

## FEMINIST JURISPRUDENCE AND ITS IMPACT ON LEGAL REFORM AND GENDER EQUALITY.

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*“Feminism isn’t about making women strong. Women are already strong. It’s about changing the way the world perceives that strength.”<sup>1</sup>*

*~G.D. ANDERSON*

<sup>1</sup> <https://www.thecovaproject.com/cova-conversations/gdandersonbio>

## INTRODUCTION

Feminist Jurisprudence is based on the belief that the law has been fundamental in women's historical subordination. The feminist legal theory or feminist jurisprudence is twofold. First, feminist jurisprudence wants to explain ways in which the law played a role in women's former subordinate status. Second, feminist legal theory is dedicated to changing women's status through a rework of the law and its approach to gender.

For centuries, most laws were drafted, interpreted, and enforced by men. therefore, women's experiences, voices, and struggles seldom found space enclosed by the legal system. Even though the law often asserts to treat everyone equally, in actuality it has carried a long deep-rooted prejudice that Favors male perspectives. Across the world, and particularly Indian People, this imbalance can be seen in how women's rights have historically been sidelined whether in family, property or workplace laws. Feminist jurisprudence challenges this imbalance by asking whether a legal system built without women's participation can ever be truly just.

## FROM PROTEST TO PRINCIPLE: THEORETICAL ORIGINS OF FEMINIST JURISPRUDENCE

The origin of feminist jurisprudence started after World War II, when women began to question why they were not treated equally in society and under the law, when women began demanding recognition for their roles in rebuilding societies and economies. However, it was during the 1960s women's movements and especially when in the United States and Europe that feminist legal thought began to take shape.

Writers like Simone de Beauvoir, in her groundbreaking book *The Second Sex*,<sup>2</sup> questioned why women were seen as “the Other” in social and legal systems. Her work became the philosophical foundation for modern feminism, inspiring later scholars to look critically at the law itself.

By the 1970s and 1980s, feminist jurisprudence moved into academia. Carol Gilligan, through her famous work in a Different Voice,<sup>3</sup> developed the ethic of care that the women's moral reasoning often emphasizes relationships and empathy, which should also inform justice. Catharine MacKinnon, in her writings such as *Toward a Feminist Theory of the State*, introduced the sexual subordination theory, arguing that law historically normalized male dominance, particularly in cases involving sexual harassment and pornography.<sup>4</sup>

<sup>2</sup> SIMONE DE BEAUVIOR, *THE SECOND SEX* (H.M. Parshley trans., Alfred A. Knopf 1949).

<sup>3</sup> Gilligan, Carol. *In a Different Voice: Psychological Theory and Women's Development*. Cambridge, Massachusetts: Harvard University Press, 1982.

<sup>4</sup> CATHARINE A. MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* (Harvard Univ. Press 1989).

Feminist jurisprudence directly criticized traditional schools of law like legal positivism and liberalism, which observed law as an objective and gender-neutral and feminists argued that these schools disregard social realities and power structures that kept women unequal also movement extended as an interdisciplinary field, linking psychology, sociology and gender studies to uncover how patriarchy operates through legal norms.

In India, after the Independence, the Constitution gave equal rights to men and women under Articles 14, 15, and 16 also promising equality before law and no discrimination based on gender. But in reality, women still faced economic, social, and legal inequality. Even after all these legal reforms and progressive judgments, deep-rooted prejudice against women still exists in societies. Many people continue to believe that a woman's primary role is in the home, not in decision-making or leadership. Social practices like dowry, child marriage, and unequal treatment of daughters still mirror this mindset. So, while the law promises equality, the execution and social etiquette often fail equal it. Feminist jurisprudence in India continues to fight this gap reminding us that true gender equality needs not only legal change but also a change in mindset and culture.

For instance, the landmark case of the *Air India v. Nargesh Meerza*<sup>5</sup> cabin crew is a painful reminder of this truth. According to regulation No. 12 of Indian Airlines Service<sup>6</sup>, where Women flight attendants were told that marriage, pregnancy, or simply turning 35 marked the end of their careers, while their male counterparts flew freely until 58. The law had to step in to declare these rules "arbitrary and unconstitutional." But what is more disturbing is that such injustice was not seen as shocking until it reached the court.

This was not just about a job but it was about a woman's right to dream without conditions, to live without being measured by age, appearance, or motherhood. It revealed how patriarchy hides behind policies, how discrimination wears the mask of "procedure." Feminist jurisprudence tears off that mask. It stands as a voice that refuses to let silence normalize bias and a reminder that equality written in the Constitution means nothing unless it's lived in reality also the shadow of gender prejudice still haunts Indian society.

## BREAKING DOWN PATRIARCHY : THE THEORIES THAT SHAPED THE FIRE

There are three major schools of thought in feminist jurisprudence:

- **Cultural feminism:** This school of thought focuses on giving men and women a voice for their moral and ethical values. This school values and celebrates the distinction between men and women.

<sup>5</sup> *Air India Etc. Etc. v. Nergesh Meerza & Ors.*, 1981 AIR (SC) 1829, 1981 SCC (4) 335 (Ind.).

<sup>6</sup> *Air India Etc. Etc. v. Nergesh Meerza & Ors.*, AIR 1981 SC 1829, 1981 SCC (4) 335 (Ind.) (Regulation No. 12, Indian Airlines (Staff) Service Regulations, 1965).

Cultural feminism reverses the focus of liberal feminism. It is concerned with women's differences from men." It argues that important task for feminism is not to include women into patriarchy, and prove that women are similar to men and can function like men and meet male norms, but to change institutions to reflect and accommodate values that they see as women's nurturing virtues, such as love, empathy, patience and concern". It is an ideology of a "female nature" or "female essence" that attempts to revalidate what cultural feminists consider undervalued female attributes. It is also a theory that commends the difference of women from men. It is based on an essentialist view of the differences between women and men and advocates independence and institution building.

- **Liberal Feminism:** This school promotes individual freedom, and freedom from age-old male authority beliefs, and seeks to eliminate gender-based distinctions.

The Origin of contemporary liberal feminism goes back to the 18th century. An important principle of this philosophy was individualism by which was meant that an individual possesses the freedom to do what he wishes without interference from others". Liberal feminism is an individualistic form of feminist theory, which focuses on women's ability to maintain their equality through their own actions and choices

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

It does not see the issue of gender equality as an issue of difference and sameness but rather as issues of domination of women by men" Radical feminism is a perspective within feminism that calls for a radical reordering of society in which male supremacy is eliminated in all social and economic contexts.

Feminists attempt to call into question laws about domestic violence, rape, divorce, maintenance, reproductive rights, and employment, and they have significantly changed gender-discriminatory laws into gender-neutral laws. One such case is the landmark judgment of *Joseph Shine v. Union of India*<sup>7</sup>, which held that Section 497 of the Indian Penal Code treats women as chattel for this provision, is discriminatory based on sex, and violates Articles 14 and 15 (1) of the Indian Constitution, and thus such provisions should not be pronounced valid.

## FEMINISM IN INDIA

The term "feminism" is derived from the Latin word "Femina," which means "woman." Under Article 14 of the Indian Constitution, which states that every citizen of the country should be treated equally, also grants women the right to vote.

<sup>7</sup> *Joseph Shine v. Union of India*, (2018) 10 SCC 1 (Ind.).

Shah Bano Begum paved the way for thousands of women to make legitimate claims that had previously been denied to them. The practice of talaq-e-bidat and talaq-e-mughallazah was declared unconstitutional by the Indian judiciary. These practices raised serious concerns about gender equality and rights.<sup>8</sup> Further in the landmark Shayara Bano Case, the Indian judiciary proclaimed the law of equality over personal law. Women of all faiths applauded the amendment.<sup>9</sup>

“Have you ever noticed how a girl’s freedom is measured by the setting sun, while a boy begins when it goes down?”

A girl asks her parents if she can visit her friend’s house to complete a school project. The answer is either a strict “no” or a warning to return home before evening. Her brother, on the other hand, faces no such restrictions, he can stay out as long as he likes. The same pattern repeats when it comes to play. Boys run freely on open grounds, shouting and laughing, while girls are told to stay indoors, often without any real space or equipment to play.

Why does this difference exist? Why is a girl’s freedom still tied to what time the sun sets, while a boy’s freedom is treated as natural? These everyday examples reveal the quiet, invisible form of gender discrimination that still shapes our homes and minds.

This bias also affects boys, though in different ways. They are often told not to cry, not to appear weak, and to always win because “boys don’t cry.” Society praises them for being tough and discourages them from showing emotion. Similarly, if a man chooses to stay at home and take care of his family, he is often mocked, as if caregiving is a woman’s job alone. Even so, the weight of discrimination still falls more heavily on women and girls. They face more restrictions, more judgment, and fewer chances. This is why feminist jurisprudence pays special attention to women’s struggles because until women and men can both live and choose freely, true equality will remain only a promise, not a reality. It clearly shows how women are often ignored or treated unfairly by traditional legal systems and why change is needed. The main goal is to make the law more just, fair, and sensitive to the experiences of women. It reminds us that true justice can only exist when both men and women have equal rights, opportunities, and respect in every part of life.

## WHEN NUMBERS TELL STORIES: WOMEN, LAW AND THE FUTURE

The United Nations Women Report 2024, which mentions countries with women's active participation in decision-making and legislation, claims that these countries have experienced a decrease of 25% in gender-based violence. The report further states that if women's views are taken into account in the decision-making processes, the resulting policies will become more caring, inclusive, and protective towards women and children.

<sup>8</sup> *Mohd. Ahmed Khan v. Shah Bano Begum*, AIR 1985 SC 945, (1985) 2 SCC 556 (Ind.).

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

Representation is not merely a matter of symbols; it actually leads to substantial societal change.<sup>10</sup>

However, India still faces serious challenges. The National Family Health Survey (NFHS-6), 2024 shows that about 29% of Indian women face domestic violence. These shocking numbers remind us that laws alone cannot change society - people's mindset must also change. Legal equality without social acceptance is like a building without a foundation - it cannot stand strong.<sup>11</sup> The India Justice Report 2022 adds another perspective: only 11% of police officers and 26% of judges in India are women. These numbers show that the justice system is still not gender-balanced. When women are underrepresented in law enforcement and the judiciary, the issues affecting them often go unheard or misunderstood.<sup>12</sup>

Therefore, the journey ahead should focus on both legal and social reforms. We need more women in positions of authority, gender-sensitivity training in institutions and education that teaches equality from childhood. Feminist jurisprudence continues to remind us that real progress comes not from words or symbolic representation - but from ensuring that every woman, regardless of her class, caste or background, has equal voice, equal opportunity and equal respect under the law.

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<sup>10</sup> *Progress on the Sustainable Development Goals: The Gender Snapshot 2024*, United Nations Department of Economic and Social Affairs & UN Women (Sept. 2024), available at <https://knowledge.unwomen.org/en/digital-library/publications/2024/09/progress-on-the-sustainable-development-goals-the-gender-snapshot-2024>

<sup>11</sup> *National Family Health Survey (NFHS-5), 2019–21: India Report*, Int'l Inst. for Population Sciences (IIPS) & Ministry of Health & Family Welfare, Gov't of India (2022), available at <https://rchiips.org/nfhs/>

<sup>12</sup> India Justice Report: Ranking States on Police, Judiciary, Prisons and Legal Aid (2022), Tata Trusts & partners (Apr. 2023) (India), available at <https://indiajusticereport.org/files/IJR%202022%20Full%20Report.pdf>

## CONCLUSION

Feminist jurisprudence stands as a transformative lens that redefines justice by highlighting how law, once an instrument of exclusion, can become an instrument of equality. It reminds us that true justice is not achieved simply by creating gender-neutral laws, but by ensuring that women's voices, experiences and struggles are at the centre of the legal framework. Despite the constitutional guarantee of equality, deep-rooted patriarchy continues to shape institutions, policies and social behaviour, creating a gap between the law and lived reality. Feminist jurisprudence bridges this gap by challenging the objective notion of law and instead insists that law must be empathetic, inclusive, and mindful of power dynamics. As Gloria Steinem has rightly said, "The story of women's struggle for equality is not that of any one feminist or any one organization, but of the collective efforts of all who care about human rights."<sup>13</sup> This movement is not about elevating one gender above the other, but about reconstructing justice - where equality is not a privilege but a naturally deserved right. It envisions a future where the legal system reflects the values of fairness, dignity and human compassion, ensuring that justice is not just written into laws but experienced by every woman in her everyday life.



<sup>13</sup> Gloria Steinem, *as quoted in G. Steinem, Outrageous Acts and Everyday Rebellions* (1983).