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Feminist Jurisprudence: A New Era in Indian Judiciary

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Abstract
Feminist Jurisprudence is an important branch of legal theory that focuses on how laws affect woman and seeks to highlight gender inequalities. It builds on feminist ideas and perspectives, applying them to the study of law and justice. This paper explores the growth of feminist Jurisprudence, looking at how different waves of Feminism have shaped it and how landmark legal decisions have influenced it's development in India.
The first section discusses the various waves of Feminism and their impact on feminist legal thought. The paper then examines key legal cases in India, showing how the quotes have contributed to advancing women's rights and feminist ideas the legal system. By looking at these cases, we can trace the changes that have taken place in the Indian legal framework over time.
Before concluding the paper identifies the challenges and obstacles that continue to hinder the progress of feminist Jurisprudence, especially in India. Finally, it explores the positive changes that Feminist Jurisprudence has brought to the country.

Keywords: Not my CJI, Acts, Feminism, jurisprudence, articles

Introduction
Today, word "Feminism" has many dimensions. For some, it is a historical struggle demanding the rights of women to vote and then to eradicate obvious discrimination against women from the Nation's laws. For others **i**t is a political movement to challenge the patriarchy and oppression faced by women from the centuries. Now it is emerging as an ideology or a philosophical system of thought and as a community of belief which is concentrating on attaining political, social and economic equality not only for women but also for men and people of any gender. In it's recent interpretation, feminist approach embraces justice for all and seeks to associate itself with rights based movements for people of color, the poor immigrants, refugees, religious minorties, disabled individuals, LGBTQ people and other historically marginalised groups.

"Feminism" through its three waves, various movements and struggles has brought structural changes in the western society. Feminist legal theory, a twentieth century innovation, has incorporated feminist ideology in judicial judgements and has successfully brought out cultural social and political changes in the west and has helped in empowering various marginalised groups. In India, despite of having a "feminist constitution" for many decades women and other oppressed classes (dalits, LGBT community and third gender) have lived the life of that 'other'. Even Supreme Court in some of its past judgememts has shown how judge's perspective had been influenced by assumptions regarding particular gender, caste, class, sexuality etc. and has exposed the layered structure of misogynistic attitude in our judicial system. As in the case of *Rakesh B versus Karnataka High Cour*t, court infamously remarked that it was "unbecoming" of an alleged rape victim to have fallen asleep after being 'ravished'. Constitutional feminism in India, has been treated as 'The road not Taken' (Robert Frost poem) for long time. But, in some recent judgements, Supreme Court of India has become the torch bearer of the feministic jurisprudence by passing historic judgements against the preconceived psychological notions and has paved the way for enforcement of fundamental rights.

Introduction of Indian Feminist Judgements Project, Justice AK Sikri and Chief Justice of India DY Chandrachud's support to feminist thinking in dealing with the law can be seen as a beginning of new era of progressive thinking in India's judiciary, despite of movements like *# Not my CJI*. Through, some recent judgements, (discussed from the next paragraph), Supreme Court has tried to cure the patriarchial mindset of the legal system and has tried to overturn the established 'Power Discourses'.

In it's ruling in *Vineeta Sharma versus Rakesh Sharma* case It held that daughters would have equal coparcenary rights in Hindu Undivided Family property by virtue of their birth and could not be excluded from inheritance regardless of whether they were born before the 2005 amendment to the *Hindu Succession Act 1956*, is a landmark decision in protecting women's rights in the context of the family. It over ruled the earlier judgement of *Prakash versus Phulwati* versus *T.B. and Mangammal Raju*. This judgement along with *Indian young lawyers association and others. State of Kerala and others* will boost self-respect and dignity of women in this society and will strengthen Article 14 of the constitution. Another ruling to empower women in the family is against the practice of instant Triple Talaq in *Shyra Bano versus Union of India* case. It has been hailed by the various groups in the whole country. Supreme Court ruled that the practice of Triple talaq (also known as Talaq-e-bidat), that is, when a man uses the word 'Talaq' three times in a row without his wife's permission, husband has the legal right to divorce his wife, violates the fundamental principles of Quran. *The Muslim Women Protection of Rights* of Marriage Act 2019 was created as a result of the court's directive to the centre to enact legislation in this regard. According to act, any Muslim husband who issues a Triple Talaq to his wife faces a fine and a sentence up to 3 years in prison. Here, one witnesses an encouraging break from the courts cautious stance in *Mohammed Ahmed Khan versus Shahbano Begum judgements.*

*With Joseph Shine versus Union of India r*uling the court abolished the redundant law of Adultry and upheld women's right to exercise her sexual freedom in a private setting. In this case court relied on Article 21's *Right to privacy* and struck down section 497 of the IPC which grants husband, the sole right to prosecute his wive's lover while denying wife the same right to pursue a case against the women with whom he has an intimate relationship. Thus, adultry is only a crime when it occurs without the consent of the married man. As the Chief justice Deepak Mishra correctly noted that Section 497 viewed the married woman as nothing more than her husband's property. These judgements will boost self-respect and dignity of women not only in the family sphere but also in society and will strengthen the goal of gender equality mentioned in article 14 of the constitution. In Sabrimala issue, by permitting mensurating women in the temple, Court has challenged centuries old religious beliefs and give new meaning to religious faith in which all disciples of God are equal, despite of their gender, caste, class etc. and has taken another step to establish equality in all the spheres of life.

Feminist ideology now not only advocates women's issues but it also fights for every oppressed section. Being a feminist imply that, person will show mercy, compassion and empathy in his behaviour and thoughts towards others. The Supreme Court and various high courts have delivered judgements by breaking the ceilings of age old social, religious and political norms of societal structure. In *National legal services authority versus Union of India* Supreme Court declared 'transgender people', 'the third gender' by conforming the fundamental rights granted under the constitution of India, will be equally applicable to them and they have the right to self-identify themselves with the gender of their choice, that is male, female or third gender. This decision will change the life of this 'socially outcast' section of our population who has endured various kinds of abuses and insults at the hands of other two 'natural genders' This will also open gates for economic equality because now various employment avenues will be available to them. Now they will not be forced to take up earlier professions of begging, prostitution, dancing-singing in auspicious occasions of others, as a result of legal recognition of third gender.

Another internationally celebrated judgement of Indian Supreme Court is scrapping of section 377 of IPC. Though the verdict has only decriminalised the same sex intercourse, but has not provided marriage equality. Still it's a big win for LGBT community in country where ruling was vehemently oppossed by religious and social groups and most of the population, who are afraid that decision will disturb 'the natural sexual order' and well established social institutions. Another ruling to establish gender equality is the recent judgement of The Secretary Ministry of defence versus Babita Punia and Others case. Supreme Court has shattered the gender stereotypes by providing the long term job security and has established equality in armed forces where women were treated 'differentially' because of stereo typical perception of physical and psychological capabilities that are based on deep rooted belief and assumptions about gender roles in society. Now women officers will have the equal opportunities in promotions, rank benefits and pensions, to their male counter parts. It will help in dismantling workplace inequality.

The very recent judgement in *X versus The Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi and Anr*., it states", all women are entitled to the benefit of safe and legal abortions". Supreme Court allowed an unmarried women to end her pregnancy at 24 weeks. This ruling has been seen as progressive and historic by Feminist lawyers, scholars, academia and civil rights groups throughout the world in comparison to US Supreme Court's controversial order in which it has over turned the 1973 ruling by stating that States should restrict abortions of pregnant women. In Indian ruling word 'woman' not only include female gender by birth only but also cis-gender women. In context to Indian society where unmarried pregnancy is not socially acceptable and even medical practitioners resort to unethical methods for terminating pregnancy of unmarried girl, judgement will pave the road of equality for modern women by giving them,' Right to Bodily Autonomy'

Though the Supreme Court has acknowledged pre-marital sex, live in relationships, prostitution as vocation and has passed revolutionary verdicts regarding these issues yet the social acceptance of these modern concepts is in doubt because it needs behavioral, cultural and ideological change among the masses. Our movies like Pink, Thappad, Section 375, Article 15 etc. have shown effectively how the life of the protagnists has improved because of the progressive and feministic thought of our judicial system. As Supreme Court has acted as “champion of rights of the marginalised

section" of the Indian society and now as its judges are openly accepting that the part of their personalities have feminist attributes, we can expect more such judgements which will help in establishing egalitarian society.

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