



Swami Vivekananda Advanced Journal for Research and Studies

Online Copy of Document Available on: www.svajrs.com

ISSN:2584-105X

Pg. 337- 342



Feminist Jurisprudence and the Advancement of Gender Justice in the Indian Constitutional Framework

Swapna Bijayini

Capital Law College, Bhubaneswar, Odisha, India

Affiliated to Madhusudan Law University, Cuttack, Odisha, India

mail2swapna81@gmail.com

Accepted: 07/06/2026

Published: 09/06/2026

DOI: <http://doi.org/10.5281/zenodo.20605595>

Abstract

The feminist approach to jurisprudence seeks to remove patriarchy biases from the judicial process and reinterpret laws in light of gender justice and equality in the constitution. In the Indian context, the perspective seeks to eliminate male-dominated principles and ensure substantive rights as per Articles 14, 15, and 21 of the constitution. This review discusses the four waves of feminism, starting from Roy's anti-sati laws (1829) to #MeToo (fourth wave). Key judicial achievements include Vishaka (1997) on sexual harassment, Shayara Bano (2017) for outlawing talaq, and X (2022) for reproductive health and abortion rights. Feminist jurisprudence has a range of theoretical backgrounds, including liberalism (Vineeta Sharma, 2020), radicalism (POSH Act, 2013), postmodernism, intersectionality (NALSA, 2014; Sabarimala, 2018), and body autonomy (Puttaswamy, 2017). While there has been significant development in the field, the following issues need to be addressed. First, institutional marginalization remains an issue. Second, implementation needs improvement. Finally, stereotyping persists. Crucially, intersectionality highlights the need to address overlapping forms of discrimination based on gender, caste, class, sexuality, and religion, ensuring that feminist jurisprudence evolves into a more inclusive and transformative framework for achieving substantive equality in India.

Keywords: *feminist jurisprudence, gender justice, constitutional equality, intersectionality, bodily autonomy, Vishaka guidelines, transformative constitutionalism*

1. Introduction

The world over, legal systems have been designed in patriarchal terms, wherein men's experiences form the basis of norms, women's experiences are marginalized, and gender hierarchy is preserved. Feminist jurisprudence assumes the role of a reformative exercise both theoretically and pragmatically, analyzing the contribution of the law in perpetuating inequality and advocating reforms based on equality guaranteed constitutionally. Unlike the traditional view of the law as being neutral and scientific, feminist theory proves that doctrine, process, and structure have a fundamentally social character and reflect social hierarchies, particularly linked to gender roles, sexual relations, and the body. In India, such a framework assumes even greater relevance, existing at the intersection of colonialism, multiple personal laws, caste politics, and a transformative Constitution that guarantees dignity (Article 21), equality (Article 14), and non-discrimination (Article 15).

The Indian judiciary has been at the forefront of this development, incrementally augmenting constitutional guarantees via seminal cases based on international human rights principles such as CEDAW.¹ *Vishaka v. State of Rajasthan* (1997) stands out as a turning point, referencing Articles 14, 19(1)(g), and 21, together with CEDAW, to characterize workplace sexual harassment as a violation of fundamental rights, leading to legally binding recommendations ultimately legislated as the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.²³ Later judicial pronouncements, including *Shayara Bano v. Union of India* (2017) outlawing instant triple talaq,⁴ *Vineeta Sharma v. Rakesh Sharma* (2020)

guaranteeing equal coparcenary rights for daughters,⁵ *X v. Principal Secretary* (2022) facilitating abortion services for single women,⁶ and current deliberations on marital rape, reflect the judiciary's involvement in applying feminist theories. However, whereas earlier assessments have examined doctrinal trends (such as liberalization in succession laws), no study has attempted to integrate the evolution of four waves of feminism in India using various theoretical perspectives (including liberal, radical, postmodern, and inter-sectional feminism) within the context of the present-day issues confronting 2026.

In this context, this paper makes an attempt to bridge this gap by considering the irony between the robustness of the Indian legal framework and the existence of social discrimination. The conviction rate in cases of sexual harassment of women is roughly 30%. Moreover, the judiciary is imbalanced, with 12% being female judges. The implementation of POSH is inconsistent. This review aims at analyzing the effect of feminist jurisprudence on Indian law through comprehensive research into academic literature written between 1990-2026 in law journals and socio-legal and constitutional commentary articles.

In such a way, the outline of the paper can be formulated as follows: Section 2 elaborates on the process of Indian feminism through four waves, from Roy's anti-sati campaign to the #MeToo movement. Section 3 outlines key theories: liberal egalitarianism (Anuj Garg, 2008); structural radicalism (Vishaka); postmodern theory (Babita Puniya, 2020); intersectionality (NALSA, 2014 & Sabarimala, 2018); and bodily autonomy (Puttaswamy, 2017). Section 4 explores constitutional facilitators (Articles 14-21). Section 5 critically evaluates four critical concerns—

¹ United Nations, *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*, 1979.

² *The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Act 14 of 2013)*.

³ *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.

⁴ *Shayara Bano v. Union of India*, (2017) 9 SCC 1.

⁵ *Vineeta Sharma v. Rakesh Sharma*, (2020) 9 SCC 1.

⁶ *X v. Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi*, (2022) 14 SCC 1.

patriarchal prejudices, deficiencies in bodily autonomy, constraints in judicial integration, institutional improvements—and recommends solutions, such as gender audits, for specific problems. Conclusion summarizes the study with future direction.

2. Review of Literature

Feminist jurisprudence in India has developed from initial criticisms of colonial patriarchy to more nuanced, intersectional approaches that integrate constitutional law, judicial activism, and socio-legal changes. Some key texts include the Towards Equality Report (1974),⁷ which chronicled pervasive gender inequities, sparking research into law's complicity in sustaining inequalities.

The literature began by focusing on liberal reforms. In her work, Flavia Agnes (1999)⁸ analyzes judicial decisions, including Shah Bano (1985),⁹ arguing against the discussion of uniform civil codes and undermining Muslim women's autonomy. Ratna Kapur (2001)¹⁰ studies Vishaka v. State of Rajasthan (1997) and notes how CEDAW-based judgments gave rise to POSH (2013).

Post-1990s research is characterized by the dominance of radical feminist perspectives. Menon (2004)¹¹ considers the structural critique inherent to radical feminism by focusing on a case study like A.K. Chopra (1999), wherein she states that patriarchy was not

dismantled but sustained through laws. Intersectionality becomes important post-1989. Usha Sharma (2024),¹² referring to cases like Patan Jamal Vali (2021),¹³ finds that even in the Indian context, intersectionality has been accepted by the Supreme Court, as it referred to it in discussing custodial violence against Dalit women. The same concept of intersectionality has been applied to other cases such as Sabarimala (2018)¹⁴ and NALSA (2014)¹⁵ by Archana Pathak (2023).¹⁶

Autonomy of the body literature is critical of the expansion of MTPs. In relation to X v. Principal Secretary (2022)¹⁷, Das (2022) is appreciative of the judgment's significance concerning the rights of unmarried women; however, she expresses concerns regarding access to the procedure for rural and marginalized communities. The inheritance equality represented by Vineeta Sharma's (2020) work, according to Kirti Singh (2021),¹⁸ highlights the limitation of coparcenary rights if not complemented by land reforms.

However, there exist gaps in current literature: pre-2020 reviews underemphasize the digital activism of the fourth wave (#MeToo) and ethical concerns related to AI. Quantitative research on gender diversity in the judiciary (12% women judges in 2025) remains underrepresented, as discussed by Shruti Chaudhry¹⁹

⁷ Government of India, *Towards Equality: Report of the Committee on the Status of Women in India* (Ministry of Education and Social Welfare, 1974).

⁸ Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (Oxford University Press, 1999).

⁹ Mohd. Ahmed Khan v. Shah Bano Begum, (1985) 2 SCC 556.

¹⁰ Ratna Kapur, 'The Tragedy of Victimization Rhetoric: Resurrecting the "Native" Subject in International/Post-Colonial Feminist Legal Politics' (2001) 15 *Harvard Human Rights Journal* 1.

¹¹ Nivedita Menon, *Recovering Subversion: Feminist Politics Beyond the Law* (Permanent Black, 2004).

¹² U. Sharma, 'Intersectionality and Constitutional Protection of Marginalized Women in India' (2024) 31(1) *Indian Journal of Gender Studies* 88.

¹³ Patan Jamal Vali v. State of Andhra Pradesh, (2021) 1 SCC 785.

¹⁴ *Indian Young Lawyers Association v. State of Kerala* (Sabarimala case), (2018) 10 SCC 1.

¹⁵ *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438.

¹⁶ A. Pathak, 'Intersectionality and Gender Justice in Indian Constitutional Law' (2023) 18(1) *Asian Journal of Comparative Law* 101.

¹⁷ S. Das, 'Reproductive Autonomy and Abortion Jurisprudence in India after X v. Principal Secretary' (2022) 13(2) *Journal of Indian Law and Society* 45.

¹⁸ K. Singh, 'Women's Inheritance Rights and the Limits of Legal Reform in India' (2021) 56(12) *Economic and Political Weekly* 45.

¹⁹ S. Chaudhry, 'Feminist Jurisprudence and Constitutional Transformation in India' (2021) 5(2) *Indian Law Review* 145.

3. Discussion

However, the profound impact of feminist jurisprudence on the legal practice in India notwithstanding, glaring discrepancies between theory and reality need to be highlighted.

3.1. Biases Towards Patriarchy in Legal Doctrine:

Some notable cases such as *Joseph Shine v. Union of India* (2018)²⁰, which did away with the patriarchal characterization of adultery, and *Anuj Garg v. Hotel Association* (2008)²¹, which struck down as stereotypical the prohibition of alcohol services on the grounds that they "protect" women, prove the extent to which patriarchal bias has been addressed by the courts. Yet, vestiges of colonial patriarchies such as maintenance ceilings under CrPC Sec. 125 continue to disadvantage women economically.

3.2. Bodily Autonomy and Reproductive Rights:

Puttaswamy (2017)²² made privacy a fundamental right, thereby allowing *X v. Principal Secretary* (2022)²³ to allow unmarried women access to MTP. However, rural access remains poor (only 40% safe facilities based on NFHS-5²³), and stigma continues. *Suchita Srivastava* (2009)²⁴ upheld autonomy, yet the marital rape exception stands. Recommendations: Decriminalize marital rape by amending the IPC. Universalize contraceptives via ASHA networks.

3.3. Limits of Judicial Incorporation:

Transformative constitutionalism is demonstrated in *Vishaka* (1997)³ and *Babita Puniya* (2020)²⁵ which refuse stereotyping regarding sexual harassment and army commissions respectively. Intersectionality is used in *Sabarimala* (2018)²⁶ to tackle the issue of

menstrual discrimination while *NALSA* (2014)²⁷ addresses issues regarding transgender rights. However, inconsistent incorporation, as seen in the case of *Navtej Johar* (2018) that overlooks intersectionalities in issues related to gender-based violence.

3.4. Institutional Changes for Substantive Equality:

Although the inheritance of property is made gender-neutral through *Vineeta Sharma* (2020)²⁸, the ownership of land continues to be gendered (14% females from NSSO). There are POCSO committees in place, but they are largely dysfunctional with only 30% functional (audits till 2025). Intersectional inadequacies exacerbate the oppression of Dalit/Adivasi women, according to *Jamal Vali* (2021)²⁹.

These complexities underscore the two-sided nature of feminist jurisprudence. Its transformative capacity involves reconciling different waves—from Roy's reforms to the current wave—with the concept of intersectionality proposed by Crenshaw³⁰.

4. Conclusion

Feminist jurisprudence has radically changed the Indian legal system in terms of both theoretical and practical aspects from merely questioning colonial patriarchy to developing an inclusive framework of constitutional gender justice by using the interpretations of Articles 14, 15, and 21 through liberalism, radicalism, intersectionality, and post-modernism in judgments ranging from *Vishaka*

²⁰ *Joseph Shine v. Union of India*, (2018) 2 SCC 189.

²¹ *Anuj Garg v. Hotel Association of India*, (2008) 3 SCC 1.

²² *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

²³ *Ministry of Health and Family Welfare, National Family Health Survey (NFHS-5) 2019–21 (Government of India, 2021)*.

²⁴ *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1.

²⁵ *Secretary, Ministry of Defence v. Babita Puniya*, (2020) 7 SCC 469.

²⁶ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

²⁷ *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438.

²⁸ *Vineeta Sharma v. Rakesh Sharma*, (2020) 9 SCC 1.

²⁹ *Patan Jamal Vali v. State of Andhra Pradesh*, (2021) 1 SCC 785.

³⁰ *Kimberlé Crenshaw*, "Demarginalizing the Intersection of Race and Sex" (1989) 1989(1) *University of Chicago Legal Forum* 139.

guidelines to X judgment on reproductive rights and women's dignity as independent citizens.

However, there still exist many disparities in terms of both formal equality and structural inequality of Dalit, Adivasi, and transgender women. Real gender justice calls for more measures such as gender audit of laws, mixed judicial bench, victim-friendly mechanism, etc.

In conclusion, feminist legal theory demands that law reach its ultimate vocation by actively tearing down hierarchical structures rather than remaining neutral. In 2026 as India faces new issues like artificial intelligence ethics and climate and gender relations, the combination of theory and practice will translate constitutional pledges into concrete realities of equality for all.

References

1. A. Pathak, "Intersectionality and Gender Justice in Indian Constitutional Law", (2023) 18(1) *Asian Journal of Comparative Law* 101.
2. *Anuj Garg v. Hotel Association of India*, (2008) 3 SCC 1.
3. Flavia Agnes, *Family Law: Volume I—Family Laws and Constitutional Claims* (Oxford University Press, 2011).
4. Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (Oxford University Press, 1999).
5. Government of India, *Towards Equality: Report of the Committee on the Status of Women in India* (Ministry of Education and Social Welfare, 1974).
6. *Indian Young Lawyers Association v. State of Kerala*, (2018) 10 SCC 1.
7. *Joseph Shine v. Union of India*, (2018) 2 SCC 189.
8. *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.
9. K. Singh, "Women's Inheritance Rights and the Limits of Legal Reform in India", (2021) 56(12) *Economic and Political Weekly* 45.
10. Kimberlé Crenshaw, "Demarginalizing the Intersection of Race and Sex", (1989) 1989(1) *University of Chicago Legal Forum* 139.
11. Ministry of Health and Family Welfare, *National Family Health Survey (NFHS-5) 2019–21* (Government of India, 2021).
12. *Mohd. Ahmed Khan v. Shah Bano Begum*, (1985) 2 SCC 556.
13. *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438.
14. *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.
15. Nivedita Menon, *Recovering Subversion: Feminist Politics Beyond the Law* (Permanent Black, 2004).
16. Nivedita Menon, *Seeing Like a Feminist* (Zubaan, 2012).
17. *Patan Jamal Vali v. State of Andhra Pradesh*, (2021) 1 SCC 785.
18. Ratna Kapur & Brenda Cossman, *Subversive Sites: Feminist Engagements with Law in India* (Sage Publications, 1996).
19. Ratna Kapur, "The Tragedy of Victimization Rhetoric: Resurrecting the 'Native' Subject in International/Post-Colonial Feminist Legal Politics", (2001) 15 *Harvard Human Rights Journal* 1.
20. S. Chaudhry, "Feminist Jurisprudence and Constitutional Transformation in India", (2021) 5(2) *Indian Law Review* 145.
21. S. Das, "Reproductive Autonomy and Abortion Jurisprudence in India after X v. Principal Secretary", (2022) 13(2) *Journal of Indian Law and Society* 45.

22. S. Srivastava, “Reproductive Rights and Judicial Interpretation in India”, (2009) 3 *Indian Journal of Constitutional Law* 99.
23. *Secretary, Ministry of Defence v. Babita Puniya*, (2020) 7 SCC 469.
24. *Shayara Bano v. Union of India*, (2017) 9 SCC 1.
25. U. Sharma, “Intersectionality and Constitutional Protection of Marginalized Women in India”, (2024) 31(1) *Indian Journal of Gender Studies* 88.
26. United Nations Women, *Progress of the World’s Women 2019–2020: Families in a Changing World* (UN Women, 2020).
27. United Nations, *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)* (1979).
28. *Vineeta Sharma v. Rakesh Sharma*, (2020) 9 SCC 1.
29. *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.
30. *X v. Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi*, Supreme Court of India (2022).

Disclaimer/Publisher’s Note: The views, findings, conclusions, and opinions expressed in articles published in this journal are exclusively those of the individual author(s) and contributor(s). The publisher and/or editorial team neither endorse nor necessarily share these viewpoints. The publisher and/or editors assume no responsibility or liability for any damage, harm, loss, or injury, whether personal or otherwise, that might occur from the use, interpretation, or reliance upon the information, methods, instructions, or products discussed in the journal’s content.
