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## Exploring Feminist Jurisprudence: An Analytical Discourse on Constitutional Provisions, Legislative Frameworks, Emerging Criminal Statutes and Key Jurisprudential Precedents

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*This research article delves into the topic of feminist jurisprudence which is a developing school that examines the legal statutes through the perspective of a patriarchal society. It becomes imperative to comprehend the different schools of thought of feminism to effectively analyze the constitutional provisions and legislations. The research article discusses Liberal, Radical, and Cultural Feminism and extends the discourse concerning the Constitutional Provisions that enshrine the concept of gender equality, emphasizing the necessity for their incorporation and efficacious application to foster an equitable society. The discussion moves towards the Legislative frameworks in place which are enacted to advocate feminist jurisprudence and empower women's justice through legislation. Further, the enactment of the three new Criminal statutes makes it vital to understand the nature of these legislations since they are to replace the old archaic laws. The paper explores how amendments have been made to take a more gender-neutral approach with certain Sections introduced to take a stringent approach against the exploitation of women. An analysis of certain sections that cater to feminist jurisprudence has been undertaken through the lens of the various schools of thought highlighting gender-inclusive approaches. The article lastly discusses the evolution of Jurisprudential Precedents over the years and how they have guided the judgments by overturning the patriarchal guidelines and primarily basing its tenets on the concepts of gender equality. The Article advocates for concentrated attention on the implementation and the incorporation of feminist legal techniques into judicial lawmaking to eventually cultivate a legal system that achieves justice as fairness and advances Feminist Jurisprudence.*

**Keywords:** *feminism, gender equality, patriarchal, gender justice.*

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## INTRODUCTION

After earning its title of word of the year for 2017 by Merriam Webster, the word originates from the Latin root 'femina' meaning woman, and '-isme' follows from the Latin suffix 'ismus', taking the form of a practice or doctrine.<sup>1</sup> Feminism as a term refers to the social, political, and economic equality of both sexes and organizing activities that fall in the interests of women and their upliftment. As a theory and a movement, it vocalizes putting an end to the oppression and exploitation of women. As time passed, Feminism associated itself politically, when the waves of feminism were carried on worldwide and appropriated the term to cater to their needs and start being vocal about it. The waves of feminism in the world were concerned with the granting of legal rights to women, the focus being on the right of franchise, further political representation, rights relating to their sexuality, and economic representation. When we move our discussion to the growth and development of feminism in India, we see the waves of feminism that provided it with the said shape.

Feminist Jurisprudence is a developing school of legal philosophy, that examines and interprets legal methodologies and statutes through the lens of the patriarchal-dominated society in which we reside.<sup>2</sup> Feminism encompasses various theories that push efforts to address the complex and multifaceted nature of gender inequality and the exploitation of women.

## FEMINIST SCHOOLS OF THOUGHT

Four primary feminist schools of thought offer distinct approaches to achieving gender justice and advocate for it through their perspectives - Liberal Feminism, Radical feminism, and Cultural Feminism.<sup>3</sup>

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<sup>1</sup> Larkin C, 'What's the Meaning of "Feminism"?' (*Babbel Magazine*, 06 March 2023) <<https://www.babbel.com/en/magazine/meaning-of-feminism>> accessed 12 June 2024

<sup>2</sup> Anjali Baskar, 'Feminist Theory in the Indian Constitution' (*ProBono India*, 21 June 2020) <<https://probono-india.in/research-paper-detail.php?id=453>> accessed 12 June 2024

<sup>3</sup> Sonal Beniwal, 'Growth of Feminist Jurisprudence in India' (*iPleaders*, 9 August 2020) <<https://blog.iplayers.in/growth-feminist-jurisprudence-india/>> accessed 12 June 2024

**Liberal Feminism** is characterized by its advocacy for equal rights for both men and women and seeking political as well as legal equality. The liberal feminists assert their right to participate in society actively, receive equal treatment to their male counterparts, and demand equal rights concerning marriage, education, equal pay, and even suffrage rights, among others.<sup>4</sup> It further places its commitment to achieving gender justice through legal reforms and to the democratic system, where both sexes can fully express themselves and are open to equal opportunities without being oppressed.<sup>5</sup> It points to the society to hold women as equal contributors in the society as men are perceived and disagree with the norms that make women depend on the men in their lives. They tend to project their focus on the need for a pivotal shift in the traditional way of the domestic division of labour and lessen the dependence of women on men for their economic support. When women involve themselves in taking care of the household due to traditional stereotypes or are awarded unequal wages, it puts them on the back foot. It denies the platform that could have brought both genders on an equal footing.

**Radical Feminism:** This phase of the movement, occurring between 1969 and 1970, had significant connections with the Liberal movement. However, the Liberal movement overlooked issues of sexual oppression and the sexual division of labour concerning women. It was recognized that the root of subordination lies within the biological family structure.<sup>6</sup> Natural differences led to the initial division of labour based on childbirth and motherhood, relegating women to a dependent and powerless role—a condition that will persist as long as women continue to bear children. Radical feminist jurists campaigned for the elimination of all forms of sex discrimination, viewing men as adversaries and interpreting women's subordination as a result of men's biopsychological dominance over women.<sup>7</sup>

**Cultural Feminism:** It is the idea that women are different from men in some way and, in certain situations, that gives them an advantage in society. Cultural feminists argue that women's

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<sup>4</sup> Camille Cottais and Caroline Feldner, 'Liberal Feminism' (*Institut du Genre en Géopolitique*, 20 August 2021) <[https://igg-geo.org/wp-content/uploads/2021/08/IGG\\_CCottais\\_Liberal\\_feminism2020.pdf](https://igg-geo.org/wp-content/uploads/2021/08/IGG_CCottais_Liberal_feminism2020.pdf)> accessed 14 June 2024

<sup>5</sup> Reed and Christine, 'Liberal Feminism Definition, Theory & Goals' (*Study*) <<https://study.com/academy/course/developmental-psychology-help-course.html>> accessed 14 June 2024

<sup>6</sup> Kalpana Devi and S.N. Sharma, 'Feminist Jurisprudence and Women Rights in India' (2018) 6(4) *Bharati Law Review* <[https://docs.manupatra.in/newsline/articles/Upload/11DBD81F-4929-4F33-92BB-7B97D045BF52\\_Devi-Prof. Dr. Sharma Asst. Prof.-Prof 47-56\\_Jurisprudence.pdf](https://docs.manupatra.in/newsline/articles/Upload/11DBD81F-4929-4F33-92BB-7B97D045BF52_Devi-Prof. Dr. Sharma Asst. Prof.-Prof 47-56_Jurisprudence.pdf)> accessed 14 June 2024

<sup>7</sup> *Ibid*

viewpoints ought to be prioritized and that their perceived gender 'weaknesses' actually contribute to their advancement.<sup>8</sup> Cultural Feminism expressly encourages the components and perceived traits of women and the differences between the two sexes make them unique and special and the exploitation of her by men tends to suppress her talents. Further, it connotes emotional intelligence and feelings of sentimentality not as a weakness but rather what defines her strength.

## CONSTITUTION PROMOTING GENDER EQUALITY

The Constitution of India enshrines the concept of gender equality foremost in its preamble. The Preamble reads that social, economic, and political justice should be assured and equality of status and opportunity should also be promoted amongst all. These Constitutional Provisions reflect the tenets of Liberal Feminism when it advocates for gender parity in both legal and political rights, as well as equal opportunities in employment and compensation. By incorporating these principles, the provisions aim to ensure that both men and women receive equitable treatment and access in all societal facets, promoting a just and balanced environment. The other Constitutional provisions are as follows:<sup>9</sup>

**Article 14** provides a mandate for the State to not deny 'equality before the law' and 'equal protection of the rights' of the individuals. It highlights the promotion of equality for every individual regardless of gender, race, caste, place of birth, etc.<sup>10</sup>

**Article 15** provides a mandate for the State to not discriminate against any person solely based on their caste, sex, race, place of birth or any of them. Further, also provides for positive discrimination arrangements for women and children to secure their protection.<sup>11</sup>

**Article 16** mandates that equality of opportunity should be provided for all citizens in matters that relate to employment in the public sector and no one should be discriminated against based on caste, place of birth, religion, sex, or descent, for employment or office.<sup>12</sup>

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<sup>8</sup> 'Cultural Feminism: 4 Key Ideas in Cultural Feminism - 2024' (*Master Class*, 22 February 2023)

<<https://www.masterclass.com/articles/cultural-feminism>> accessed 14 June 2024

<sup>9</sup> Ananya Karnwal, 'Constitutional Provision for Gender Equality: Must Know Facts' (*ProBono India*, 5 May 2020)

<<https://probono-india.in/blog-detail.php?id=85>> accessed 14 June 2024

<sup>10</sup> Constitution of India 1950, art 14

<sup>11</sup> Constitution of India 1950, art 15

<sup>12</sup> Constitution of India 1950, art 16

**Article 39(a)** provides that the state should follow a policy that aims at securing that men and women have equal rights to adequate means of livelihood.<sup>13</sup>

**Article 39(d)** provides that the state should follow a policy that aims at securing equal pay for equal work for both men and women<sup>14</sup>

**Article 42** mandates the State under its Directive Principles of State Policy to ensure the establishment of equitable and just working conditions and the provision of maternity support.<sup>15</sup>

**Article 51A(e)** puts forth as a fundamental duty of the State to promote solidarity and the cultivation of mutual friendship among all citizens while repudiating actions that defame or undermine the dignity of women.<sup>16</sup>

**Article 243D** provides for reservations at least one-third of seats to be reserved for women belonging to Scheduled Castes and Tribes within the Panchayat.<sup>17</sup>

**Article 243T** provides for reservation of seats and even offices of Chairpersons in the Municipalities to be reserved for women including women belonging to Scheduled Castes and Scheduled Tribes.<sup>18</sup>

These Constitutional provisions are designed to establish and fortify gender equality, creating a legal framework that ensures its protection and promotion, thereby rendering it sufficiently robust to secure gender equality. The aforementioned constitutional provisions embody the principles of Liberal Feminism, which advocates for gender equality in legal and political spheres. These provisions are designed to ensure equal rights and opportunities for both sexes, thereby fostering a more equitable and just society. However, the empirical evidence indicates that these provisions have not been effectively implemented to substantially enhance gender equality for women. Despite, the constitutional measures in place, their practical application has not yielded significant improvements in promoting gender equality.

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<sup>13</sup> Constitution of India 1950, art 39(a)

<sup>14</sup> Constitution of India 1950, art 39(d)

<sup>15</sup> Constitution of India 1950, art 42

<sup>16</sup> Constitution of India 1950, art 51A(e)

<sup>17</sup> Constitution of India 1950, art 243D

<sup>18</sup> Constitution of India 1950, art 243T

## THE THREE NEW ACTS PROMOTING THE GENDER INCLUSIVITY

**Bhartiya Nyaya Sanhita Act (BNSS), 2023<sup>19</sup> - (Earlier Indian Penal Code, 1860)<sup>20</sup>:** The new Act comprises 19 Chapters and 358 Sections, representing an enhanced and better-organized framework compared to the 511 sections in the Indian Penal Code, 1860<sup>21</sup>. This refined structure demonstrates the consolidation of the new Act. A significant aspect to be discussed is based on how involves women. Definition 10 which described both men and women, now the definition 19 lists men and the definition 35 lists women. Unlike in the erstwhile Indian Penal Code, 1860<sup>22</sup> the offenses against children and women which were dispersed throughout, now find a consolidated position under Chapter V of the Bhartiya Nyaya (Second) Sanhita Act<sup>23</sup> This Chapter specifically addresses offenses against women and children, underscoring the priority and precedence given to these groups in the new law.

**Section 63<sup>24</sup>** - Section 375 of the Indian Penal Code, 1860<sup>25</sup>, which dealt with the offence of rape, had been replaced by **Section 63** of the Bhartiya Nyaya (Second) Sanhita Act, 2023.<sup>26</sup> Now, this Section provides for the offence of rape and exception 2 of this Section provides that sexual intercourse by a man with his own wife, the wife is not under the age of 18, is not rape.

**Section 69<sup>27</sup>** - Additionally, **Section 69<sup>28</sup>** introduced a new offence for engaging in sexual intercourse with a woman through deceitful means, such as making false promises of employment or promotion or marrying under false pretence without intent to fulfil those promises. This Section aims to safeguard women's rights and penalize actions that induce women into dependence on men dishonestly.

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<sup>19</sup> Bhartiya Nyaya (Second) Sanhita Act 2023

<sup>20</sup> Indian Penal Code 1860

<sup>21</sup> *Ibid*

<sup>22</sup> *Ibid*

<sup>23</sup> Bhartiya Nyaya (Second) Sanhita 2023

<sup>24</sup> Bhartiya Nyaya (Second) Sanhita 2023, s 63

<sup>25</sup> Indian Penal Code 1860, s 375

<sup>26</sup> Bhartiya Nyaya (Second) Sanhita 2023, s 63

<sup>27</sup> Bhartiya Nyaya (Second) Sanhita 2023, s 69

<sup>28</sup> *Ibid*

**Section 70(2)**<sup>29</sup>- Under this Section, the age-based criteria that imposed different punishments for gang rape of a minor girl have been set aside, and now, Section 70(2)<sup>30</sup> now mandates that individuals convicted of gang-raping a woman under the age of 18 shall be subject to either life imprisonment, extending until the end of the offender’s natural life, or the death penalty. This revision underscores the stringent approach to promoting oppression and exploitation against women.

A Step towards gender neutrality was made under Section 76<sup>31</sup> and Section 77<sup>32</sup> of the Act to widen it to include the word ‘whoever’ for assault or making use of criminal force against a woman that intends ‘to disrobe her’ and also for Voyeurism. The introduction of this section aligns with the tenets of Radical Feminism, which asserts that gender inequality arises from structural issues like Patriarchy. These core issues often lead men to believe they possess control over women and their bodies. Consequently, this Section mirrors the principles of radical feminism by preventing men from sexually exploiting women.<sup>33</sup>

**Bhartiya Nagarik Suraksha Sanhita, 2023**<sup>34</sup> (**Earlier Code of Criminal Procedure, 1973**<sup>35</sup>): The Bhartiya Nagarik Suraksha Sanhita, 2023<sup>36</sup>, has superseded the Code of Criminal Procedure, 1973<sup>37</sup>, introducing several modifications. From the perspective of Feminist Jurisprudence, two significant highlights can be projected. Section 66 introduces the principle of gender neutrality by recognizing women as adult members of the family eligible to receive service of summons on behalf of the person summoned.<sup>38</sup> The previous language, which referred specifically to ‘some adult male member’ has been amended to ‘some adult member’. This change ensures that both men and women are equally acknowledged and included in legal processes concerning the service of summons, reflecting a more inclusive and equitable approach.

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<sup>29</sup> Bhartiya Nyaya (Second) Sanhita 2023, s 70(2)

<sup>30</sup> *Ibid*

<sup>31</sup> Bhartiya Nyaya (Second) Sanhita 2023, s 76

<sup>32</sup> Bhartiya Nyaya (Second) Sanhita 2023, s 77

<sup>33</sup> Camille Cottais and Caroline Feldner, ‘Radical Feminism’ (*Institut du Genre en Géopolitique*, 4 May 2021)

<<https://igg-geo.org/wp-content/uploads/2021/04/Technical-Sheet-Radical-feminism.pdf>> accessed 14 June 2024

<sup>34</sup> Bhartiya Nagarik Suraksha Sanhita 2023

<sup>35</sup> Code of Criminal Procedure 1973

<sup>36</sup> Bhartiya Nagarik Suraksha Sanhita 2023

<sup>37</sup> Code of Criminal Procedure 1973

<sup>38</sup> Bhartiya Nagarik Suraksha Sanhita 2023, s 66

In Chapter 10, titled 'Order for Maintenance of Wives, Children, and Parents,' of the Act, a significant amendment has been introduced in Section 145. This amendment allows that, in cases involving a dependent father or mother, proceedings for an order of maintenance may now be initiated at the place where the dependent parent resides<sup>39</sup>. This change addresses a significant challenge that existed under CrPC, where the initiation of such proceedings for parents was restricted to the place of residence of their son. This change projects better access to justice by making it gender equality.

**Bharatiya Sakshya Adhiniyam 2023:**<sup>40</sup> This Act<sup>41</sup> aims to consolidate all the general principles of evidence and provide for fair trials through a consolidated response. It represents the growing technological advancements and places a focus on delivering justice by expanding the scope of admissible evidence. Further, Section 52<sup>42</sup> also expands the scope to consider legal standards aligning with global norms which widens the area of legal aspects. Overall, the act provides for women to have a more equitable and efficient legal system that signals a forward-thinking approach to justice.

The newly enacted Criminal Acts, including the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023<sup>43</sup>, exemplify a dedicated approach to promoting gender equality and integrating feminist jurisprudence. The principles of Liberal Feminism are particularly evident in these reforms, as the laws have been revised and introduced with an inclusive perspective that addresses women's experiences and needs. This approach underscores a commitment to the Liberal school of thought's objective of achieving equality for both sexes, ensuring that legal provisions are equitable for all individuals, regardless of gender. Additionally, the influence of Radical Feminism is discernible in the new legislation. Radical Feminism's focus on dismantling patriarchy at its foundational level is reflected in the provisions of the BNSS, 2023<sup>44</sup>. The introduction and revision of various sections within the Act aim to address and rectify structural inequalities that perpetuate gender-based discrimination and violence. By targeting underlying

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<sup>39</sup> Bhartiya Nagarik Suraksha Sanhita 2023, s 145

<sup>40</sup> Bharatiya Sakshya Adhiniyam 2023

<sup>41</sup> *Ibid*

<sup>42</sup> Bharatiya Sakshya Adhiniyam 2023, s 52

<sup>43</sup> Bhartiya Nagarik Suraksha Sanhita 2023

<sup>44</sup> *Ibid*



patriarchal norms and practices, the Act seeks to establish a more just and equitable legal framework that protects and empowers women, thereby challenging and transforming the systemic issues that sustain gender inequality.

## LEGISLATIONS IN PLACE THAT CATER TO FEMINIST JURISPRUDENCE

**The Indecent Representation of Women (Prohibition) Act 1986:**<sup>45</sup> This is a significant piece of legislation enacted in India to address the issue of the indecent representation of women in advertisements and media. This law aims to protect the dignity of women and prevent their objectification and exploitation. Under this Act, the term ‘indecent representation of women’ refers to the depiction of women in a manner that is derogatory, obscene, or likely to deprave, corrupt, or injure public morality or morals.<sup>46</sup> The Act prohibits the publication, distribution, or exhibition of any advertisement, book, pamphlet, film, or any other content that indecently portrays women.<sup>47</sup> It also extends to electronic media and digital platforms, ensuring comprehensive coverage to combat the misuse of women's images across all forms of media. The Act provides for penalties, including fines and imprisonment, for those found guilty of violating its provisions.<sup>48</sup> By implementing this legislation, the Indian government seeks to foster a more respectful and equitable representation of women in society, promoting their empowerment and safeguarding their rights against degrading and harmful portrayals.

**Dowry Prohibition Act 1963:**<sup>49</sup> This Act was brought in to prohibit and curb the cultural practice of dowry in the country. The Act encompasses not only property, goods, or money transferred by either party to the marriage but also any property, goods, or money provided by either parent from both sides.<sup>50</sup> This definition underscores the comprehensive nature of dowry, emphasizing that it can involve various forms of material contributions and the intent behind this to curtail this practice of feminine gender exploitation and rather push for gender justice.<sup>51</sup> In the case

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<sup>45</sup> The Indecent Representation of Women (Prohibition) Act 1986

<sup>46</sup> *Ibid*

<sup>47</sup> Pravien Raj, ‘Feminist Jurisprudence and Laws’ (*Vakil Search*, 30 January 2024)

<<https://vakilsearch.com/blog/feminist-jurisprudence-and-laws/>> accessed 19 June 2024

<sup>48</sup> *Ibid*

<sup>49</sup> Dowry Prohibition Act 1963

<sup>50</sup> *Ibid*

<sup>51</sup> ‘Domestic Violence’ (*Encyclopædia Britannica*) <<https://www.britannica.com/topic/domestic-violence>> accessed 09 June 2024

**Bhoora Singh v State of Uttar Pradesh**<sup>52</sup>, the court held that the deceased woman had left a letter to her father about the ill-treatment from her in-laws and eventually was set on fire. Therefore, it was held that the offence of dowry was committed.

**The Maternity Benefit Act 1961**:<sup>53</sup> This is a crucial piece of legislation that safeguards the employment rights of women during their maternity period. This Act provides women employees with 'maternity benefits,' which include fully paid wages during their absence from work to care for and bond with their children.<sup>54</sup> The Act specifically applies to establishments that employ 10 or more employees, ensuring that a substantial number of women are covered under its provisions.<sup>55</sup> The objective of the Act is to promote the well-being of women employees by offering financial support during their maternity leave and encouraging a smooth transition back to work after childbirth.<sup>56</sup> Additionally, the Maternity Benefit Act, of 1961<sup>57</sup>, was amended through the Maternity (Amendment) Bill of 2017, enhancing and expanding the rights and benefits available to women. In the case of **Air India v Nergesh Mirza (1981)**<sup>58</sup>, the discriminatory provision of providing for an age limit in order to avail maternity benefits for women was struck down. The amendments addressed issues such as extending the duration of maternity leave, accommodating the needs of working mothers, and promoting a supportive work environment for them. These changes underscore the commitment to fostering a workplace culture that values and prioritizes the health and well-being of women employees during and after pregnancy.<sup>59</sup>

**The Equal Remuneration Act 1976**:<sup>60</sup> This is a pivotal piece of legislation in India aimed at eliminating wage discrimination based on gender. This Act ensures that men and women performing the same or similar work receive equal pay for equal work, regardless of their gender.<sup>61</sup> By prohibiting any distinction, preference, or limitation concerning remuneration, the

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<sup>52</sup> *Bhoora Singh v State of U.P.* (1992) CRILJ 2294

<sup>53</sup> Maternity Benefit Act 1961

<sup>54</sup> *Ibid*

<sup>55</sup> Raj (n 47)

<sup>56</sup> *Ibid*

<sup>57</sup> Maternity Benefit Act 1961

<sup>58</sup> *Air India v Nergesh Mirza* (1981) 4 SCC 335

<sup>59</sup> Kartikeya and Oishika, 'The Maternity Benefit Act 1961' (*iPleaders*, 26 October 2022)

<<https://blog.iplayers.in/the-maternity-benefit-act/>> accessed 19 June 2024

<sup>60</sup> Equal Remuneration Act 1976

<sup>61</sup> *Ibid*

Act seeks to promote gender equality in the workforce. It emphasizes that both male and female employees should be treated fairly and without bias, allowing them to be compensated equitably for their contributions.<sup>62</sup> The objective of this legislation is to dismantle gender-based pay disparities and foster a work environment that upholds the principle of equal opportunity and fair compensation for all.

**Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (PoSH) Act 2013:**<sup>63</sup> The POSH Act was enacted by the government in 2013, and it aims to address the issue of sexual harassment experienced by women in the workplace. The primary objective of the legislation is to establish a safe and supportive working space for women and to offer them protection against incidents of sexual harassment in the workplace.

**The Protection of Women from Domestic Violence Act 2005:**<sup>64</sup> The Act aims to safeguard women from domestic violence in all its forms. This legislation comprehensively covers various types of abuse, including physical, emotional, sexual, and economic abuse, ensuring a holistic approach to protecting women's rights and well-being.

These Legal frameworks provide for multiple protective measures for women to identify and curb the different forms of exploitation against women. These legislations are designed to create a safe and supportive environment for women and to promote their dignity and empowerment. Further, this advocates for feminist jurisprudence and the way it consumes the idea of Liberal and Radical theories of thought.

## ANALYSING THE PROGRESS THROUGH JUDICIAL CASES

**Air India v Nargesh Mirza (1981)**<sup>65</sup> - This case dealt with challenging discriminatory policy in the workplace based on Gender. The Air hostess Nargesh was terminated by Air India Airline on the basis that she was married. As per rules at that time under the Airline, the air hostess was given the mandate to retire upon attaining the age of 35 years, upon entering into matrimony, or upon pregnancy, dependent upon whatever transpired first. This provision was declared

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<sup>62</sup> Raj (n 47)

<sup>63</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013

<sup>64</sup> Prevention of Women from Domestic Violence Act 2005

<sup>65</sup> *Air India v Nargesh Mirza* (1981) 4 SCC 335

void and unconstitutional by the Supreme Court as it rejects the notion of gender equality. Therefore, this judgment emphasized the notion of gender justice and acted progressively.

**Mary Roy and Ors v State of Kerala and Ors (1986)**<sup>66</sup> - Mary Roy, an activist, legally challenged the inequitable provisions of the Travancore Christian Succession Act, 1916<sup>67</sup>, which delineated the inheritance rights of Syrian Christian women in Kerala. It was predicated upon customary law, conferred upon women merely a one-fourth share of the estate that their male siblings received. The Supreme Court, recognized this discriminatory approach of the Act and adjudged that this provision was unjust, thereby underscoring the imperative for gender-neutral statutes in inheritance-related laws.

**Vishaka and Ors v State of Rajasthan and Ors (1997)**<sup>68</sup> - This was a landmark case, in which the Supreme Court adjudicated the matter of sexual harassment at the workplace, and promulgated essential guidelines that were necessary for instituting a procedural framework for the prevention of such occurrences. The Supreme Court determined the case that 'sexual harassment of women in workplaces' constituted a contravention of the Fundamental Rights as provided under Articles 14<sup>69</sup>, 15<sup>70</sup>, and 21<sup>71</sup> of the Indian Constitution. This Judicial precedent further takes a stance toward gender justice and highlights the role of the judiciary in empowering feminist jurisprudence.

**Githa Hariharan and Anr v Reserve Bank of India and Anr (1999)**<sup>72</sup> - The Supreme Court adjudicated the issue of guardianship under Hindu Majority and Guardianship, 1956<sup>73</sup>. This Case holds significance as it established, for the first time, that a natural guardian as delineated in the Hindu Majority and Guardianship Act, 1956<sup>74</sup>, may be either the father or the mother, contingent upon which parent is competent, accessible to assume the responsibility of childcare,

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<sup>66</sup> *Mary Roy v The State of Kerala* (1986) 2 SCC 209

<sup>67</sup> Travancore Christian Succession Act 1916

<sup>68</sup> *Vishaka & Ors v State of Rajasthan & Ors* (1997) 6 SCC 241

<sup>69</sup> Constitution of India 1950, art 14

<sup>70</sup> Constitution of India 1950, art 15

<sup>71</sup> Constitution of India 1950, art 21

<sup>72</sup> *Githa Hariharan & Anr v Reserve Bank of India & Anr* (1999) 2 SCC 228

<sup>73</sup> Hindu Majority and Guardianship Act 1956

<sup>74</sup> *Ibid*

and genuinely invested in the child's welfare, thereby affirming the role need not be exclusively ascribed to the father.<sup>75</sup>

**Suchita Srivastava v Chandigarh Administration**<sup>76</sup> - The petitioners impugned the constitutional validity of the obligatory pre-abortion authorization by a medical board as it was stipulated under the Medical Termination of Pregnancy Act 1971<sup>77</sup>. The recognition of a woman's prerogative to make reproductive determinations, encompassing the option to conceive or refrain from conception, is acknowledged as an integral component of her intrinsic liberty under Article 21<sup>78</sup> of the Indian Constitution.

**Joseph Shine v Union of India**<sup>79</sup> - The petitioner had challenged the constitutionality of Section 497<sup>80</sup> which criminalized adultery. The Supreme Court had struck down Section 497<sup>81</sup> of the IPC as it was violating the dignity and equality of women and also infringing Article 21<sup>82</sup> of the Indian Constitution. The patriarchal attitude dictated the law and it was a regressive law that was preventing women from making choices and not attributing autonomy and dignity to women. Therefore, these judicial precedent places great emphasis on voicing for women's equality and dignity and putting in efforts to disseminate the patriarchal approach.

**Lata Singh v State of Uttar Pradesh and Anr**<sup>83</sup> - In its ruling, the Supreme Court deliberated upon an adult woman's entitlement to marry or cohabit with whomever she deems fit. Additionally, the Court mandated that law enforcement authorities initiate penal proceedings against individuals perpetrating violence against those who pursue inter-religious or inter-caste unions. The Court further acknowledged that every individual retains the prerogative to wed

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<sup>75</sup> *Githa Hariharan & Anr v Reserve Bank of India* (1999) 2 SCC 228

<sup>76</sup> *Suchita Srivastava & Anr v Chandigarh Administration* (2009) 9 SCC 1

<sup>77</sup> Medical Termination of Pregnancy Act 1971

<sup>78</sup> Constitution of India 1950, art 21

<sup>79</sup> *Joseph Shine v Union of India* (2019) 3 SCC 39

<sup>80</sup> Indian Penal Code 1860, s 497

<sup>81</sup> *Ibid*

<sup>82</sup> Constitution of India 1950, art 21

<sup>83</sup> *Lata Singh v State of U.P. & Anr* (2006) 5 SCC 475

and has an unequivocal entitlement to select their life companion under the provisions of Article 21<sup>84</sup>. This fundamental right cannot be infringed upon at the behest of any third party.<sup>85</sup>

**State of Jharkhand v Shailendra Kumar Rai and Ors**<sup>86</sup> - In this case, the Supreme Court adjudicated that if a person would be found conducting the two-finger test on a rape victim or penetrative sexual assault then they will be considered guilty of misconduct.<sup>87</sup> This archaic practice of inserting two fingers into the vagina of the victim to check if the hymen is broken or not, was still been conducted and it acts to increase the trauma of the survivor. This judgment was seen in the light of protecting the dignity of women and also to reinforce the idea of preventing them from such kind of exploitation and oppression.

**X v The Principal Secretary Health and Family Welfare Department, Delhi NCT Government and Anr**<sup>88</sup> - The Hon'ble Court afforded an expansive interpretation to Rule 3B of the Medical Termination of Pregnancy Rule 2003<sup>89</sup> (hereinafter referred to as the 'MTP Rules'), encompassing within its purview unmarried women and survivors of marital rape, thereby qualifying them for the termination of pregnancies ranging from 20 to 24 weeks. In the present matter, the Court authorized an unmarried woman to undergo the termination of her pregnancy at 24 weeks, resulting from a consensual relationship.<sup>90</sup> In the present case, the Supreme Court also noted that a married woman may also fall under the category of rape or sexual assault, and hence within the meaning rape under Rule 3B(a) of the MTP Rules<sup>91</sup>, marital rape was also to be included.<sup>92</sup> This became a very progressive ruling and a landmark judgment as it guaranteed

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<sup>84</sup> Constitution of India 1950, art 21

<sup>85</sup> Anadi Tewari, 'International Women's Day 2024: 24 Supreme Court Judgments That Shaped the Contours of Women's Rights in India' *Bar and Bench* (08 March 2024) <<https://www.barandbench.com/columns/litigation-columns/international-womens-day-24-supreme-court-judgments-womens-rights-india>> accessed 15 June 2024

<sup>86</sup> *The State of Jharkhand v Shailendra Kumar Rai @Pandav Rai* (2022) SCC OnLine SC 1494

<sup>87</sup> Abhimanyu Hazarika, 'Two-Finger Test Retraumatizes Rape Survivor; Persons Conducting Two-Finger Test Guilty of Misconduct: Supreme Court' *Bar and Bench* (31 October 2022)

<<https://www.barandbench.com/news/litigation/two-finger-test-retraumatizes-rape-survivor-persons-conducting-two-finger-test-guilty-of-misconduct-supreme-court>> accessed 19 June 2024

<sup>88</sup> *X v The Principal Secretary Health and Family Welfare Department, Delhi NCT Government & Anr* (2022) LiveLaw (SC) 809

<sup>89</sup> Medical Termination of Pregnancy Rules 2003

<sup>90</sup> *X v The Principal Secretary Health and Family Welfare Department, Delhi NCT Government & Anr* (2022) LiveLaw (SC) 809

<sup>91</sup> Medical Termination of Pregnancy Rules 2003, s 3B(a)

<sup>92</sup> *Ibid*

reproductive autonomy to women and further ensured their right to dignity under Article 21 of the Indian Constitution<sup>93</sup>.

These Judicial Rulings and precedents have shown that judicial activism is overturning the patriarchal guidelines and primarily basing its tenets on the concepts of gender equality and liberty and further promoting gender justice.

## CONCLUSION

Feminist Jurisprudence revolves around the idea of political, social, and economic equality of the sexes. Feminist Jurisprudence has evolved at its own deliberate and methodical pace, reflecting a gradual shift in the understanding and interpretation of legal principles and precedents as they pertain to gender equality and the recognition of women's rights. Without a doubt, feminist theories and practices promote the idea of justice as fairness. By examining the law in connection with the institutional, social, and historical aspects of any case, feminist consciousness improves judicial impartiality and objectivity by exposing structural biases that could lead to unfair outcomes.<sup>94</sup>

Four principal feminist schools of thought have facilitated the analysis of legislation, policies, and judicial precedents, thereby providing a nuanced perspective for such examinations. These schools include liberal feminism, which advocates for equal legal rights and opportunities; radical feminism, which seeks to dismantle patriarchal structures and address systemic gender inequalities; socialist feminism, which examines the intersections of gender, class, and economic systems; and intersectional feminism, which highlights the multifaceted nature of discrimination based on race, gender, sexuality, and other identities.

In 2023, the 'Handbook on Combatting Gender Stereotypes' was promulgated by the Apex Court to eradicate patriarchal stereotypes and promote rulings that are sensitive to gender issues. This handbook serves as a crucial guide for the judiciary, ensuring that decisions are informed by an awareness of gender biases and aim to rectify systemic inequities.

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<sup>93</sup> Constitution of India 1950, art 21

<sup>94</sup> Balram Pandey, 'A Case for Feminist Reasoning in Judicial Edict' (*SCC Online*, 20 July 2023)

<<https://www.sconline.com/blog/post/2023/07/20/a-case-for-feminist-reasoning-in-judicial-edict/>> accessed 13 June 2024

Over the years, concerted efforts have been made to enact legislation aimed at fostering gender equality and empowering women by safeguarding their rights. For instance, the Hindu Succession (Amendment) Act 2005<sup>95</sup> was enacted to eliminate discriminatory provisions, thereby granting women the right to inherit property – a right previously denied to them. This amendment represented a significant step toward rectifying historical injustices and promoting gender parity in inheritance rights.<sup>96</sup>

Similarly, the Nirbhaya Gang Rape<sup>97</sup> incident precipitated the amendment of the Criminal Law (Amendment) Act 2013<sup>98</sup>, subsequently referred to as the Anti-Rape Act 2013, which fortified the legal framework to address and combat instances of sexual violence, thus ensuring enhanced protection for women. This act introduced stringent penalties for sexual offenses, expanded the definition of rape, and established mechanisms for better handling of sexual violence cases.

While these legislative measures are pivotal when viewed through theoretical frameworks, their practical implementation remains essential for fully realizing their objectives. Effective enforcement of these laws requires robust institutional support, public awareness, and continuous monitoring to ensure compliance and address any gaps in the legal system. Judicial precedents over the years underscore the judiciary's vital role in aligning with the goal of gender justice, with numerous case laws affirming this commitment. Landmark judgments have progressively advanced women's rights, reinforcing the principles of equality and non-discrimination enshrined in the Constitution.

Nonetheless, the persistence of Exception 2 to Section 375 of the Indian Penal Code<sup>99</sup>, which pertains to marital rape, remains a notable legal aberration. This exception, which exempts marital rape from being criminalized under the current Criminal Act<sup>100</sup>, continues to perpetuate archaic patriarchal and oppressive ideologies.<sup>101</sup> The retention of this exception highlights the

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<sup>95</sup> Hindu Succession (Amendment) Act 2005

<sup>96</sup> Beniwal (n 3)

<sup>97</sup> *Mukesh & Anr v State for Nct of Delhi & Ors* (2017) 6 SCC 1

<sup>98</sup> Criminal Law (Amendment) Act 2013

<sup>99</sup> Indian Penal Code 1860, s 375

<sup>100</sup> Indian Penal Code 1860

<sup>101</sup> Mohd Aquib Aslam, 'Feminist Jurisprudence and Its Impact in India. an Overview' (*Legal Service India*)

<<https://www.legalserviceindia.com/legal/article-1859-feminist-jurisprudence-and-its-impact-in-india-an-overview.html>> accessed 13 June 2024



need for further legal reforms to ensure that all forms of sexual violence are unequivocally condemned and punished, irrespective of the marital status of the victim. Although there has been significant progress in achieving gender equality through legislative and judicial proceedings, more work is still required to narrow existing gaps and ensure that these laws are enforced effectively. Feminist law must advance and be applied in legal settings to achieve a just and equitable society. A feminist perspective will impart a higher level of social consciousness that shall expand the viewpoint that an adjudicator can use to understand the law. The integration of feminist legal techniques into judicial lawmaking, while upholding established legal theories, will therefore result in a legal system that realizes justice as fairness and promotes Feminist Jurisprudence.