. The creation of a new concept of legal rights has been one of feminist jurisprudence's major accomplishments. Legal rights, according to feminist theorists, are influenced by social and political systems as well as individual autonomy. They also emphasised the significance of social movements and collective effort in gaining legal rights for underrepresented populations. For instance, feminist legal activists were instrumental in promoting the enactment of statutes like the Violence Against Women Act, which gave victims of domestic violence better legal protections. In addition, feminist jurisprudence has influenced the creation of new legal disciplines, such as sexual harassment and reproductive rights law.

## MAIN TEXT

Analysing gender relations is one of feminist theory's core objectives and how they are constituted is equally important<sup>1</sup>. Understanding the position of women and the analysis of male dominance is the goal of feminist studies. The social phenomenon that builds and equally governs cultures is gender.<sup>2</sup> Like a complex legal philosophy, there is no one feminist theory. Feminist legal theory has produced a wide range of perspectives on the condition of women. Understanding the root of women's subjugation is one of the main concerns of Western feminists. It is well acknowledged that women's inferior standing to men is artificial and not a result of their biological makeup.

In general, there are a few primary feminism theories:

**Liberal Feminism:** Improvements in social norms, institutions, laws, and attitudes, in the opinion of liberal feminist jurists, will reform society as a whole and grant women equality.

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<sup>1</sup> Jha Shankar Uma, Mehta Arti, Menon Latika, Status of Indian Women 2 (1st ed. 1998).

<sup>2</sup> Suchinmayee Rachna, Gender, Human Rights and Environment, 41 (1st ed. 2008)

According to a believer of this theory, the position of the inferiority of women is due to both cultural and psychological factors.

**Marxist Feminism:** Marxist feminism holds that consciousness is determined by social existence. The maxim "Women's work is never done" sums up the nature of women's work. Marxist feminist lawyers hold that one must examine the connections between women's employment positions and women's self-image in order to comprehend why women are oppressed. The primary component of Marxist doctrine on women's subjugation, according to a Marxist jurist, is domestic slavery. They believe that the uneven roles of women inside families and the family's function as a source of labour for capitalism are the root causes of women's oppression. It began with the family, but the repercussions extend far beyond life inside the family.<sup>3</sup>

**Radical Feminism:** The liberal movement ignored sexual oppression and the gendered division of labour that affected women. It was discovered that the biological family is where subordination originates. The radical feminist lawyer fought to end all sexism, viewing men as enemies and viewing women's subjection as evidence of the biological and psychological superiority of men over women. The initial division of labour based on childbirth and parenting consigned women to a dependent and powerless role and will continue to do so as long as they remain children due to natural disparities.

**Socialist Feminism:** Socialist feminism holds that women's subordinate status is a result of both class and gender. Juliet Mitchell, a socialist feminist, discovered that while the family is a major factor in the oppression of women, there are some other structures as well. The development of the idea of private property, the restriction of women to childbearing, and the maintenance of gender disparities were major obstacles to the women's socialist movement. Socialist feminists combine sex and class oppression of women.<sup>4</sup>

**Hedonic Feminism:** The idea of using hedonic jurisprudence to demonstrate how these women's experiences of assault and rape were caused by laws that viewed them as less human and gave them fewer rights than males was developed by feminist legal theory. These feminist legal theorists relied on them to substantiate claims that the law disregards the

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<sup>3</sup> Smith S., <http://socialistworker.org/2013/01/31/marxism-feminismandwomens-Liberation>

<sup>4</sup> Tripathi S.C. and Arora Vibha, Law Related to Women and Children, 4 (3rd ed. 2008).

interests and disrespects the existence of women. They claimed that the instances provided were not just a description of hypothetical situations but also a proof of actual events.

### **FUNDAMENTAL RIGHTS**

Speaking of equality, our constitution has given us a number of protections for the atmosphere of positivist equalism. The philosophy of our constitution's authors is reflected in Articles 14 and 15, which when read in conjunction with Article 12 further protect women against gender discrimination. According to the interpretation of Article 14 that takes gender equality into account, all people, including women, are entitled to equal protection under the law within India's territorial jurisdiction. Men and women should be treated equally under the law and in society generally. In contrast, Article 15 safeguards women from all forms of discrimination. Article 15, clause 3, grants the state the authority to create any additional provisions for women and children in order to preserve the idea of equal protection of the law in situations where the same treatment should have been provided but was not. This clause is acknowledged in light of the fact that Indian women have historically faced social and economic disadvantages, which have reduced their participation in the country's socioeconomic activities on an equal basis. The fundamental tenet of the provision is to give women a voice, end their socioeconomic subordination, and unquestionably give them more power. Without a doubt, everyone has an equal opportunity to participate in the decision-making process in a democratic society. Theoretically, since they make up about half of the population and are free citizens, women can voice their complaints in a democratic manner. However, they are unable to actively participate in democracy due to socioeconomic and cultural factors. Given the flaws in democracy and the dangers of parliamentary majoritarianism, it is imperative to interpret the Constitution and legislation in a way that is pro-women and anti-subordination. This clause was therefore created in light of positive discrimination.

The court emphasised the necessity for rules that would limit the dominance analysis practise that is common in our patriarchal society in the case of *Bodhisattwa Gautama v. Subhra Chakraborty*. The court admitted recognised that women in our nation are part of a class or group that is marginalised by a number of social constraints.

## LEGAL RIGHTS

The following rights listed below are the initiatives that were taken for the protection of the rights of women:

**Dowry Deaths:** The oldest social ritual, dowry is practised throughout the entire nation. In Indian society, dowry deaths are widespread. While our society is currently developing its technological and scientific temperament, women are still being burned in India because of the lack of dowry.

In *Ashok Kumar v. State of Haryana*<sup>5</sup>, the Hon'ble Supreme Court further clarified the definition of "dowry," which is defined in Section 2 of the Dowry Prohibition Act, 1961, as "any property or valuable security given or agreed to be given either directly or indirectly by one party to another during or after marriage." The Supreme Court ruled in *Satbir Singh v. State of Punjab*<sup>6</sup> that any costly property given or agreed to be given as part of a marriage is regarded as dowry. However, dowry does not include customary payments made in connection with childbirth or other ceremonies. The Dowry Prohibition Act of 1961, Section 3, stipulates penalties for providing or receiving dowry.

**Live-in Relationships:** Live-in relations are a more contemporary type of family in which two adults choose to cohabit without getting married. The Apex Court recognised a long-term partnership as a marriage in January 2008. No longer will live-in relationships result in children being labelled as illegitimate. In *Mahabat Ali v. Mohammad Ibrahim Khan*<sup>7</sup>, the court stated that when a man and woman have lived together consistently for a number of years, the law presumes marriage against concubinage. Evidence of extensive cohabitation for a certain number of years is required. However, the law has not made the number of years explicit. In *Badri Prasad v. Deputy Director Consolidation*<sup>8</sup>, the Supreme Court recognised a live-in relationship as a valid marriage.

**Crime of Rape:** The most horrifying crime against women is rape. It obliterates women's social and psychological selves. The victim also has a difficult life. The victim endures mental suffering, trauma, and permanent mental scars that never fully heal. The worst is how society views rape victims. Rape victims are not considered as victims but as offenders.

<sup>5</sup> *Ashok Kumar v. State of Haryana*, AIR 2010 SC 2839 (India)

<sup>6</sup> *Satbir Singh v. State of Punjab*, AIR 2001 SC 2828 (India)

<sup>7</sup> *Mahabat Ali v. Mahammad Ibrahim Khan*, AIR 1929 135 P.C. (India).

<sup>8</sup> *Badri Prasad v. Deputy Director Consolidation* 1978 AIR 1557 (India).

Women of all ages, from little girls to elderly women, are victims of rape. The Supreme Court granted the rape victim in *Bodhi Sathwa Gautam v. Subhra Chakrabarty*<sup>9</sup> an interim award of Rs. 1000 per month until the trial court rules on her rape charges. In another case, it was claimed that complaints are handled harshly and are not given the attention they need because women are more frequently subjected to police humiliation. Rape itself is bad enough without adding the trauma of rape trials.

**Right to Dignity:** The fundamental right of every person is to live in dignity. Women are more delicate and sensitive by nature, making them more vulnerable. Typically, women do not have access to this right, and because of patriarchal culture, they must endure various forms of social humiliation. In *Surjit Singh v. Kanwaljit Kaur*,<sup>10</sup> the Punjab and Haryana High Court ruled that a woman's right to privacy would unquestionably be violated by a medical examination to determine whether or not she is still a virgin. Virginitiy tests are obviously an affront to women's dignity. The Supreme Court ruled in *Gautam Kundu v. State of West Bengal* that allowing blood tests to establish or deny paternity for maintenance causes shame and a lack of respect for women.

**Sexual Harassment:** According to Section 354A of the Indian Penal Code, sexual harassment occurs when a man makes unwanted physical contact, advances, demands, or requests for sexual favours while displaying pornography, among other things. Sexual harassment is punishable by up to three years in prison, a fine, or both.

**Voyeurism:** Voyeurism is defined by Section 354C of the Indian Penal Code, which states that any man who views or records the image of a woman engaged in a private act in any situation where she would typically have someone watching her is punishable by a minimum of one year and a maximum of three years in prison. A second conviction will result in a minimum sentence of three years and a maximum sentence of seven years. In the case of *State v. Shailesh*<sup>11</sup>, Justice Susheel Bala Dagar found that although voyeurism is a ridiculous form of entertainment for men, it traumatises women psychologically. Women's right to privacy is violated by these activities, which make them uncomfortable for women in environments that are normally safe for them. In this case, the Supreme Court reiterated its

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<sup>9</sup> *Bodhi Sathwa Gautam v. Subhra Chakrabarty*, (1996) 1 SCC 490 (India)

<sup>10</sup> *Surjit Singh v. Kanwaljit Kaur*, AIR 2003 P&H 353 (India).

<sup>11</sup> *State v. Shailesh* (2019)

1995 decision in *Rajagopal v. the State of Tamil Nadu*<sup>12</sup>, adding that the right to privacy encompasses the "right of being left alone."

**Stalking:** The Indian Penal Code discusses stalking under Section 354D. Any guy who follows, contacts, or makes repeated attempts to contact a woman in order to force her to interact with him is considered to be stalking, notwithstanding the woman's obvious lack of interest. Stalking is the act of keeping tabs on women via the Internet, email, or other forms of communication. A person who commits the crime of stalking will be penalised on their first conviction with a period of imprisonment that may last up to three years and a fine. On the second offence, he may receive a five-year prison sentence in addition to a fine.

In *Shri Deu Bajju Bodake v. The State of Maharashtra*<sup>13</sup>(2016), the Bombay High Court dealt with a woman's suicide and her determination that the cause of her death was ongoing harassment and stalking by the offender. She was the target of the accused's harassment and stalking while she was at work, and despite her resistance and lack of interest, he insisted they be married. The High Court ruled that in order to punish the accused, Section 354D and aiding in suicide must be recorded.

**Right to safe abortion:** A girl who is under the age of 18 has the legal right, with the permission of her guardians, to end an undesired pregnancy, per section 3(4) of the Medical Termination of Pregnancy Act, 1971. Contrarily, an adult woman, married or not, has the right to end her pregnancy up to 20 weeks if it poses a risk to her life or is damaging to her health. In a Supreme Court judgment, it was stated that the right to access education and information about contraception, the right to access safe and legal abortions, and the right to reproductive health care are all included in the court's interpretation of reproductive rights, which goes beyond the right of choice.

## CONCLUSION

A legal concept known as feminist jurisprudence is centered on the political, economic, and social equality of the sexes. India has seen a rise in the representation of women in all spheres of society. For instance, after the passage of Article 243 D, one-third of Panchayat Raj positions are now designated for women. In the cases of *Air India vs Nergesh Meerza &*

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<sup>12</sup> *R. Rajagopal vs State Of T.N* on 7 October, 1995 AIR 264, 1994 SCC (6) 632

<sup>13</sup> *In Shri Deu Bajju Bodake v. The State of Maharashtra* (2016)

Ors., Vishakha v State, etc., our judiciary made sure that women should not face job discrimination. As a result, we have economically emancipated women.

Women continue to be held captive by an exploitative combination, exploited, sold as commodities, and liquidated without following the law. All people, including men and women, professionals, professionals, and people with a social conscience, are disturbed by gender injustice towards the weaker section of society. No society can be free, just, and equitable until its women have equal access to freedom and chances to realise their full potential. Right now, if we adopt a cause-and-effect perspective on the globe, we discover that ignorance is to blame for most global issues. Human beings are created equally.

The goal of feminist law is to understand the causes of women's oppression. It looks at the underlying reasons why gender prejudice still exists in society. In India, laws are in place to protect the rights of women, yet the laws themselves are not properly carried out. The way society views women in particular needs to alter. The fight for gender equality includes both economic and psychological empowerment. In our nation, feminist jurisprudence has evolved at its own rate. However, there are still some gaps that must be filled and some gaps between the government and the poor must be bridged. The gender pay gap still exists, there are numerous laws that need to be amended, the safety of women is still not guaranteed, and the promotion of rape culture in media such as songs, movies, and jokes needs to be stopped. The feminist movement in India also needs more support.

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