

## FEMINIST LEGAL THEORY WITH SPECIAL REFERENCE TO INDIAN PERSPECTIVE

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### ABSTRACT

*Feminist legal theory, also referred to as feminist jurisprudence, is rooted in the belief that the law has historically played a significant role in the subordination of women. Feminists assert that traditional laws and practices, which have been shaped predominantly from a male perspective, fail to adequately represent the viewpoint of women and acknowledge their historical contributions. This paper aims to explore feminist jurisprudence from an Indian perspective, delving into the history of the feminist movement in India and its transformative journey. Feminist jurisprudence challenges the notion that law constructs, maintains, reinforces, and perpetuates patriarchy. The ultimate aim of the feminists is to pull apart patriarchy by questioning the present societal principles and establishments. They believe that by eliminating patriarchy, everyone will be liberated from an unjust society. Feminist jurisprudence requires examining its connections with other disciplines, as it cannot be viewed in isolation. This paper seeks to commemorate the significant milestones achieved through the influence of feminist jurisprudence, both globally and in India, while also exploring the extent to which society has embraced these changes. It traces the evolution of feminism in India from 1915 to the present, analyzing the changing ideas and roles of women within society. The paper also addresses the various obstacles encountered by feminist jurisprudence and the growth of feminism through statutes and judicial interpretation. Additionally, it highlights the impact of post-independence efforts and sheds light on the progress made thus far.*

**KEYWORDS:** - Feminist, Feminist legal theory, Feminist jurisprudence, Patriarchy

### 1. INTRODUCTION

Feminism is a belief in or advocacy of women's social, political and economic rights especially with regard to equality of sexes. People often misunderstand feminist as those who favours females but Feminism is rather "an awareness of women's oppression and exploitation in society, at work and within the family, and feminists make a conscious effort to switch to better world for women. Thus, anyone who recognizes the existence of sexism (discrimination on the basis of the gender), male domination and patriarchy and who takes some action against it, irrespective of gender is a feminist. Today, feminists have gone beyond the mere legal reforms (earlier, feminists were struggling for the basic rights of women e.g. right to education, right to employment, right to vote, etc.) to end discrimination, now they are working towards the emancipation (**the act of freeing a person from another person's control**) of the women. **Feminism is a struggle for power to women. Feminists do not hate men but are against patriarchy, male domination and the maleness in men, which led men to treat women as their property.**

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Feminist legal theory, also referred to as feminist jurisprudence, is rooted in the belief that the law has historically played a significant role in the subordination of women. Feminists assert that traditional laws and practices, which have been shaped predominantly from a male perspective, failed to adequately represent the women and acknowledge their contribution in the society. The objective of feminist legal theory is twofold. Firstly, it aims to elucidate the subordination of women in the society. It stresses upon the point that feminism doesn't mean hating men, it just means demand for equality with men. Secondly, feminist legal theory strives to recognise the need to transform the perspective towards women's status by re-examining and reshaping the law.

Originating in around 1960s, it has had a profound impact on discussions surrounding sexual and domestic violence, workplace inequality, gender-based discrimination, employment regulations, divorce, reproductive rights, laws pertaining to rape, abortion, and sexual harassment, etc.

### **1.1 OBJECTIVES OF STUDY**

Feminist jurisprudence sheds light on the existing gender disparities within our society, recognizing the differences between men and women. Although it is a relatively recent subject of study, its evolution has been ongoing for a considerable period of time. This paper aims to explore feminist jurisprudence from an Indian perspective, delving into the history of the feminist movement in India and its transformative journey.

Many recent apex courts judgments have been discussed in this paper, which witnessed an ongoing conflict between women's right and equality and the preservation of cultural and ethical values. These cases serve as a notable reference to highlight the complexities and challenges faced in achieving gender equality and addressing exploitation in the name of so-called cultural norms within the Indian context.

### **2 RESEARCH METHODOLOGY**

Research methodology is the procedure to conduct the research in an aligned way by providing guidance to the researcher. In this study, variants of feminist legal theory such as liberal, cultural, radical, postmodern and Indian perspective over feminist legal theory are discussed briefly. During the research, ethical principles are followed. For the preparation of the paper, secondary sources such as published journals, articles, Supreme Court and High Court's judgments and enacted laws in the country such as Constitution, Indian Penal Code have been used.

### **3. HISTORY**

Feminists argue that since time immemorial, India has been considered as a Patriarchal society where male is given an upper hand and a female has to be obedient to her male counterpart be it father, brother or husband. This imbued superiority in the men, consequently leading to male-centric view of history that led to biases in understanding the basic nature of human being particularly females. The women were denied basic rights such as right to life. Earlier widow used to immolate herself on her husband's funeral pyre in the name of religious practice "Sati". In the society, through religion and legal practices, gender-based disparities perpetuated.

Feminists challenged the prevailing notion that male characteristics should be considered the norm, while female characteristics are seen as deviations from this norm. They reject the belief that biological differences between men and women justify attributing specific behaviours based on sex. Instead, feminists emphasize that gender is a social construct rather than a biological determinant. While sex determines physical traits and reproductive capacity, it does not determine psychological, moral, or social characteristics. Feminists assert that men and women should be treated equally ignoring their physical strengths and giving them equal opportunity to speak, work and behave.

The typical and patriarchal story places the emergence of feminist legal theory in the sixties and seventies, ignited by the activism of the women's liberation movement and fostered under the leadership of new women entering the system. Since then, there have been tremendous improvement in the position of the woman starting from Bengal Sati Regulation enacted by the British East India Company in 1829 on the perusal of Raja Ram Mohan Roy. Finally, around 1960-1970s, the wave of feminism was visible and feminists had stronger voices than ever before. Many debates over sexual and domestic abuse of a woman, discrimination in wages, matrimonial rights, property rights, lower positions in the workplace and many more. Finally, these debates threw light on the atrocities under the name of law and voices were raised to amend such gender biased laws such as denial of divorce to woman, no right of a woman on reproduction, marital rapes, sexual harassment, maintenance to wife, no property rights, adoption etc. This involves raising awareness about gender issues, promoting gender-sensitive legal practices, and fostering a more inclusive legal profession. Consequently, many changes were brought in the laws.

#### **3.1 FEMINIST JURISPRUDENCE**

Feminist jurisprudence encompasses a wide range of feminist philosophy and theory, reflecting the understanding shared among feminists that women experience oppression and disadvantage in comparison to men, and that this oppression is unjust and illegitimate.

Feminism has been a driving force behind the contemporary women's movement, leading to the development of specialized knowledge in various fields, such as feminist sociology, feminist philosophy, feminist history, and feminist jurisprudence. Feminist jurisprudence is a natural extension of the pursuit of law and justice. Legal strategies have played a vital role in women's organizations' campaigns for greater equality and social justice.

Feminist jurisprudence contemplates the ways in which this patriarchal system can be debilitated and ultimately removed from the society. The feminist investigation into law focuses on various important issues:

- i. Examination of legal concepts, rules, doctrines, and processes in relation to women's experiences.
- ii. Examination of the underlying assumptions in the law that are based on gender distinctions, whether explicit or seemingly gender-neutral.
- iii. Analysis of the discrepancies, distortions, or denials that arise from the mismatch between women's life experiences and the assumptions or imposed structures of the law.
- iv. Identification of the patriarchal interests served by these discrepancies.
- v. Proposals for legal reforms aimed at eliminating patriarchal influences.

Feminism encompasses various schools of thought, including liberal, radical, cultural, and postmodern perspectives. In the early stages, feminists primarily focused on the pursuit of equality in relation to the law.

The roots of contemporary liberal feminism can be traced back to the 18th century. This philosophy upholds the principle of individualism, which emphasizes an individual's freedom without interference from others. Liberal feminism is a form of feminist theory that acknowledges that a woman has the capability and capacity to achieve equality through her own decisions and accomplishments.

The primary focus of liberal feminism is to secure equal legal and political rights for women, aiming to challenge the false societal belief that women are inherently less capable than men intellectually and physically. Liberal feminists argue that such biases lead to discrimination against women in various domains, including academia, public discourse, and the job market. They assert that women's subordination is rooted in a combination of societal customs and legal constraints that restrict their access and success in what is commonly referred to as the public sphere.

A central tenet held by liberal feminists is that women face social and legal barriers that impede their participation in the public realms of politics and economics. They demand that liberal principles of universal human rights and

equality be applied consistently, advocating for equal treatment of women and men. These theorists argue for a gender-blind approach to the law, rejecting any restrictions or preferential treatment based on gender.

Radical Feminism, also referred to as dominant feminism, approaches the issue of gender equality as a matter of domination of women by men, rather than simply focusing on differences and similarities between genders. Radical feminism advocates for a radical restructuring of society with the aim of eliminating male supremacy in all social and economic contexts. According to radical feminists, society is fundamentally structured as a patriarchy, where men are given power over women to control and suppress them. They want to disassemble the patriarchy thereby freeing everyone in the society from an unjust system, challenging existing social norms and institutions. This includes opposing the use of a woman as a commodity, raising social awareness about crimes such as sexual exploitation and violence against women, and questioning conventional gender roles.

Radical feminists debate that patriarchy has led to the marginalization and oppression of women, who are often seen as the "other" in relation to the male norm. They profess that those men, as a class, take advantage from the exploitation of women in the garb of societal norms and traditions. It is important to note that patriarchal theory does not claim that all men always benefit from the oppression of all women. Instead, it emphasizes the power dynamics and the relation which is ruled by supremacy or dominance, where one party exploits and have an authority over the other for the benefit and comfort of the former/dominant group. Radical feminists argue that men, as a class, use social systems and various forms of control to suppress women and non-dominant men. The ultimate aim of radical feminists is to pull apart patriarchy by questioning the present societal principles and establishments. They believe that by eliminating patriarchy, everyone will be liberated from an unjust society.

Cultural feminism takes a different approach compared to liberal feminism by shifting the focus towards the unique qualities and differences of women in comparison to men. It asserts that the primary goal of feminism should not be assimilating women into existing patriarchal structures, proving their similarity to men, and conforming to male norms. Instead, cultural feminism intends to convert these institutions to acknowledge and embrace the values that are traditionally imbibed when a woman is born such as nurturing virtues, love, affection, compassion, kindness, empathy, patience, and concern.

Cultural feminism promotes the idea of a distinct attributes which a female has and seeks to reaffirm those values. It embraces the concept of inherent differences between women and men and advocates for women's independence

and the creation of supportive institutions that acknowledge and celebrate these differences. This perspective is rooted in an essentialist understanding of gender differences and emphasizes the importance of recognizing and validating the unique contributions of women in society. It further supports that we need not to change a woman physically and emotionally rather enjoy such differences and use them for better upbringing of our future generations.

### 3.2 POST-MODERN FEMINISM

Postmodern feminism emphasizes the importance of self-definition and the exploration of women's experiences to raise consciousness and amplify voices that have been historically marginalized. Postmodern feminist legal theorists reject both the liberal equality approach that assumes women are inherently similar to men, and the difference theory that posits inherent differences between women and men.

Postmodern feminists employ a method called deconstruction, which involves examining laws to uncover hidden biases and assumptions. By deconstructing laws, postmodern feminists aim to highlight the need for change and challenge the notion that laws are fixed and objective, as they are created by individuals with their own biases that can contribute to the oppression of women.

### 3.3 INDIAN PERSPECTIVE OVER FEMINISM

Feminism originates from the Latin word 'femina', signifying 'woman'. The initial wave of feminism took place globally between 1850 to 1940.

The **First Wave** of Indian Feminism, spanning from 1850 to 1915, marked a significant turning point in the fight for women's rights by abolishing the practice of Sati. During this time, attention was also drawn to the prohibition of widow remarriage, which confined widows to a life of prayer, drudgery, and isolation. Pandit Vidyasagar spearheaded the fight against this social evil, leading to the enactment of the Widow Remarriage Act in 1856. However, these progressive changes faced resistance from those opposed to colonial attempts at "modernizing" Hindu family structures.

The **Second Wave** of Indian Feminism, spanning approximately from 1920 to 1980, emerged during the Pre-Independence Era. Women in India began to assert their rights and demand equality, with the popularity of women's rights gaining momentum. Sarojini Naidu, as the first female President of the Indian National Congress, championed women's rights and collaborated with the Women's India Association led by Annie Besant to promote women's literacy and education.

This era witnessed the rise of numerous women who challenged patriarchy and the colonial system, such as Matangini Hazra, Bhikaiji Cama, and Lakshmi Sahgal (known as Captain Laxmi). Therefore, the Constitution makers while drafting the Constitution gave equal rights to women through Article 14 of the Indian Constitution wherein the principle of equality among all citizens was enshrined. The Indian women were granted, the right to vote, which was still denied to many women in other countries.

The inception of the **Third Wave** of Indian Feminism took place in 1992, marked by Rebecca Walker's courageous statement in a magazine, proclaiming "I am the Third Wave."<sup>1</sup> This statement highlighted the crucial aspects of intersectionality and raising one's voice against harassment. The establishment of the National Commission for Women in the same year represented a significant stride towards promoting and protecting women's rights. The issue of sexual harassment in the workplace gained prominence, leading to the introduction of the Prevention of Sexual Harassment at Workplace Act in 2013 after the landmark *Vishaka v. State of Rajasthan*<sup>2</sup> case, wherein the Supreme Court of India recognized the importance of gender equality and the right to life and liberty. The supreme court gave various guidelines to be followed by the offices ensuring safety of the woman. The guidelines were followed for twenty years till the enactment of 2013 Act. In the *Shayara Bano*<sup>3</sup> case, the practice of triple talaq was declared unconstitutional, challenging gender inequality and personal laws. The amendment was welcomed by women of all religions as it ended the brutal exploitation of the women by the hands of the men.

The **Fourth Wave** of Indian Feminism embraced inclusivity, acknowledging and embracing trans rights, diverse perspectives, aesthetics, races, and languages. Movements such as Slut Walk symbolized the focus on intersectionality, transfeminism, sex positivity, and postmodern feminism. Currently in the fourth wave, Indian Feminism continues to evolve and address various concerns. The #metoo movement has shed light on the dark side of society and sparked conversations about harassment. Demonstrations and protests, such as those following the Nirbhaya Gang Rape Case<sup>4</sup> and the brutal gang rape and murder of Dr. Priyanka Reddy, have amplified the voices of the voiceless and placed pressure on authorities to take action.

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<sup>1</sup> Rebecca Walker, *Becoming the Third Wave*, MS., Jan./Feb. 2002, reprinted in MS., Spring 2002, at 86.

<sup>2</sup> *Vishaka v. State of Rajasthan* (1997) 6 SCC 241.

<sup>3</sup> *Shayara Bano v. Union of India* (2017) 9 SCC 1.

<sup>4</sup> The Criminal Law (Amendment) Act of 2013, No.13, Acts of Parliament, 2013 was enacted in response to the heinous Nirbhaya case, where a female student was subjected to a brutal gang-rape in December 2012. This Act brought about amendments to various provisions of the Indian Penal Code, Indian Evidence Act, and Criminal Procedure Code.

The fourth wave is characterized by its diversity, as different people prioritize different issues. Some focus on judicial reform, seeking fair trials, while others advocate for equal pay for equal work or LGBTQIA+ rights. The feminist movement in India is gaining tremendous momentum, and it is crucial to acknowledge the contributions of social activists throughout history who have shaped the incredible progress achieved in India today.

Religions play a significant role in shaping feminism in India and provide insights into the origins of the current dynamics between genders. When it comes to feminism, the Hindu religion has historically continued to position itself as a progressive and enlightened belief system. Not only does the religion emphasize gender equality throughout its ancient texts, but it also reflects this principle in its personal laws. However, while the religion has made significant strides toward gender equality, complete success in eradicating oppression through the law is still a distant goal. Within the Hindu religion, the struggle for feminism has transformed into a battle for caste equality due to the existence of various caste hierarchies. Within the Muslim religion, personal laws have historically been oppressive, but recent shifts in paradigms and judicial interventions have stirred up considerable change and upheaval. The banning of triple Talaq, UCC in Uttarakhand are welcomed by the religion. As a result, feminism is no longer perceived as a foreign or unfamiliar concept, and Muslim women are stepping forward to demand equality, refusing to accept subordination any longer.

### **3.4 THE STATUTORY FRAMEWORK**

The Constitution makers of our country took all the necessary step to safeguard the interest of the women. With the advent of the feminist legal theory, many amendments were made in the constitution thereby uplifting the status of a woman and giving adequate reservations to help them in achieving the desired goals.

#### **3.4.1 LEGISLATIVE MEASURES**

To ensure equality and combat various forms of social discrimination, gender bias, atrocities, and violence against women, various states have implemented numerous legislative measures. In addition to gender-neutral laws that prohibit crimes against individuals regardless of their gender, India's penal laws specifically prohibit crimes against women.

Britishers enacted Indian Penal Code in 1960 with general crimes relating to women. With the onslaught of feminism, many laws were inserted and amended to recognise the discrimination faced by women at home and workplace. Any type of interference with the body, dignity, honour, or marriage of women started gaining importance. In case of crimes affecting women, the Indian Evidence Act, 1872 establishes presumptions in favour of women. For example,



under section 114A of the Evidence Act, 1872 if a woman says that she did not consent for sexual relationship, then the court shall presume that she did not consent and proceed with this notion. Similarly, Criminal Procedure Code, Indian Penal Code has established laws in their favour. Some of these crimes are: Dowry Death (Section 304-B IPC), Kidnapping and Abduction for different purposes (Sections 363-373 IPC), Molestation (Section 354, 354A, 354B, 354C, 354D IPC), Rape (Sections 375, 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB IPC), Sexual Harassment (Section 509 IPC), Cruelty (Section 498-A IPC), etc.

The rise of the feminist movement and increased awareness led to the enactment of several laws specifically aimed at safeguarding women's rights. These acts include: "The Special Marriage Act, 1954, The Hindu Marriage Act, 1955, The Hindu Succession Act, 1956 with amendment in 2005, Immoral Traffic (Prevention) Act, 1956, The Maternity Benefit Act, 1961 (Amended in 1995), Dowry Prohibition Act, 1961, The Medical Termination of Pregnancy Act, 1971, The Equal Remuneration Act, 1976, The Prohibition of Child Marriage Act, 2006, Commission of Sati (Prevention) Act, 1987, The Protection of Women from Domestic Violence Act, 2005", etc. These Acts serve as concrete evidence of the existence of feminism in India, demonstrating various instances and amendments that have been enacted for the benefit of women.

In *National Legal Service Authority v. Union of India*<sup>5</sup>, the court ruled that the principles of social, economic, and political justice, equality of status and opportunity, and the assurance of individual dignity, as enshrined in the Preamble, acknowledge the right of all citizens to these fundamental essentials, which aim to nurture the full development of their personalities. The concept of equality plays a crucial role in enabling citizens to achieve their highest potential. Moreover, the Preamble guarantees the dignity of individuals, encompassing the dignity of women as well.

B.R. Ambedkar, the architect of the Indian Constitution, espoused feminist principles even before the emergence of the feminist movement. He advocated for the equal treatment of women and recognized the historical deprivation of power and unjust treatment they had endured. The framers of the Indian Constitution were acutely aware of the discrimination and unequal treatment faced by women in various spheres of life, as well as the prevalence of violence against them, including domestic violence. The Constitution upholds the principle of equality and grants the State the power to enforce this principle and prohibit any form of discrimination, including on the basis of sex. The Constitution emphasises on the requirement of positive discrimination in favour of women to acknowledge the cumulative socio-economic, educational, and

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<sup>5</sup> National Legal Service Authority v. Union of India AIR 2014 SC 1863.

political disadvantages they face. Several articles of the Indian Constitution are particularly relevant in this regard, including Article 14, Article 15 and 15(3), Article 16 of Fundamental Rights, Article 39 (a, b, and c), and Article 42 of the Directive Principles of State Policy.

### 3.4.2 JUDICIAL INTERPRETATION

Courts in India have demonstrated a proactive approach in the realm of feminist jurisprudence, making significant contributions towards empowering women in the country. Recent judicial developments reflect a strong determination to address the oppression faced by women in personal and social spheres. The courts have shown no hesitation in intervening in personal laws to uphold gender equality. Sexual freedom holds paramount importance in the realm of human existence, and no individual should be subjected to subordination in this regard. Women, like men, possess the right to exercise their sexual freedom within their personal space. The court unequivocally affirmed this right in the case of *Joseph Shine v Union of India*<sup>6</sup>. In this judgment, the court relied on the right to privacy enshrined in Article 21 of the Constitution and deemed Section 497 of the Indian Penal Code unconstitutional and discriminatory. This section granted exclusive rights to husbands to prosecute their wives' lovers, as husbands were considered as the custodians of the woman or in other words lords of the woman. Treating wives as possessions and projecting them as commodities violates the principles of equality enshrined in Articles 14 and 15(1) of the Constitution. Consequently, Section 497 IPC was deemed invalid as it treated adultery as an offense only when committed without the consent of the married man, while denying any say to the woman involved. It was recognized that a wife is not the property of her husband, and such discriminatory treatment was rightly struck down by the court.

Achieving true equality requires women to have financial independence and the Supreme Court of India has played a vital role in safeguarding and promoting women's rights within the family. Prior to the 2005 amendment, the law discriminated against daughters when it came to inheritance compared to sons. While a son had an inherent right to claim a share in the HUF property, a daughter was never considered a coparcener, who would be a legal beneficiary of the property. After the amendment in 2005 in Hindu Succession Act, 1956<sup>7</sup>, the Statute declared the daughter to be a coparcener like that of a son. But the confusion still persisted as it was very difficult for the society to digest that a female will also be co-sharer in her father's property culminating into litigation. In *Prakash v Phulvati*<sup>8</sup>, the court clarified that a daughter could only be eligible as a co-sharer in the father's property if both the daughter and the father were alive on September 9, 2005 i.e. the date of the amendment. However, the Court,

<sup>6</sup> *Joseph Shine v. Union of India* (2019) 3 SCC 39.

<sup>7</sup> Hindu Succession Act, 1956, § 6, No. 30, Acts of Parliament, 1956

<sup>8</sup> *Prakash v. Phulvati* (2016) 2 SCC 36.

through the *Vineeta Sharma V Rakesh Sharma*<sup>9</sup> judgment, expanded the scope of the 2005 amendment and fully recognized the position of women as an essential and rightful part of their father's family. In this case, the honourable Court made a significant ruling and held that daughters, by virtue of their birth, have equal coparcenary rights in the Hindu Undivided Family (HUF) property. This means they cannot be excluded from inheritance, regardless of whether they were born before or after the 2005 amendment to the Hindu Succession Act, 1956. This ruling by the Supreme Court rectified the discriminatory nature of the law and reinforced the principle of equality by ensuring that daughters have equal rights to inheritance in HUF property, irrespective of the year she was born. This ruling comprehensively validated and empowered woman, ensuring their equal status and rights within the family, regardless of the specific circumstances of their birth.

Achieving gender equality in the workplace is a complex and challenging task, encompassing various factors. Despite being in the twenty-first century, women still face concerns about their safety at work. Addressing this issue, the Court demonstrated sensitivity by acknowledging and taking measures against sexual harassment in the case of *Vishakha v State of Rajasthan*<sup>10</sup>. The Court in the judgment not only directed employers to ensure a safe environment for women but also established a fair mechanism for addressing such grievances. Sexual harassment not only undermines gender equality but also violates the fundamental rights of women, including the right to equality and the right to live a dignified life as enshrined in Articles 14 and 21 of the Constitution. The guidelines provided by the Court in the *Vishakha* case were eventually transformed into legislation with the enactment of "The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013". This legislative milestone played a significant role in advancing the feminist movement's quest for absolute gender equality.

In a landmark ruling of *Githa Hariharan v. Reserve Bank of India*<sup>11</sup>, the petitioner challenged the discriminatory provision in the Hindu Minority and Guardianship Act, 1956, which granted preferential custody rights to fathers over mothers. The Apex court held that the mother can be the sole guardian of her children as the welfare of the child is of paramount importance thereby upholding the principle of gender-neutral custody laws. In another landmark ruling of *ABC v. The State (NCT of Delhi)*<sup>12</sup>, the Supreme court of India held that an unwed woman belonging to the Christian faith can become a legal guardian of her child without the father's consent. The court concluded that the unwed mother possesses primary custodial and guardianship rights with regard

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<sup>9</sup> Vineeta Sharma v. Rakesh Sharma (2020) 9 SCC 1.

<sup>10</sup> supra note 2.

<sup>11</sup> Githa Hariharan v. Reserve Bank of India (1999) 2 SCC 228.

<sup>12</sup> ABC v. The State (NCT of Delhi) 2015 SCC OnLine SC 609.

to her children and that the father is not conferred with an equal position merely by virtue of having fathered the child.

In another significant case, the judiciary addressed a deeply entrenched gender bias in society that had persisted for centuries. In the case of *Shayara Bano v Union of India*<sup>13</sup>, the Court declared the practice of instant Triple Talaq (Talaq-e-Bidat) as contrary to the fundamental principles of the Quran. In the Muslim community, instant Talaq or Triple Talaq or talaq-e-Biddat was an established Islamic practice that allowed a man to divorce his wife immediately by uttering the word "Talaq" three times. This practice granted absolute power to the husband and placed him in a dominant position where he could end the marriage without the wife's consent. To systematically and comprehensively abolish this practice, the Court directed the government to enact legislation in accordance with the judgment. This led to the enactment of the Muslim Women (Protection of Rights on Marriage) Act, 2019, which prohibits triple Talaq and makes it a punishable offense with imprisonment for up to three years and a fine.

In another significant milestone for progressive feminist jurisprudence, the Court made a ground-breaking decision to intervene in a matter involving belief and asserted that devotion and belief should not be limited to a specific gender. In the case of *Indian Young Lawyers Association v State of Kerala*<sup>14</sup> (commonly known as the *Sabarimala case*), the Court allowed women of all ages to enter the Sabarimala Temple, overturning a centuries-old custom that prohibited the entry of menstruating women. Addressing such legal issues in a secular country like India can be complex, as they involve intricate implications of Articles 14, 25, and 26 of the Constitution. However, the Court demonstrated unwavering determination and upheld the constitutional principles of liberty, equality, and dignity, prioritizing them over patriarchal norms, dominance, and beliefs.

#### 4. FINDINGS AND RESULT

Feminist legal theory has thus expanded and contracted over time. It expanded over women's rights but at the same time contracted on maternalism. The theory kept its focus on changing laws to end gender inequality, legal and societal system and the conflict over subordination. However, the feminists were able to achieve formal legal equality such as rights in property, equal wages, right to vote, coparcenary rights. But socially a woman is still considered person, whose main purpose in life is to take of the family without claiming for basic rights. Our system is still, patriarchal and women with voice are considered ill-mannered and out of space. Formal equality is trying to dismantle the stereotypes that women is only for domestic work and is subject

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<sup>13</sup> supra note 3.

<sup>14</sup> supra note 1.

to subordination to men.<sup>15</sup> Though we have come a long way in gender equality through feminist legal theory but a few feminine attributes are still undervalued within a patriarchal society.

## 5. CONCLUSION AND SUGGESTIONS

Feminist jurisprudence is a response to the predominantly patriarchal nature of traditional laws, aiming to challenge and transform them. It prompts us to contemplate the potential changes that could have transpired if a feminist perspective had been considered during the formulation of laws. Understanding feminist jurisprudence requires examining its connections with other disciplines, as it cannot be viewed in isolation. This paper seeks to commemorate the significant milestones achieved through the influence of feminist jurisprudence in India, while also exploring the extent to which society has embraced these changes. It traces the evolution of feminism in India from 1915 to the present, analysing the changing ideas and roles of women within society. In the past, women seldom questioned their societal roles, but with the increasing influence of women in various domains, a revolution has sparked introspection, prompting women to question established norms and seek possibilities for change. The paper also addresses the various obstacles encountered by feminist jurisprudence and the growth of feminism. Additionally, it highlights the impact of post-independence efforts and sheds light on the progress made thus far. The aim of the feminist legal theory is to create a just, class-less and gender-neutral society. Though women are excelling in almost all the fields in the society and are given many societal responsibilities worldwide. But still more is required to do to bring justice, freedom, liberty and gender equality.

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<sup>15</sup> Ruth Bader Ginsburg & Barbara Flagg, *Some Reflections on the Feminist Legal Thought of the 1970's*, *University of Chicago Legal Forum*, Vol. 1989, Article 3. <https://chicagounbound.uchicago.edu/uclf/vol1989/iss1/3>

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