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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

FEMINIST JURISPRUDENCE: ANALYSING GENDER BIAS IN INDIAN LAWS

AUTHORED BY - TWINKLE VERMA

ABSTRACT

Feminist jurisprudence, as a critical legal theory, interrogates the patriarchal foundations of legal systems and seeks to reinterpret law through the lens of gender justice. In India, despite constitutional guarantees of equality and non-discrimination under Articles 14, 15, and 21, the legal framework remains deeply embedded with gendered norms that often marginalize women and other gender minorities. These biases are not merely remnants of colonial or religious patriarchy but are actively reinforced through legislative omissions, procedural inequities, and interpretative biases by courts.

This research paper critically analyses the Indian legal system from a feminist jurisprudential perspective, aiming to uncover how structural and interpretative gender biases continue to operate within statutory laws, personal laws, and judicial decisions. It delves into the disjunction between formal equality enshrined in the Constitution and the substantive inequality experienced by women in areas such as criminal justice (e.g., sexual violence laws), personal laws (e.g., marriage, divorce, inheritance), labour legislation, and property rights. Drawing from key legal provisions, landmark case law, scholarly critiques, and comparative feminist legal theories, the paper explores how Indian law both reflects and reinforces patriarchal hierarchies.

Moreover, this study highlights the intersectional nature of gender oppression—how caste, class, religion, and sexuality compound the marginalization of women within legal processes. The paper advocates for a transformative approach to jurisprudence, one that goes beyond gender neutrality and aspires toward substantive equality by embedding feminist reasoning within legal doctrine, legislative reform, and judicial practice. By situating Indian laws within the broader discourse of feminist jurisprudence, the paper aims to contribute to an emerging body of scholarship that not only critiques but reimagines law as a tool for emancipation.

KEYWORDS

Feminist jurisprudence, Gender bias, Indian legal system, Patriarchy, Substantive equality, Constitutional law, Criminal law, Personal laws, Labour laws, Intersectionality.

INTRODUCTION

The Indian Constitution, celebrated for its progressive vision and egalitarian ideals, enshrines the principles of equality, justice, and non-discrimination. Articles 14, 15, and 21 are often cited as the bedrock of gender equality in Indian jurisprudence. However, a closer examination of statutory laws, judicial interpretations, and institutional practices reveals a persistent gender bias that continues to shape the lived realities of women and gender minorities in India. Feminist jurisprudence emerges as a powerful tool of critique and transformation, aimed at identifying and dismantling the patriarchal underpinnings of law.

Feminist legal theory contends that the law has traditionally been male-centered—created, interpreted, and enforced from the standpoint of male experience and privilege. It questions the assumed neutrality of legal concepts and norms, arguing that such neutrality often conceals systemic discrimination. In the Indian context, gender bias manifests in multiple forms: in personal laws that privilege male authority, in criminal laws that fail to adequately address sexual and domestic violence, in labour laws that ignore unpaid care work, and in judicial reasoning that often perpetuates stereotypes about women's roles, morality, and credibility¹.

This persistent bias is not accidental—it is rooted in the patriarchal foundations of legal and social institutions. For instance, the codification of personal laws was heavily influenced by dominant male religious leaders, sidelining women's voices and reinforcing male privilege². Similarly, judicial decisions in cases of rape or dowry deaths have at times reflected sexist assumptions about female behaviour, chastity, or the ideal victim³.

The relevance of feminist jurisprudence lies in its dual function: as a method of critique and a framework for reconstructing legal norms. It does not merely seek gender neutrality, but advocates for substantive equality, which acknowledges historical disadvantage, structural

¹ Carol Smart, *Feminism and the Power of Law*, Routledge, 1989.

² Flavia Agnes, "Redefining the Agenda of the Women's Movement within a Secular Framework," *Economic and Political Weekly*, vol. 29, no. 20, 1994, pp. 1184–1191.

³ Amita Dhanda, "Judicial Bias and Gender Justice," *Sociological Bulletin*, vol. 49, no. 1, 2000, pp. 83–98.

discrimination, and social context. This becomes especially important in India, where gender inequality is compounded by other axes of oppression such as caste, class, religion, and sexuality⁴.

This research aims to critically examine how gender bias operates within Indian laws, both substantively and procedurally, through the lens of feminist jurisprudence. It investigates whether current legal frameworks serve the constitutional promise of equality or if they continue to sustain patriarchal power dynamics. By analysing key areas of law—criminal law, personal law, labour law, and judicial interpretation—this paper seeks to expose the limitations of formal equality and propose feminist legal reforms that align with the ideals of justice and dignity for all genders.

LITERATURE REVIEW

Feminist jurisprudence as a distinct theoretical framework developed as a critique of the perceived neutrality of legal systems that were, in fact, deeply entrenched in patriarchal assumptions⁵. Scholars such as Carol Smart have argued that the law is not merely a reflection of society but a powerful institution that constructs and reinforces gender hierarchies⁶. In her seminal work *Feminism and the Power of Law*, Smart critiques the male-centric nature of legal discourse, arguing that law often marginalizes women by treating their lived experiences as legally irrelevant.

In the Indian context, feminist legal scholarship gained prominence in the 1990s with increasing attention paid to how personal laws, criminal laws, and judicial interpretations fail to address women's realities. Flavia Agnes, a leading feminist lawyer and scholar, has consistently argued that personal laws—particularly Hindu and Muslim family laws—reflect patriarchal control over women's sexuality, mobility, and economic agency⁷. She notes that legal reforms have been selective and superficial, often ignoring more deeply rooted structural issues⁸.

⁴ Kimberlé Crenshaw, "Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color," *Stanford Law Review*, vol. 43, no. 6, 1991, pp. 1241–1299.

⁵ Katherine Bartlett, "Feminist Legal Methods," *Harvard Law Review*, vol. 103, no. 4, 1990, pp. 829–888.

⁶ Carol Smart, *Feminism and the Power of Law*, Routledge, 1989.

⁷ Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India*, Oxford University Press, 1999.

⁸ Flavia Agnes, "Personal Laws and Constitutional Guarantees," *Seminar*, no. 471, 1998.

Amita Dhanda's work examines the gendered biases in judicial reasoning, especially in cases of sexual violence and domestic abuse. She observes that judges often rely on moral stereotypes, such as the "ideal victim" narrative, which undermines the credibility of survivors and perpetuates harmful notions of chastity and modesty⁹. Her analysis of judgments in rape cases highlights how courts question the character, clothing, and delay in filing FIRs, all of which reflect a deeper institutional misogyny.

Intersectionality—a concept introduced by Kimberlé Crenshaw—has also begun to influence feminist legal scholarship in India. Crenshaw argued that traditional feminist and anti-racist discourses fail to address how the intersection of multiple identities (such as race, gender, caste, and class) affects legal outcomes¹⁰. Indian scholars have expanded on this to show how Dalit women, tribal women, and LGBTQ+ individuals face compounded legal discrimination that mainstream legal reforms fail to address¹¹.

International feminist legal scholars like Catharine MacKinnon and Patricia Williams have also contributed to the evolution of feminist jurisprudence by exposing how legal definitions of equality often ignore substantive contexts. MacKinnon, for example, argues that the law's emphasis on "sameness" with men ignores how women are systematically disadvantaged by social norms, economic structures, and violence¹². Her work underscores the need for laws that address power imbalances, rather than pretending neutrality can ensure justice.

Recent Indian scholarship has also begun engaging with queer jurisprudence and trans rights, critiquing the binary and cisnormative assumptions within law. Arvind Narrain's writings explore the limitations of legal recognition without social transformation, particularly in the context of *Navtej Singh Johar v. Union of India*¹³. This work broadens feminist legal thought to include a more inclusive vision of gender justice beyond heteronormative binaries.

Thus, the literature establishes a consistent pattern: Indian law, despite constitutional

⁹ Amita Dhanda, "Judicial Bias and Gender Justice," *Sociological Bulletin*, vol. 49, no. 1, 2000, pp. 83–98.

¹⁰ Kimberlé Crenshaw, "Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color," *Stanford Law Review*, vol. 43, no. 6, 1991, pp. 1241–1299.

¹¹ Sumi Madhok, *Vernacular Rights Cultures: The Politics of Origins, Human Rights and Gendered Struggles for Justice*, Cambridge University Press, 2014.

¹² Catharine A. MacKinnon, *Toward a Feminist Theory of the State*, Harvard University Press, 1989.

¹³ Arvind Narrain, "Exploring the Relationship Between the Constitution and the Queer Movement," *NUJS Law Review*, vol. 12, no. 1, 2019, pp. 45–65.

guarantees, often fails to deliver gender justice because of its embedded patriarchal structure. While feminist scholars have proposed both critique and reconstruction, the need for integrating intersectionality, substantive equality, and lived experiences remains critical.

RESEARCH METHODOLOGY

This research employs a qualitative and doctrinal methodology grounded in critical legal theory, particularly feminist jurisprudence. The objective is to systematically examine how Indian laws, judicial decisions, and legal institutions reflect and perpetuate gender bias, and how feminist legal theory can offer a lens for reforming them.

1. Theoretical Framework: Feminist Legal Theory

The research is primarily informed by feminist jurisprudence, which critiques the law as a male-centric institution that reproduces patriarchy through its language, interpretation, and application¹⁴. This theoretical framework facilitates a critique of both substantive and procedural laws, exploring how notions of neutrality, objectivity, and universality in law often exclude or misrepresent women lived experiences. Sub-frameworks such as intersectional feminism (developed by Kimberlé Crenshaw) are used to account for the compounded marginalisation experienced by women based on caste, class, religion, and sexuality¹⁵.

2. Doctrinal Legal Research

The study involves extensive doctrinal analysis of:

- Constitutional provisions (Articles 14, 15, 21)
- Statutory laws (Indian Penal Code, Hindu Marriage Act, Muslim Personal Law, Labour Laws, etc.)
- Landmark Supreme Court and High Court decisions
- Law Commission of India reports

This allows for a structured critique of the legal text and its evolution over time, especially in terms of gender responsiveness.

3. Case Law Analysis

Select judgments have been studied to analyse the patterns of judicial reasoning, particularly in cases of sexual violence, marital disputes, domestic violence, and reproductive rights. For instance, the judicial interpretations in cases such as *Vishaka*

¹⁴ Carol Smart, *Feminism and the Power of Law*, Routledge, 1989.

¹⁵ Kimberlé Crenshaw, "Demarginalizing the Intersection of Race and Sex," *University of Chicago Legal Forum*, 1989, pp. 139–167.

v. State of Rajasthan, Joseph Shine v. Union of India, and Navtej Singh Johar v. Union of India are critically examined to assess shifts (or lack thereof) in judicial attitudes toward gender justice¹⁶.

4. Secondary Sources and Scholarly Commentary

The research draws on academic writings, journal articles, feminist critiques, NGO reports, and law commission recommendations to understand the socio-legal dimensions of gender bias in Indian laws. Comparative insights from international feminist legal literature (from jurisdictions like the US, UK, and South Africa) are also considered to enrich the theoretical and reform-oriented discussion¹⁷.

5. Limitations

While the study offers an in-depth theoretical and legal critique, it does not include empirical fieldwork or primary data collection through interviews or surveys. The focus remains on legal texts, judicial discourse, and theoretical interpretation. Additionally, while intersectionality is considered, the scope does not fully cover all regional and cultural specificities across India.

HYPOTHESIS

This research is premised on the hypothesis that:

"Despite the formal guarantees of equality under the Indian Constitution, the structure and application of Indian laws continue to reflect systemic gender bias. This bias is embedded in both substantive legal provisions and judicial reasoning, thereby impeding the realization of substantive gender justice. Feminist jurisprudence offers a transformative framework to critically assess and reconstruct Indian law to align it with the constitutional vision of equality, dignity, and non-discrimination."

This hypothesis is built on three interlinked propositions:

1. The Doctrine of Formal Equality Is Inadequate:

Indian law often relies on formal equality—treating everyone the same regardless of historical disadvantage or social context. This principle fails to account for structural inequalities that affect women and gender minorities disproportionately. Laws that

¹⁶ *Vishaka v. State of Rajasthan*, AIR 1997 SC 3011; *Joseph Shine v. Union of India*, (2019) 3 SCC 39; *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

¹⁷ Catharine MacKinnon, *Toward a Feminist Theory of the State*, Harvard University Press, 1989; Patricia Williams, *The Alchemy of Race and Rights*, Harvard University Press, 1991.

appear neutral may produce discriminatory outcomes when applied to unequal social realities¹⁸.

2. Patriarchal Values Are Institutionalized in Law:

Both substantive provisions (such as unequal inheritance laws or limitations in criminal statutes on marital rape) and procedural frameworks (e.g., evidentiary standards in rape trials) reinforce gender stereotypes and uphold male-centric norms. Judicial decisions often reveal unconscious bias rooted in patriarchal social conditioning¹⁹.

3. Feminist Jurisprudence Can Enable Substantive Equality:

By integrating feminist legal reasoning—which emphasizes experience, context, power imbalance, and intersectionality—law can be reimagined to deliver justice that is inclusive, empathetic, and transformative²⁰.

The following sections of the paper will evaluate these propositions through a critical study of key Indian laws, judicial precedents, and comparative feminist theory.

I. Gender Bias in Personal Laws: Patriarchy through Religion and Tradition

Indian personal laws, which govern areas such as marriage, divorce, inheritance, and maintenance, are deeply rooted in religious customs and have long been critiqued for institutionalizing patriarchal values. These laws, although reformed to varying extents, continue to treat women as subordinate within familial structures—denying them equal status, rights, and autonomy.

1. Unequal Marriage and Divorce Provisions

Under the Hindu Marriage Act, 1955, and the Muslim Personal Law (Shariat) Application Act, 1937, marriage is regulated in a manner that reflects patriarchal assumptions. For instance, under Muslim law, men possess an unregulated unilateral right to divorce through *talaq*, whereas women face significant procedural hurdles to obtain *khula* or *faskh*²¹. Although the Supreme Court in *Shayara Bano v. Union of India*²² declared triple talaq unconstitutional, it did not comprehensively address the

¹⁸ Sandra Fredman, “Substantive Equality Revisited,” *International Journal of Constitutional Law*, vol. 14, no. 3, 2016, pp. 712–738.

¹⁹ Amita Dhanda, “Constructing a New Lexicon for Gender Justice,” *Indian Journal of Gender Studies*, vol. 12, no. 1, 2005, pp. 39–60.

²⁰ Catherine A. MacKinnon, *Sex Equality*, Foundation Press, 2001.

²¹ Tahir Mahmood, *Muslim Law in India and Abroad*, LexisNexis, 2016.

²² *Shayara Bano v. Union of India*, (2017) 9 SCC 1.

gender asymmetry embedded in divorce law.

Similarly, the Hindu Marriage Act permits divorce on grounds such as cruelty or desertion but fails to recognize marital rape as a valid ground. This omission points to the deep entrenchment of the notion that a husband has a right over his wife's body, a concept at odds with the constitutional guarantee of bodily autonomy²³.

2. Inheritance and Property Rights

Despite the enactment of the Hindu Succession (Amendment) Act, 2005, which gave daughters equal coparcenary rights, practical enforcement remains limited. Patriarchal societal norms often result in women being denied their inheritance in practice. In Muslim law, the inheritance share of a daughter remains half that of a son, justified through the rationale that men bear financial responsibility²⁴. This essentialist view perpetuates gender inequity by reducing women's legal identity to that of a dependent. Furthermore, customary laws among tribal communities and other religious minorities often override codified legislation. For example, Naga and Mizo customary laws deny women inheritance rights altogether, and these continue under the guise of constitutional protection for tribal autonomy²⁵.

3. Maintenance and Economic Disempowerment

Section 125 of the Code of Criminal Procedure provides for maintenance to wives, but the enforcement mechanisms are weak, and the amounts granted are often meagre. In *Danial Latifi v. Union of India*²⁶, the Supreme Court upheld a Muslim woman's right to fair and reasonable provision, yet maintenance under Muslim personal law still varies greatly depending on interpretation.

Additionally, the lack of uniform application across communities perpetuates a fragmented and unequal legal system. The absence of a gender-just Uniform Civil Code (UCC) has led to selective reform—mainly among Hindus—while Muslim and other personal laws have remained largely unreformed or selectively politicised²⁷.

4. Feminist Critique of Personal Law

Feminist legal scholars argue that personal laws serve as a tool for regulating women's sexuality, reproduction, and labour. They see the family not as a private sanctuary, but

²³ J. Devika, "Domestic Violence and the Indian Legal System: A Feminist Critique," *Indian Journal of Gender Studies*, vol. 18, no. 2, 2011, pp. 149–176.

²⁴ Asghar Ali Engineer, *The Rights of Women in Islam*, Sterling Publishers, 2004.

²⁵ Nandini Sundar, "Custom and Law in Tribal India," *Seminar*, no. 654, February 2014.

²⁶ *Danial Latifi v. Union of India*, (2001) 7 SCC 740.

²⁷ Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India*, Oxford University Press, 1999.

as a site of power and inequality where law legitimizes control over women²⁸. The failure of the Indian state to secularize or uniformly reform personal laws demonstrate its complicity in sustaining gender hierarchies under the garb of cultural pluralism.

II. Gender Bias in Criminal Law and Sexual Violence Jurisprudence

Criminal law in India, particularly in the context of sexual and gender-based violence, is both a site of progress and deep-rooted bias. While notable reforms have expanded the definition of sexual offences and improved procedural protections for survivors, patriarchal assumptions continue to shape legislative design, prosecutorial conduct, and judicial reasoning.

1. The Legacy and Limits of the 2013 Criminal Law Amendment

The *Criminal Law (Amendment) Act, 2013*, enacted following the brutal 2012 Delhi gang rape (the *Nirbhaya* case), marked a watershed moment in Indian criminal jurisprudence. The Act broadened the definition of rape (Section 375 IPC), criminalized voyeurism, stalking, acid attacks, and introduced stricter punishments. However, it notably excluded **marital rape** from criminal sanction, preserving the Exception 2 to Section 375, which states that sexual intercourse by a man with his own wife, not being under fifteen years of age, is not rape²⁹.

This exception institutionalizes a husband's conjugal right over his wife's body and stands in stark contrast to constitutional values of autonomy and dignity. Feminist scholars argue that the legal system continues to treat marriage as a domain beyond the reach of sexual autonomy and consent. Despite demands from women's rights groups and multiple Law Commission recommendations, marital rape remains legally unrecognized, thereby violating the bodily integrity of countless women³⁰.

2. Judicial Stereotyping and the "Ideal Victim" Narrative

The judiciary, while occasionally progressive, often reverts to victim-blaming tropes and moralistic reasoning in sexual violence cases. Courts have questioned a survivor's delay in filing an FIR, their prior sexual history, or even their clothing as indicators of consent³¹. The notorious *Mathura rape case* (*Tukaram v. State of Maharashtra*) is a glaring example, where the Supreme Court acquitted two policemen by relying on the

²⁸ Ratna Kapur, "Too Hot to Handle: The Cultural Politics of 'Sex' and Law," *Law and Society Review*, vol. 28, no. 2, 2005, pp. 509–532.

²⁹ Section 375, Indian Penal Code, 1860 (as amended by Criminal Law (Amendment) Act, 2013).

³⁰ Law Commission of India, *Consultation Paper on Reform of Family Law*, August 2018.

³¹ Aparna Chandra, "The Myth of the Ideal Victim: Gender Bias in Indian Rape Adjudication," *NUJS Law Review*, vol. 10, no. 2, 2017.

victim's perceived lack of resistance and "habituation to sex"³².

Even in more recent cases, courts have referred to rape because of "romantic involvement gone wrong" or have encouraged compromise through marriage or mediation³³. Such practices betray a deep-rooted patriarchal lens that views women's sexuality through the prism of morality rather than autonomy.

3. Procedural Gaps and Institutional Failures

Despite Section 164-A of the CrPC mandating prompt medical examination of rape survivors, procedural delays, insensitive handling by police, and invasive "two-finger tests" have continued, especially in rural and marginalised communities. In *Lillu v. State of Haryana*, the Supreme Court declared the two-finger test unconstitutional and violative of the victim's right to privacy and dignity, yet its use persisted in medical practices for years³⁴.

Similarly, the conviction rate in rape cases remains dismally low (hovering around 30%), not due to a lack of legislation, but owing to a culture of disbelief, shaming, and poor prosecutorial support³⁵.

4. Feminist Legal Responses and Structural Reform

Feminist legal scholars and activists emphasize that gender-sensitive reform must go beyond criminalization. They advocate for survivor-centric procedures, trauma-informed policing, and comprehensive legal aid. Legal scholar Pratiksha Baxi introduces the concept of "judicial voyeurism," where courtrooms turn into hostile spaces for women recounting trauma³⁶. Reforms must thus engage with not only law on paper but its lived implementation.

III. Gender Bias in Labour and Economic Laws: Invisible Work and Economic Disempowerment

Despite constitutional guarantees of equality and non-discrimination, Indian labour laws and economic policies often overlook the structural realities of gendered work. Women's labour—particularly in domestic, informal, and caregiving roles—remains underpaid, unregulated, or entirely invisible in the eyes of the law. Feminist jurisprudence highlights how these

³² *Tukaram v. State of Maharashtra*, (1979) 2 SCC 143.

³³ Deepti Misri, "Rape, Representation, and the Politics of Compromise in India," *Signs: Journal of Women in Culture and Society*, vol. 44, no. 2, 2019, pp. 403–426.

³⁴ *Lillu v. State of Haryana*, (2013) 14 SCC 643.

³⁵ National Crime Records Bureau (NCRB), *Crime in India Report*, 2022.

³⁶ Pratiksha Baxi, *Public Secrets of Law: Rape Trials in India*, Oxford University Press, 2014.

frameworks not only ignore women's contributions but also reinforce their economic dependency and marginalisation.

1. Invisibility of Unpaid Domestic and Care Work

The Indian economy, like most others, relies heavily on the unpaid labour of women. According to Time Use Surveys and NSSO data, Indian women spend three to ten times more hours on unpaid care work than men³⁷. However, this work remains unrecognised in labour law, national income accounting, or social security benefits.

The Indian legal system does not classify unpaid domestic work as “work” for purposes of employment rights, despite feminist arguments that such labour sustains the workforce and contributes significantly to the economy. This legal invisibility devalues women's economic role and reinforces the stereotype that caregiving is a natural, private duty rather than socially essential labour³⁸.

2. Gender Disparities in the Formal Labour Market

In the formal workforce, gender discrimination persists in the form of wage gaps, glass ceilings, and occupational segregation. The Equal Remuneration Act, 1976 mandates equal pay for equal work, but its implementation remains weak, particularly in private and unorganised sectors. Women are often concentrated in low-paying, insecure jobs such as garment work, domestic help, and agrarian labour, with minimal labour protections.

Maternity leave policies, though improved under the Maternity Benefit (Amendment) Act, 2017, have inadvertently made women less attractive to employers, especially in small enterprises³⁹. Further, there is no legal obligation for paternity leave, reinforcing the notion that child-rearing is primarily a woman's responsibility.

3. Informal Sector Exploitation and Lack of Protection

Most Indian women work in the informal sector—street vending, home-based work, construction, domestic work—without access to minimum wages, workplace safety, or maternity benefits. Domestic workers fall outside the scope of most protective legislation, despite being vulnerable to abuse and exploitation.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 does cover domestic workers, but enforcement is weak due to the

³⁷ Ministry of Statistics and Programme Implementation, *Time Use Survey Report*, 2019.

³⁸ Nivedita Menon, *Seeing Like a Feminist*, Zubaan, 2012.

³⁹ Priyanka Tripathi, “Maternity Leave in India: A Double-Edged Sword?,” *Economic and Political Weekly*, vol. 52, no. 10, 2017, pp. 20–24.

private nature of households and lack of institutional oversight⁴⁰.

4. Feminist Economic Perspectives

Feminist economists and legal theorists argue for a recognition of reproductive labour in economic policymaking. They call for reforms that include compensation for housework, universal basic services (like childcare and elder care), and gender-sensitive budgeting. Scholars such as Bina Agarwal and Devaki Jain have long critiqued the male-centric definition of productivity and pushed for the inclusion of women's unpaid labour in economic planning.

Feminist jurisprudence demands a restructuring of labour law that reflects the social and gendered realities of work. Laws must move beyond formalistic equality and address systemic disadvantage through affirmative measures, recognition of invisible work, and redistribution of care responsibilities.

IV. Gender Bias in Judicial Reasoning and Interpretation: The Bench as a Site of Patriarchy

While constitutional courts in India have occasionally delivered progressive judgments, judicial reasoning often mirrors the patriarchal values embedded in society. Feminist jurisprudence asserts that law is not merely what is written, but how it is interpreted, and judges—being products of their socio-cultural contexts—frequently reproduce gendered assumptions in their decisions.

1. Stereotyping in Judicial Language and Reasoning

Many Indian judgments on issues such as rape, domestic violence, and maintenance reflect unconscious gender bias. For example, courts have been known to question the character of rape victims, comment on their attire, and evaluate their credibility based on outdated notions of female modesty⁴¹. In *State of Punjab v. Gurmit Singh*, the Supreme Court acknowledged that trial courts often disbelieve victims due to preconceived notions about "respectable" women, yet such stereotypes still find place in judgments.

In several cases, courts have reduced sentences or granted bail in rape cases on the grounds of the accused being a "young man with a bright future," thus prioritizing the

⁴⁰ India Committee of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Shadow Report, 2019.

⁴¹ Aparna Chandra, "Judging Gender: Courts, Constitution and Gender Justice," *India Law Review*, vol. 4, no. 1, 2020, pp. 1–25.

perpetrator's potential over the survivor's trauma⁴². This form of reasoning trivializes sexual violence and underscores the court's gendered empathy.

2. Misuse of “Compromise” and “Marriage” as Relief

In numerous cases, especially those involving sexual violence or statutory rape, Indian courts have suggested that the accused marry the victim as a means of compromise. This practice, rooted in honor-based notions of justice, treats rape as a private wrong rather than a public crime and reinforces the view that a woman's value is tied to her marital status.

In *Madras High Court v. Perumal*, the judge granted bail to a rape accused because he promised to marry the survivor—a move that blatantly disregards the principle of consent and reduces legal remedies to moral bargaining⁴³. Feminist legal scholars argue that such compromises are deeply patriarchal and antithetical to the concept of bodily autonomy.

3. Selective Application of Constitutional Morality

While the Supreme Court has invoked constitutional morality in landmark judgments like *Navtej Singh Johar* (decriminalizing homosexuality) and *Joseph Shine* (striking down adultery law), its application has not been consistent. In marital rape, for instance, the Court has so far refrained from striking down the exception in Section 375 IPC, despite overwhelming constitutional arguments about the right to dignity, equality, and autonomy⁴⁴.

This selective application shows a reluctance to challenge entrenched social norms within marriage. Feminist jurisprudence calls for consistent judicial engagement with constitutional values, particularly in cases involving gender and sexuality.

4. Feminist Interventions in the Judiciary

There have been moments of feminist intervention in judicial discourse. Justice D.Y. Chandrachud's opinions in *Joseph Shine* and *Independent Thought v. Union of India* reflected a more gender-sensitive and rights-based approach. In the latter, the Court criminalized sex with a minor wife (below 18 years), narrowing the marital rape exception to align with child protection laws.

However, such judgments are exceptions rather than the rule. Feminist scholars call for

⁴² Saptarshi Mandal, “A Future at Stake: Courts and the 'Bright Future' Argument in Rape Cases,” *Economic and Political Weekly*, vol. 52, no. 45, 2017.

⁴³ *Perumal v. State of Tamil Nadu*, CrI. A. No. 1492 of 2018, Madras High Court.

⁴⁴ Jhuma Sen, “Marital Rape and the Supreme Court's Silence,” *The India Forum*, April 2021.

gender sensitization of the judiciary, inclusion of feminist theory in legal education, and the appointment of more women and gender-diverse judges to ensure that judicial reasoning reflects inclusive and equitable values⁴⁵.

V. Intersectionality and the Marginalisation of Minority Women

The feminist legal critique of Indian laws would be incomplete without engaging with intersectionality, a term coined by Kimberlé Crenshaw to highlight how different forms of oppression—based on caste, class, religion, sexuality, disability, and other identities—interact with gender to produce layered injustices⁴⁶. In the Indian context, feminist jurisprudence must account for how minority women experience the law differently from upper-caste, urban, or otherwise privileged women.

1. Caste, Gender, and the Dalit Woman's Experience

Dalit women in India face a triple burden—of caste, class, and gender. Legal protections under the *Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989* are often poorly implemented, especially in cases of sexual violence⁴⁷. High-profile cases like the Hathras gangrape (2020), where police burned the victim's body without family consent and delayed the FIR, show how state institutions often collude to suppress Dalit voices.

Moreover, judicial discourse rarely addresses caste in gender justice cases. Most feminist judgments are written in a gender-neutral or “casteless” tone, thus erasing the lived experiences of Dalit and Bahujan women.

2. Muslim Women and Personal Laws

Muslim women in India are governed by *Muslim Personal Law (Shariat) Application Act, 1937*, which is not codified and often interpreted in patriarchal ways. While the Supreme Court declared *triple talaq* unconstitutional in *Shayara Bano v. Union of India*, the judgment focused more on procedural irregularity than on gender justice or the right to equality.

Furthermore, state regulation of Muslim women's rights is often caught between protecting women and appeasing religious sentiments. Feminist scholars argue that both extremes—state apathy and state overreach—end up marginalising Muslim women's

⁴⁵ Pratiksha Baxi, *Public Secrets of Law: Rape Trials in India*, Oxford University Press, 2014.

⁴⁶ Kimberlé Crenshaw, “Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color,” *Stanford Law Review*, vol. 43, no. 6, 1991, pp. 1241–1299.

⁴⁷ Ruth Manorama, “Dalit Women Speak Out: Violence Against Dalit Women in India,” National Campaign on Dalit Human Rights, 2006.

agency⁴⁸.

3. LGBTQ+ Persons and the Law

Feminist jurisprudence must also account for gender minorities. Although *Navtej Singh Johar v. Union of India* (2018) decriminalised homosexuality, there remains little legal recognition or protection for transgender, intersex, and non-binary individuals under family laws, inheritance rights, or healthcare access.

The *Transgender Persons (Protection of Rights) Act, 2019* has been widely criticised for its regressive definitions, medicalized processes for gender identity certification, and lack of affirmative action provisions⁴⁹. Feminist legal theory demands a reorientation of law to recognize non-binary experiences and dismantle cis-heteronormative frameworks embedded in Indian statutes.

4. Disability, Gender, and Access to Justice

Women with disabilities face systemic exclusion in the legal system—from inaccessible court infrastructure to lack of interpreters, support staff, and procedural accommodations⁹. Crimes against disabled women, especially sexual violence, are often trivialised or underreported. Despite provisions in the *Rights of Persons with Disabilities Act, 2016*, enforcement remains poor.

Feminist jurisprudence, when intersectional, demands that equality must mean equitable access—not merely formal guarantees, but inclusive and responsive mechanisms that acknowledge layered vulnerabilities.

CONCLUSION

Feminist jurisprudence challenges the myth of neutrality and objectivity in law by exposing how patriarchal values shape the content, interpretation, and application of legal norms. In the Indian context, gender bias is not merely a matter of outdated laws but also of deeply embedded social attitudes that infiltrate judicial reasoning, procedural mechanisms, and policy formulations.

This research has illustrated that gender inequality persists across several dimensions of Indian law—from the structural limitations of criminal statutes to the discriminatory contours of personal and family laws. Moreover, the absence of gender sensitivity in labour and social

⁴⁸ Flavia Agnes, “Muslim Women’s Rights and Media Discourse,” *Indian Journal of Gender Studies*, vol. 25, no. 2, 2018, pp. 246–264.

⁴⁹ Arvind Narrain, “The Transgender Persons Bill, 2019: A Lost Opportunity,” *The India Forum*, January 2020.

welfare legislations further marginalizes women in both formal and informal sectors. Judicial responses have been inconsistent—sometimes progressive, but often regressive or neutralizing the feminist agenda through conservative interpretation.

A key insight from this study is the critical need to go beyond formal equality and strive for **substantive equality**, which accounts for women's historical disadvantage, social realities, and intersectional identities. Legal reforms must thus be guided by feminist principles of inclusion, empowerment, and redistributive justice. This includes:

- Codifying and amending discriminatory laws with explicit gender justice objectives;
- Sensitizing the judiciary and legal practitioners through gender justice training;
- Making institutions (courts, police, commissions) more accessible and accountable to women and gender minorities;
- Mainstreaming intersectionality to recognize how caste, religion, disability, and sexuality mediate legal experiences.

Feminist jurisprudence is not merely a critique of existing structures but a constructive vision for justice. It urges a reimagining of law as a tool that is participatory, emancipatory, and reflexive to lived experiences. The path to gender-just laws in India requires both legal and cultural transformation—a paradigm shift from token equality to transformative justice.

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