

Women Empowerment in India: A Historical Perspective with reference to Feminist Jurisprudence

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Abstract

Women's empowerment in India has a long and complex history, linked to the broader social, political, and legal landscape of the country. The issue of women's empowerment is deeply rooted in the struggles for gender equality and social justice, with feminist jurisprudence playing a crucial role in shaping the discourse and driving change.

India's journey towards women's empowerment can be traced back to the country's struggle for independence, where pioneering women activists and leaders like Sarojini Naidu, Vijaya Lakshmi Pandit, and Aruna Asaf Ali played a pivotal role in the independence movement. The post-independence era witnessed a gradual but steady progress in women's empowerment, with the enactment of various laws and policies aimed at addressing gender-based discrimination and violence. The Constitution of India, with its emphasis on equality, non-discrimination, and the prohibition of practices like child marriage and dowry, has been a crucial driver of this change.

However, despite these legislative and institutional efforts, the reality on the ground has often lagged behind, with deep-rooted societal attitudes and practices continuing to pose significant challenges to women's empowerment. Feminist jurisprudence has emerged as a powerful tool in addressing these challenges, by critically examining the law and its impact on women, and advocating for a more inclusive and just legal framework. Feminist jurisprudence has been instrumental in highlighting the gendered nature of the law, and the ways in which it has historically been biased towards patriarchal norms and values. The journey towards women's empowerment in India is an ongoing one, with constant challenges and setbacks, but also with moments of progress and hope. The sustained efforts of women's movements, civil society organizations, and feminist scholars, coupled with the growing recognition of the importance of gender equality in the legal and political spheres, have been instrumental in driving this change.

Keywords: Feminist Jurisprudence, Gender equality, Social Movements, Historical events

Introduction

The journey towards women's empowerment in India is an ongoing one, with constant challenges and setbacks, but also with moments of progress and hope. The sustained efforts of women's movements, civil society organizations, and feminist scholars, coupled with the growing recognition of the importance of gender equality in the legal and political spheres, have been instrumental in driving this change.

As India continues to grapple with the complex and multifaceted issue of women's empowerment, it is crucial that the lessons of the past and the insights of feminist jurisprudence are leveraged to chart a more inclusive and equitable path forward.¹ Feminist Jurisprudence has been instrumental in highlighting the gendered nature of the law, and the ways in which it has historically been biased towards patriarchal norms and values.^{2 3}

The definition of feminism more generally as the movement to end sexism, sexist exploitation, and oppression. This broad understanding of feminism as a transformative ideology that seeks to challenge and dismantle systemic patriarchal structures is crucial to understanding the role of feminist jurisprudence in the context of women's empowerment in India. Feminist jurisprudence has played a fundamental role in pushing for reforms in various areas, such as domestic violence, sexual harassment, and property rights, to ensure that the law better reflects the realities and needs of women.⁴

Feminism in India has a rich and diverse history, with women's movements and activists at the forefront of the struggle for gender equality and social justice. The development of feminist jurisprudence in India has been shaped by this broader context, with scholars and activists drawing on both local and global perspectives to challenge the patriarchal biases inherent in the legal system. Notwithstanding these achievements, the journey towards women's

¹ Noreen, N., & Musarrat, R. (2014). Women Struggle for Legal Empowerment in Pakistan Historical Overview. In *Journal of Public Administration and Governance* (Vol. 4, Issue 1, p. 134). <https://doi.org/10.5296/jpag.v4i1.5060>

² Singh, A. (2016). Marital Rape: A Socially and Legally Warranted Crime in India. In CRC Press eBooks (p. 17). Informa. <https://doi.org/10.1201/9781315368528-3>

³ Khan, A., Majeed, S., & Sayeed, R. (2020). Women Education in India and Economic Development Linkages: A Conceptual Study. In *SSRN Electronic Journal*. RELX Group (Netherlands). <https://doi.org/10.2139/ssrn.3631689>

⁴ Smart, C. (1992). The Woman of Legal Discourse. In *Social & Legal Studies* (Vol. 1, Issue 1, p. 29). SAGE Publishing. <https://doi.org/10.1177/096466399200100103>

empowerment in India remains fraught with challenges, particularly in the face of deep-rooted patriarchal attitudes and practices.

Feminist jurisprudence and its goals in the Indian context

Feminist jurisprudence has emerged as a critical perspective that challenges the patriarchal foundations long entrenched in the legal system⁵. Feminist scholars have exposed the inherently biased nature of the law, which has historically favoured male-centric viewpoints and marginalized the experiences of women⁶. The early feminist movements demanded emancipation, equality, and liberation of women from oppressive patriarchal structures⁷. Subsequent ideas have emphasized the need for a social transformation of law, culture, and social patterns to unleash women's potential. In this context, feminist jurisprudence seeks to reframe the legal system to better serve the interests and experiences of women. Feminist jurisprudence aims to address three key issues. First, it confronts the reality of oppression repeatedly legitimized by legal regulations, where women's status has historically been little better than that of slaves, the property of their fathers or husbands⁸. Second, it challenges the system of male authority that structures the institutions and organizational rationality, constituting the oppressive and exploitative relations affecting women. Third, it questions the traditional male arguments that women are different from men and have an underdeveloped sense of abstract and impartial objectivity required for justice. The feminist response is to provide a radical critique of the "objective" and male-centered jurisprudence that has dominated the law. Feminist scholars argue that the law has been shaped by patriarchal values and structures, privileging the experiences and perspectives of men while marginalizing those of women. This critique calls for a fundamental rethinking of the legal system to better account for women's lived experiences and address the systemic gender inequalities embedded within it. Importantly, feminist jurisprudence does not merely seek gender equality under the current legal framework. Rather, it advocates for a more transformative approach that challenges the

⁵ MacKinnon, C. A. (1990). Toward a feminist theory of the state. In *Choice Reviews Online* (Vol. 27, Issue 9, p. 27). Association of College and Research Libraries. <https://doi.org/10.5860/choice.27-5386>

⁶ Witmer, H. (2019). Degendering organizational resilience – the Oak and Willow against the wind. In *Gender in Management An International Journal* (Vol. 34, Issue 6, p. 510). Emerald Publishing Limited. <https://doi.org/10.1108/gm-10-2018-0127>

⁷ Herouach, S. (2019). Liberal Feminism Impact on Moroccan Educated Women: Faculty of Letters and Human Sciences, FLDM, as a Field Study. In *Open Political Science* (Vol. 2, Issue 1, p. 128). De Gruyter. <https://doi.org/10.1515/openps-2019-0014>

⁸ *Supra* f.n. 5

very foundations of the law and reshapes it to empower women and promote a more inclusive and equitable society

Feminist jurisprudence has had a profound impact on legal discourse and reforms in India, challenging the traditionally patriarchal nature of the legal system. India's women legal academics have played a crucial role in this regard, providing a counterpoint to the historical entrenchment of patriarchal scripts within law schools.⁹ The women's movement in India has a long and rich history, dating back over a century. In the pre-independence era, this movement began as a social reform effort, addressing issues such as the treatment of widows and child marriage within Hindu society. (Pande, 2018) The post-independence era, however, saw the women's movement become more explicitly political, with women's groups mobilizing to demand greater participation in the democratic process. This political activism was bolstered by the Constitution's promise of gender equality, as well as the international women's rights movements and the Convention on the Abolition of all Forms of Discrimination Against Women.

The influence of feminist jurisprudence on legal discourse in India has been multifaceted. Women legal academics, often marginalized within the traditionally male-dominated law schools, have found more success in counter-institutions like social science schools, professional practice, and progressive think tanks. These spaces have allowed them to sustain their legal voice, academic credibility, and activism. Feminist legal scholars in India have challenged the patriarchal biases inherent in the legal system, highlighting the ways in which the law has historically failed to protect the rights and interests of women. They have drawn attention to issues such as the plight of women in a male-centric society, the need for equal access to health, education, and economic opportunities, and the importance of recognizing and addressing gender-based violence and discrimination. The impact of feminist jurisprudence on legal reforms in India is also evident. Landmark cases and legislation, such as the Vishaka Guidelines on Sexual Harassment in the Workplace and the Protection of Women from Domestic Violence Act, have been shaped by the advocacy and legal scholarship of feminist jurists and activists. The efforts of feminist scholars and activists to challenge the marital rape exception in the Indian Penal Code, which has been a long-standing issue in the country¹⁰. The

⁹ Ballakrishnen, S., & Samuel, R. F. (2018). India's Women Legal Academics: Who They are and Where You May Find Them. In SSRN Electronic Journal. RELX Group (Netherlands).

<https://doi.org/10.2139/ssrn.3180526>

¹⁰ Supra f.n. 2

push for reforms in property rights, particularly related to inheritance laws, which have historically been biased against women.

History of Women Empowerment in India

The story of women's empowerment in India is a complex, shaped by the country's long history of patriarchal norms, social and cultural practices, and evolving legal and political frameworks.

India's long history of patriarchal norms and practices has been a significant barrier to women's empowerment. Despite the presence of influential women leaders and administrators throughout history, such as Chand Bibi and Noor Jahan, the overall status of women in society has largely been one of subordination and marginalization.

Gender has been a central concern in India since the colonial era. The "woman's question" emerged as a preeminent issue from the 19th century social reform movement, significantly informing anti-colonial nationalism, and continues to be a point of contention in India's cultural, social, and political landscape. The recognition of gender as a central concern forms the foundation of India's women's movement. A prominent gender-related issue was the status and benefits accorded to women as India progressed towards self-determination, statehood, democracy, development, and modernity. In 1974, the Indian government's report, "Towards Equality," forcefully placed the status of women on the national agenda by arguing that the position of Indian women had declined rather than improved since 1911. Consequently, development and progress became gendered issues, as data on gender-based discrimination in employment, education, land distribution, inheritance, nutrition, and health could no longer be ignored.

Concurrently, violence against women was on the rise and widely reported in the media, including cases of rape in police custody, large-scale domestic homicides, and sexual harassment in the workplace and public spaces. Women's issues permeated various domains, including culture, religion, law, family and community structures, as well as the challenges and official responses to population, poverty, illiteracy, and labour. Additionally, women's issues became integral to the emerging social movements of Dalits, environmentalists, tribal communities, anti-dam activists, peasants, and trade unions. As Rajeswari Sunder Rajan

observed during the 50th independence celebrations, "gender began to figure as an 'issue' as well as a category of analysis" across these discourses, disciplines, and sites of action.¹¹

In essence, before independence, the movement began as a social reform effort focused on addressing the plight of women within Hindu society, particularly concerning issues such as the treatment of widows and child marriage¹². However, this early movement was largely led by men and remained confined to the upper castes, leaving the underlying patriarchal structure untouched.¹³

The post-colonial women's movement was empowered by the recognition of gender as a central concern, with feminist scholarship and women's studies providing critical analysis. Women organized to protest violence, legal discrimination, and economic hardships, advocating for improved living conditions through higher wages, the prohibition of alcohol, and the provision of drinking water. These women represented diverse backgrounds in terms of caste, class, and geographic location. However, differences among them grew, fracturing the cohesion of the women's movement and the broader identity it had encompassed during its initial phase of active political engagement. This fragmentation was exemplified by the Shah Bano case in 1986, which brought to the fore tensions surrounding discrimination against women in personal law, an issue that had been on the women's movement's agenda since the 1920s. The case intensified a complex interplay of nationalist ideology, religious fundamentalism, communalism, and caste tensions, all of which were contested on the site of gender, further undermining the fragile unity of the women's movement.

Over the course of the 20th century, however, India has witnessed a gradual shift in the societal attitudes and legal frameworks towards women's empowerment. The emergence of various social reform movements, women's movements, and the role of Christian missionaries have played a crucial role in challenging the deep-rooted biases against women's education and participation in public life.

¹¹ Rajan, R. S. (2000). Introduction: Feminism and the Politics of Resistance. In *Indian Journal of Gender Studies* (Vol. 7, Issue 2, p. 153). SAGE Publishing. <https://doi.org/10.1177/097152150000700201>

¹² Pande, R. (2018). The History of Feminism and Doing Gender in India. In *Revista Estudos Feministas* (Vol. 26, Issue 3). Universidade Federal de Santa Catarina. <https://doi.org/10.1590/1806-9584-2018v26n358567>

¹³ Krishnaraj, M. (2012). The Women's Movement in India: A Hundred Year History. In *Social Change* (Vol. 42, Issue 3, p. 325). SAGE Publishing. <https://doi.org/10.1177/0049085712454052>

The economic reforms of 1991, commonly known as the LPG concept, have also had a significant impact on women's empowerment in India. These reforms have opened up new avenues for women's participation in the workforce and decision-making processes, although gender disparities in various spheres, such as employment and investment behaviour, still persist.

The turn of the century continued to see a significant shift in the composition and focus of the women's movement in India. While the induction of women into the nationalist movement during the struggle for independence served as a catalyst, empowering women and broadening the scope of the movement, it was the Constitution's promise of gender equality that had further fueled the movement, and events such as the 1974 "Towards Equality" report prepared by the Committee on the Status of Women provided crucial momentum.¹⁴

The influence of international women's movements and the Convention on the Abolition of all Forms of Discrimination Against Women also played a role in shaping the modern feminist movement in India. The movement evolved, addressing a wider range of issues, including equal access to health, education, and political rights, as well as the pursuit of economic progress and gender equality.¹⁵

In the 21st century, the feminist movement in India has taken on a new dimension, with social media emerging as a powerful tool for mobilization and activism. The #IWillGoOut campaign, which emerged in the aftermath of the Nirbhaya case, a brutal rape incident in Delhi, exemplifies the growing role of young feminists in leading the charge for change.¹⁶

The Nirbhaya case in 2012 was a watershed moment, reigniting the demand for legal protections and greater safety for women in India.¹⁷ The public outcry and mass protests that followed the incident highlighted the deep-rooted issues of gender-based violence and the need for systemic change.

¹⁴ *ibid*

¹⁵ D. R. H. (2023). Plight of Women and Nature in Anita Desai's "The Fire on the Mountain". In *International Journal For Multidisciplinary Research* (Vol. 5, Issue 5). <https://doi.org/10.36948/ijfmr.2023.v05i05.6256>

¹⁶ Titus, D. (2018). Social media as a gateway for young feminists: lessons from the #IWillGoOut campaign in India. In *Gender & Development* (Vol. 26, Issue 2, p. 231). Taylor & Francis. <https://doi.org/10.1080/13552074.2018.1473224>

¹⁷ *ibid*

The aftermath of the Nirbhaya case also revealed the ambivalent attitude towards women in the Indian film industry, where the increase in women-led films has not been matched by a significant change in female representation behind the scenes.

The feminist movement in India has come a long way, from its origins as a social reform movement to its current status as a multifaceted and dynamic force for change. The impact of the Nirbhaya case has further galvanized the movement, bringing issues of gender-based violence and women's safety to the forefront and inspiring a new generation of feminists to continue the fight for a more equitable and just society.¹⁸

Conclusion: Challenges and the way forward

Feminist jurisprudence has been instrumental in highlighting the gendered nature of the law and the ways in which it has historically been biased towards patriarchal norms and values. The development of feminist jurisprudence in India has been shaped by the broader context of women's movements and activism in the country, with scholars and activists drawing on both local and global perspectives to challenge the patriarchal biases inherent in the legal system. The notion of an "Indian women's movement" is highly contentious. The use of "Indian" to describe the women's movement implies a political and cultural uniformity that obscures the diverse, divergent, and conflicting nature of the movement. The issue is not merely one of disunities, but rather stems from intractable conflicts surrounding the term "women," which derive from gender's central role in postcolonial Indian culture and politics. Indeed, the processes of gender construction, including the formation of identities, roles, and relations based on sexual differences, were pivotal in the historical development of the Indian nation-state.

However, gender cannot be divorced from other, competing political identities, all of which play a vital part in the life of the nation. Recognizing the diversity within the category of "women", it is crucial to examine the unique experiences and challenges faced by women from marginalized communities in the Indian context. Women's oppression is multifaceted, with no single underlying cause, necessitating a nuanced, intersectional approach to address it. When considering the rights and issues of minority women in India, the theoretical framework of

¹⁸ Lozoya, Z. R. S. (2021). Working with "monstrous men": ambivalent sexism in the Bombay film industry. In *Feminist Media Studies* (Vol. 22, Issue 6, p. 1295). Taylor & Francis. <https://doi.org/10.1080/14680777.2021.1883087>

intersectionality, as developed by critical race scholars such as Kimberlé Crenshaw, offers a valuable analytical tool for understanding the complex interplay of race and gender in shaping women's lived realities.¹⁹ Feminist theory encompasses a diverse array of ideologies and perspectives, but it is fundamentally characterized by the examination of women's experiences from a female-centric viewpoint. As one scholar has noted, feminism is "a theory and practice forged directly from women's experience as women." While no single theory can fully capture the diverse lived experiences of all women, the value of feminist thought lies in its recognition and validation of women's perspectives and interpretations of their own experiences.

Deeply rooted patriarchal attitudes and practices continue to pose significant obstacles to achieving true gender equality and justice. While the progress has been gradual, the sustained efforts of women's movements, civil society organizations, and feminist scholars have been instrumental in driving meaningful change. The journey towards women's empowerment in India is an ongoing one, with constant challenges and setbacks, but also with moments of progress and hope. Despite the progress made, the reality on the ground paints a more complex picture. Although women have made significant strides in various spheres, such as education, political participation, and economic empowerment, they continue to face significant challenges, including gender-based violence, discrimination in the workplace, and limited access to healthcare and other resources.²⁰

The history of women's empowerment in India provides ample evidence of the success of community efforts and social movements, yet while viewing the scenario retrospectively, many more goals are yet to be achieved.

¹⁹ Carbado, D. W., Crenshaw, K. W., Mays, V. M., & Tomlinson, B. (2013). INTERSECTIONALITY. In Du Bois Review Social Science Research on Race (Vol. 10, Issue 2, p. 303). Cambridge University Press. <https://doi.org/10.1017/s1742058x13000349>

²⁰ Léonard, K. (1979). Women in India: Some Recent Perspectives. In K. Léonard, Pacific Affairs (Vol. 52, Issue 1, p. 95). University of British Columbia. <https://doi.org/10.2307/2757768>