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FEMINISTIC APPROACH: THE LEGISLATIVE RESPONSE & PROTECTION

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Abstract

The pursuit of gender equality involves a close analysis of the role that legislation plays. This book examines this issue via a feminist lens, recognizing the potential for legal frameworks to advance development while emphasizing the importance of a nuanced approach to ensure that they do not perpetuate existing power inequities.

Historically, legislative progress has been critical in ensuring women's rights. Examples include job discrimination laws and violence-prevention laws. However, a feminist critique is necessary. Current legislation may unwittingly maintain patriarchal structures. Sometimes protective measures have unintended repercussions, reducing women's autonomy. Furthermore, a "one-size-fits-all" strategy may fail to address the specific needs of marginalized women who face the convergence of sexism and variables such as race or class.

This article would examine how legislation cannot exist in a vacuum. True equality cannot be achieved without social transformation in addition to legislative improvements. Feminist movements play an important role in advocating for legislation and ensuring its effective implementation. They also attempt to change cultural beliefs that perpetuate gender disparities.

Keywords: Feminism, Legislation, gender-equality, misuse.

Introduction

Women in the workplace can use feminist jurisprudence to better understand and express their rights against discrimination, challenge sexist corporate rules, and support programs that promote gender equality. It is an important weapon for working women to ensure equal treatment and respect for their rights.

The feminist school of jurisprudence or philosophy of law is correctly based on the four waves or phases of feminist thought observed in human society in order to achieve individual, political, social, economic, and cultural equality between genders, as well as its growing influence on the legal and judicial systems of India and abroad.

In India, a variety of legal protections protect women's employment rights. The Constitution guarantees gender equality, a principle defined by the Supreme Court to include protection from discrimination and sexual harassment.

The Indian Penal Code includes specific sections such as 354A, which addresses sexual harassment, and 375, which defines rape and imposes appropriate penalties. Additionally, labor regulations help to safeguard women, with the Equal Remuneration Act preventing salary discrimination and the Maternity Benefit Act providing paid leave to expectant and new moms. The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act tackles workplace harassment and establishes procedures for handling complaints.

These regulations collectively aim to make India's workplaces safer and more equal for women, and being aware of these rights helps women to express themselves when necessary.

Traditional Laws

Manusmriti, a traditional law published in the fifth century CE, defined our society's social framework. It was regarded as the ultimate guide to living a moral life, as it detailed the roles and responsibilities of the four varnas: Brahamans, Kshtriye, Vaishyas, and Shudra. Manusmriti describes the roles and responsibilities of women as dependents who require ongoing protection and supervision throughout their lives.

It emphasized the attributes of "good women," prohibited widow remarriage, and promoted child

marriage and the dowry system in society. We can't find much discussion about unmarried menstruating women since they were once considered a threat to social balance. Manusmriti is the only text that has had an impact on women's social strata in society, and women continue to be burdened by age-old patriarchal views. It is one of the most hardest challenges to overcome. Because patriarchy has been so deeply embedded in our society from the outset, changing it is extremely difficult.

History of women-centric laws

India is a country where women's status and position have fluctuated dramatically. They were viewed as dependant on their dads at a young age, and later on their spouses after marriage. In matriarchal homes, women were seen to be physically stronger than men. However, pregnancy, childbirth, and menstruation weakened their physical strength, and they became reliant on men for sustenance and protection.

Women's standing in society was thought to be one of the most contentious issues. On the one hand, she was referred to as Devi or Goddess, while on the other, women were denied their fundamental right to exist.¹ Women held prominent family positions during the Rigvedic period. They were allowed to study the Vedas and educate themselves.

The wife and husband participated in a variety of rites.

Many educated ladies, such as Ghosa and Apala, lived during this time period. They had the right to choose their husbands. They had the right to their father's possessions. The complexity of the caste system, which emerged in the later Vedic period, led to a decline in women's well-being. Women's rights were significantly eroded. An ideal woman was expected to be obedient, able to keep her lips shut and accept her husband's commands. The birth of a daughter was highly undesirable and viewed as a source of grief.

Most women have lost their right to education. The marriageable age for women has gradually decreased. A 30-year-old man marrying a 12-year-old girl was meant to make a wonderful match. For many years after the Vedic period, the law book Manusmriti had a negative impact on women's situation and standing. Manus degraded the status of women. It stated that women should

¹ History of the Women's Rights Movement, <https://nationalwomenshistoryalliance.org/history-of-the-womens-rights-movement/> [Last accessed 28 March, 2024].

worship their husbands, follow their directions, and treat them like gods.

Manu's rules reduced women's social status in comparison to all other groups in society. Women's positions changed dramatically throughout the British period as a result of Western culture's influence on Indian society.

The status of women degraded. She was regarded as inferior to males in every respects.

Female education was given just a minor priority. In the late nineteenth century, while India was in the process of gaining independence, many important social reformers came up to advocate for the advancement of women's place in society, and a movement was launched in various regions of the country, but it was limited to the upper middle class.

Following India's independence, various legal reforms were implemented to better women's positions and equalize them with males. For example, Article 15(3) of the Indian Constitution empowers the Parliament to adopt special provisions to protect women's rights.² Article 16 ensures that all people have equal opportunities for employment or appointment in any governmental office.³

The Special Marriage Act of 1956, the Hindu Marriage Act of 1955, the Prostitution Immortal Traffic Act of 1958, the Dowry Prohibition Act of 1961, and the Domestic Violence Act of 2005 are among of the laws enacted to protect women's dignity and standing in Indian society.

With independence, women were granted equal standing with males. The administration began to implement several regulations and modifications to improve the status of women. Some laws were enacted to specifically benefit women. Historically, women's poor position prompted lawmakers to enact these particular laws and privileges for them.

Laws In Relation To The Idea Of Feminism

Feminist jurisprudence focuses on gender equality in terms of politics, economics, and society. India has seen an increase in the representation of women in all sectors of society. For example, with the enactment of Article 243 D, 33% of Panchayat Raj seats are now reserved for girls. In

² INDIA CONST. art. 15(3).

³ INDIA CONST. art. 16.

cases like as *Air India v. Nergesh Meerza & Ors*⁴. and *Vishakha v. State*,⁵ our judiciary ensured that girls would no longer experience process discrimination. As a result, we have economically empowered girls.

There are social assistance and guidance programs for girls, as well as the SWADHAR and UJJAWALA programs, and a comprehensive program for stopping trafficking and rescuing, rehabilitating, and reintegrating victims of trafficking for industrial sexual exploitation.

The surges of feminism in India are the result of a lengthy journey that honours every woman's struggle against sexism and repressive behavior in society. They overcame hurdles by increasing discourse about women's exploitation. Some of the outstanding outcomes of these battles are highlighted below:

1. Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal), Act, 2013⁶

The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013, is a breakthrough law that protects women against sexual harassment in the workplace. Sexual harassment is defined in the Act as any unwanted sexually motivated physical, verbal, or nonverbal action that creates an intimidating, offensive, or hostile working environment for women.

It applies to all workplaces, whether public or private, including offices, factories, shops, hospitals, and educational institutions.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act requires employers to take particular steps to prevent and resolve occurrences of sexual harassment in the workplace. Employers, for example, must create a safe workplace for women and respond quickly to sexual harassment accusations. Displaying a noticeboard describing the complaint filing procedure under the Act is also required.

⁴ *Air India vs Nergesh Meerza & Ors*, 1982 SCR (1) 438.

⁵ *Vishaka v. State of Rajasthan*, AIR 1997 SC 3011.

⁶ *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013*, No. 14, Act of Parliament, 2013 (India).

The Complaints Committee established by the Act must include at least 50% female members, with a woman chairing the committee. This committee has the ability to evaluate sexual harassment accusations and make appropriate recommendations to the employer. Victims of sexual harassment can file complaints directly with the Complaints Committee or through their employers.

Victims of criminal acts such as rape, assault, or stalking can seek the police. The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act of 2013 is an important step in promoting gender equality and protecting women's rights in the workplace. All working women should be informed of their rights under this legislation.

2. The Maternity Benefit Act, 1961⁷

The Maternity Benefit Act of 1961 is an Indian labor regulation that provides paid maternity leave to female employees. The act applies to all businesses with ten or more employees. The statute applies to all women who work in such places, including daily wage earners, ad hoc workers, and contract employees. The act allows pregnant women and new moms to take six months, or 26 weeks, of paid leave for their first two children. The female employee has the right to depart if she becomes ill as a result of her pregnancy or birth.

The act also includes rules for creches at or near the workplace, as well as nursing breaks during working hours, forbids discrimination against female employees based on pregnancy or motherhood, and imposes fines for violating its requirements.

The Equal Remuneration Act of 1976,⁸ passed by the Indian Parliament, seeks to eliminate gender-based discrimination in wage and remuneration payments. The Act, which applies to companies with five or more employees, prevents employers from paying different compensation to employees of different genders for equal labor.

The Act, which stems from proposals made at the Second International Conference on Women in Mexico City in 1975, is consistent with India's constitutional principles, which were created in 1950 and emphasize equal compensation for equal labor for both men and women.

⁷ The Maternity Benefit Act, 1961, No. 53, Act of Parliament, 1961 (India).

⁸ Equal Remuneration Act of 1976, No. 25, Act of Parliament, 1976 (India).

Article 39(d) of the Constitution directs the state to abolish sex discrimination in employment, whereas Article 14 guarantees equality before the law and equal protection regardless of gender. Despite these constitutional protections, effective execution was inadequate, resulting in women being paid less than men for equivalent work.

The Equal Remuneration Act has emerged as critical law aimed at preventing wage and salary discrimination against women. The Act's provisions have been enhanced by subsequent amendments, the most recent of which was made in 2019.

3. The Indecent Representation of Women (Prohibition) Act, 1986⁹

The Indecent Representation of Women (Prohibition) Act of 1986 is a law in India that forbids indecent representation of women in advertisements and media. The act was created to preserve women's dignity and keep them from being objectified and abused.

The Act defines 'indecent representation of women' as any image of a woman that is intended to create sexual arousal or to condone or incite violence against females. It includes any image of a woman's bodily parts that is sexually suggestive, as well as any depiction of a woman engaging in sexual behavior.

The Act also forbids the creation, publication, sale, distribution, exhibition, and broadcasting of indecent portrayals of women. It also demands that all types of media adhere to the criteria established by the act. The Indecent Representation of Women (Prohibition) Act has been criticized for its ambiguous definition of 'indecent representation' and for failing to address other types of gender-based violence. Nonetheless, it is a vital regulation that safeguards women's dignity and safety.

4. The Dowry Prohibition Act of 1961¹⁰

The Dowry Prohibition Act of 1961, passed by India's Parliament, prohibits the trade of dowry. The act criminalizes both giving and receiving dowry, with the goal of reducing the country's traditional practice of dowry. Dowry, as defined by the act, is any property or valued security transferred directly or indirectly from one party to a marriage to the other, and it applies to all

⁹ Indecent Representation of Women (Prohibition) Act, 1986, No. 60, Act of Parliament, 1986 (India).

¹⁰ Dowry Prohibition Act of 1961, No. 28, Act of Parliament, 1961 (India).

Indian citizens regardless of religion, caste, or creed.

The act makes several exclusions, such as gifts given during births, marriages, or engagements, as well as gifts given by family or friends during festivals, which are exempt. Penalties for violating the legislation include imprisonment for up to five years and a fine of up to ₹15,000.

The Dowry Prohibition Act was enacted to fight the practice of dowry, however its efficacy has been limited. Some families provide dowries clandestinely, only revealing it after the wedding. Additionally, bogus charges of extortion have been reported. Despite its faults, the Dowry Prohibition Act is an important step toward fostering gender equality in India.

5. Uniform Civil Code & Inequality in marriage

Feminist philosophers and writers have long affected MPs and judges, who make and interpret the law, respectively. In law schools, one quickly learns the names of masculine criminologists, social reformers, and lawmakers. However, little is taught and learned about female activists who achieved significant changes in the laws of the land through dedicated efforts and long-standing legal challenges. One such woman activist is the late Justice Leila Seth, a former Supreme Court of India Judge and author of several books on law who worked tirelessly to bridge the divide between sons and daughters in terms of family, matrimonial, and property inheritance laws.

The age-old assumption that once married, daughters have no right to their father's property is no longer accurate. Justice Seth was a member of the Law Commission from 1997 to 2000, and she proposed numerous significant reforms to Hindu laws for the benefit and empowerment of women. Her efforts paid off when her recommendations for equal succession rights for daughters became a reality. The Hindu Succession (Amendment) Act of 2005 eliminated Hindu women's position as a 'limited owner'.

Thus, a daughter, whether married or unmarried, is now treated equally with her brothers when it comes to inheriting family property. She can make a claim and obtain an equal portion.

Many battles have been won by female campaigners such as J. Seth. However, the purpose of the Uniform Civil Code (UCC) has yet to be achieved. Given the growth of Indian family and matrimonial laws, the need for a UCC is undeniable. According to Justice Seth, 'We have the right to equality, and if you teach people the right to equality, and you teach people that you don't destroy a woman's legal or sexual liberty after marriage, things will change.'

All Indian women are guaranteed essential rights and freedoms under the Indian Constitution of 1950. Article 14 states, *'The State shall not deny any person equality before the law or equal protection of the laws within the territory of India.'* Furthermore, Article 15 prohibits discrimination based on religion, ethnicity, gender, caste, or even place of birth. If all women are equal in the eyes of the law, then the same law must apply to every woman and daughter of India. In the lack of a UCC, women's civil and personal laws vary. This creates obstacles when women seek justice, since they must navigate multiple judicial hearings and delays in executing the law. For example, polygamy, which allows a man to marry numerous wives at the same time, has only been partially handled in India. The injustice done to the first wife and her children in a polygamous marriage cannot be contested. Polygamy, in reality, threatens population control measures and causes economic challenges.

Feminists, on the other hand, argue that

"monogamy comes with several benefits ranging from lower crime rate and violence against wives and children on the one hand, whereas greater parental investment, financial productivity in terms of GDP, and female equality on the other."

Monogamy, as feminists have long argued, secures a bond of trust and fidelity between husband and wife, as well as shared rights and duties, leaving less room for injustice, cruelty, desertion, sexually transmitted illnesses, and divorce.

As a result, monogamy became institutionalized in numerous communities around the world, including ancient India, Greece, and Rome. A monogamous marriage and a small family size result in lower living costs. With increased spending power, the family can get better access to healthcare, education, and recreational activities.

As a result, feminists and courts have advocated for monogamy, emphasizing the economic benefits it provides over polygamy. Currently, India has separate personal laws for Hindus, Christians, Muslims, and Parsis. The main commonality between these laws is that the marriage laws applicable to Hindus, Christians, and Parsis support monogamy.

However, there is no legal barrier in Muslim law that prevents a male from remarrying while his first marriage is still valid. However, a woman under any of these laws, whether Hindu, Christian, Muslim, or Parsi, is not permitted to remarry during the duration of her legitimate marriage, unless she becomes a widow or divorcee, or the marriage is deemed null and void. Polygamy was

not punishable in India prior to the passage of the Indian Penal Code (IPC), which was enacted in 1860.

S. 494 of IPC,¹¹ 1860 states: *'Marrying again during lifetime of husband or wife: Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine...'*

S. 495 of IPC, 1860¹² states: *'Same offence with concealment of former marriage from person with whom subsequent marriage is contracted: Whoever commits the offence defined in the last preceding section having concealed from the person with whom the subsequent marriage is contracted, the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.'*

However, these legal requirements of the IPC, 1860, do not apply to persons subject to Muslim law. Because India has numerous matrimonial laws, women continue to confront cruelty and injustice in marriage, maintenance, polygamy, divorce, child custody, and other areas. There is still a long way to go until women gain equality in all aspects of life.

In cases such as 'Lily Thomas v. Union of India,'¹³ marriage disparity was emphasized, which can be solved if Article 44 of India's Constitution, i.e. the UCC, is implemented. However, the UCC has yet to see the light of day. Goa is an interesting example. In the state of Goa, the Portuguese Civil Code continues to apply. Goa is the only state in the country with a UCC, regardless of religion, caste, gender, ethnicity, etc.

As a result, members of the Hindu, Christian, Muslim, and Parsi faiths are subject to the same laws regarding marriage, divorce, child custody, alimony, succession, and other issues. This Code also prohibits polygamy in Goa, stating that regardless of gender, a woman or a man cannot marry when a valid marriage exists. If Goa can achieve this consistency, then so can the rest of India. If the country has uniform legislation, all women will have same marital privileges as males, making marriages happier and more durable. It will also reduce the expense of litigation, resulting in faster justice for women.

¹¹ Indian Penal Code, 1860, § 494, No. 45, Act of Parliament, 1860 (India).

¹² Indian Penal Code, 1860, § 495, No. 45, Act of Parliament, 1860 (India).

¹³ Lily Thomas v. Union of India, AIR 2000 SC 1650.

6. Films and Digital Voyeurism

Some argue that films, like laws, have always been created by men for men. Previously, women filmmakers were virtually unknown. Only male producers, screenwriters, and directors created films to entertain people, and the majority of these films were developed from a male-centric perspective, with females depicted in passive and submissive roles rather than active, robust, decision-making, and powerful positions.

Women were frequently depicted as victims of violence and debauched ladies for the illicit enjoyment of spectators. According to research, watching films with sexually explicit content is directly associated with an increase in crime against women and children. Laura Mulvey¹⁴, a British feminist film scholar, stated that "the cinema offers a number of possible pleasures." One is scopophilia.

The Oxford English Dictionary defines 'Scopophilia' as 'Sexual enjoyment gained largely from seeing others when they are naked or engaged in sexual activity; voyeurism.'¹⁵ In fact, research undertaken over the years have linked watching violent crimes and explicit themes in films to actually committing those acts in real life by males aged 12 to 40.

The sexist and prejudiced attitudes depicted in films were mirrored in reality. Psychiatrists and feminist legal experts have both condemned scopophilia in its various manifestations, including watching films. The UNESCO Global Media Violence Study¹⁶ (supervised by Prof. Dr. Jo Groebel) is a must-read in this direction. This excellent study exposes the detrimental consequences of media violence on youngsters. These data, which cover the years 1996 and 1997, are quite alarming, pointing to children's television viewing patterns in various countries.

Violence in television, films, and reality shows has a harmful impact on people's behaviour both inside and beyond their homes. Those who viewed pornographic content were more likely to commit domestic violence against their wives and children than those who did not consume such content. Children's regular exposure to violent and adult content has been a key cause of adolescent delinquency, as well as severe drug usage. The World Organization of the Scout Movement collaborated with Utrecht University on this study.

¹⁴ Laura Mulvey, *Visual Pleasure and Narrative Cinema*, University of Wisconsin (1973).

¹⁵ Scopophilia', Oxford English Dictionary, <https://www.lexico.com/definition/scopophilia>.

¹⁶ Jo Groebel, *Media Violence and Children*, Educational Media International (35), Pgs. 216-227 (1998).

Schoolchildren's behaviour changes dramatically when they watch such sophisticated content at a young age. One such example is the Independent Television Commission's 1998 poll done in England. As 46% of youngsters had a television in their bedroom, they were becoming addicted to adult content. Unfortunately, less than half of all parents watched and prevented their children from watching shows that were inappropriate for their young minds. Scopophilia, therefore, is not only addictive but also violates the human rights of women and children.

As a result, it poses a major threat not just to women and children in the West, but also in the East of the world. According to a 1998 Independent Television Commission research poll, 46% of children in England have a television in their bedroom, whereas only 43% of parents supervise and prevent their child from watching inappropriate programming. According to feminist filmmakers, one of the great risks of watching violent and explicit content in the dark atmosphere of a theater is that those who watch such content on a frequent basis experience pleasure and elevated dopamine levels.

High levels of dopamine have been linked to a variety of mental health and neurological disorders. Such arousal or desire in male audiences to emulate the behavior presented in the film proves to be exceedingly dangerous for human society and can be related to an increase in the occurrence of horrible crimes such as rapes of children as young as five and women. As a result, feminist social reformers and psychoanalysts saw the need to remodel films and television serials with better quality, compassionate, and relevant material, hence lowering crime rates.

Women filmmakers entered the scene, creating films from a feminine perspective. This required studying every subject from the feminine perspective. Fine arts such as paintings, literary arts such as novels and poetry, and performing arts like as theatre and film all saw significant transformation, with a transition from male-centric to female-centric and feminist art, bringing both genders on the same plane. The masculine gaze was supplanted with 'the female gaze.' Furthermore, just a few years after India gained independence, the Cinematograph Act of 1952 was passed.

The Central Board of Film Certification (CBFC) was also established as a statutory authority in India to regulate films under the provisions of the Act. It fulfills its function of certifying films for public showing. One of the reasons on which the Central Board can refuse to certify the picture at all is 'vulgarity, obscenity, depravity, double entendres, or scenes humiliating women,

including sexual assault.' Almost all films with brutally strong violence and harsh language, humiliating, disrespectful, or demeaning sequences against women or any social group, and naked content will be prohibited by legislation in order to reduce crime and safeguard the public conscience and sanity.

The Board is part of India's Ministry of Information and Broadcasting. According to Section-354C of the Indian Penal Code, 1860, 'voyeurism' is defined as '*viewing and/or capturing the image of a girl or woman going about her private acts, where she believes no one is watching her. This includes a lady who is using a toilet, naked or in her underwear, or doing a sexual act.*' The sentence for this crime is from three to seven years in prison and a fine. In 2012, a horrifying and spine-chilling occurrence occurred in Delhi as part of the Nirbhaya Gang Rape.¹⁷ The horrible crime sparked a wave of outrage and horror across the country. As a result, the criminal law was modified in accordance with the Justice Verma Committee recommendations. To outlaw digital voyeurism in India, Section-354C was inserted to the IPC, 1860¹⁸ as part of an amendment to the law relating to women's protection. Furthermore, Section 67A of the IT Act¹⁹ states that if any sexually explicit material is released online, the individual who publishes it would face a 5-year prison sentence and a monetary fine of up to ten lakh rupees.

Following the precedent set by 'Justice K.S. Puttaswamy (Retd) vs Union of India,²⁰ the incorporation of the 'Right to privacy' in Article 21, which provides the 'Right to life and personal liberty,' any voyeuristic act is completely prohibited.

The right to privacy is a fundamental right that all Indian citizens, especially women, deserve. Despite regulations aimed at curbing 'voyeurism' and protecting women's dignity, the number of cybercrimes against women has not decreased. Although Indian regulations allow for the censorship of films and television programming, the present generation of women and children faces a significant threat from voyeuristic content on various social media platforms, websites, blogs, chat bots, and OTT platforms that are rife with pornography and child abuse. Online sex scandals have recently dominated the headlines in newspapers.

These websites must be outlawed immediately, and new laws enacted to penalize cybercriminals.

¹⁷ Mukesh vs. NCT Delhi, (2017) 6 SCC 1.

¹⁸ Indian Penal Code, 1860, § 354-C, No. 45, Act of Parliament, 1860 (India).

¹⁹ Information Technology Act, 2000, § 67A, No. 21, Act of Parliament, 2000 (India).

²⁰ Justice K.S. Puttaswamy (Retd) vs Union of India, (2017) 10 SCC 1.

It is extremely tough to track down crooks in internet. The country's cyber laws require multiple urgent modifications to stay up with changing times.

These Acts may be viewed as watershed moments in the evolution of feminist felony theory. The Hindu Succession (Amendment) Act of 2005 was enacted in order to eliminate discriminatory clauses and provide women the right to inherit possessions. Prior to this amendment, women had no statement of inherited assets. The Nirbhaya Gang rape case prompted the amendment of the Criminal (Reform) Act 2013, also known as the Anti-Rape Act of 2013. The widespread outrage following the brutal gang rape and subsequent homicide of a physiotherapy intern in Delhi acted as the push for the amendment.

This proposal seeks to provide people convicted of sexual offenses against women a faster trial and heavier penalties. All of these accomplishments show that feminism exists in India and is actively striving to better society and remove gender inequity. In our country, feminist jurisprudence has grown at its own pace.

However, certain loopholes must be addressed, as well as some gaps between the authorities and the terrible. The gender wage gap persists, various legislative standards need to be altered, women's safety is no longer guaranteed, and the promotion of rape culture in media, including songs, movies, and jokes, must cease. The feminist movement in India also needs greater backing.

Misuse of Feministic laws in India

Excessive legislation is not always beneficial. It frequently leads to the misuse of laws. In India, rules designed to safeguard women are being misused, which has become a contentious topic. The government enacted various regulations to protect women from discrimination and sexual harassment in society. However, due to one-sided safety rules for women, bogus charges against men are increasing at an alarming rate.

For many years, women were the most underprivileged element of society, but they are now offered the same possibilities as males. Even the Indian Constitution permits the government to establish specific provisions for women under Article 15(3). As a result, if some laws are enacted to protect women's rights, legislation enforcing men's rights must also be enacted. So that if any false claims are made against a guy, he might seek legal recourse. Men are now deemed the most

suffering sector of society as a result of women-centric regulations. The politicians should recognize that while women are deemed weaker than men, this does not mean that men do not need protection. Society requires rules to safeguard all individuals from any form of abuse or inequity.

Laws Being Mis-used

There are numerous laws that were once enacted to protect women's rights in society, and these laws were drafted with Article 15(3) of the Indian Constitution in mind, which allows the Parliament to make special provisions for the protection of women, but many women are now abusing the same laws. The very foundation of those laws has crumbled. The following laws are being misused:

1. The Domestic Violence Act is a civil law adopted in 2005 to provide relief to the aggrieved party (a woman under the act). This Act was primarily established to safeguard women from abuse perpetrated during their marriage by their husbands or in-laws. The statute was even successful in giving justice to many married women. However, as time went, many women utilized this Act to target their in-laws, filing bogus Domestic Violence claims against their husbands and families.

Women began bringing bogus claims as a result of extramarital affairs or in order to gain their husband's possessions. It is true that these rules are vital for women's safety because some women endure domestic abuse and cruelty in their matrimonial homes, but we cannot overlook the fact that some women force innocent males to face a variety of problems in society. The bogus cases affect their reputation in society, and some men have even lost their jobs as a result of these false charges.

2. Section 498-A, Indian Penal Code: The term "cruelty"²¹ is defined under Section 498-A of the Indian Penal Code, and the wife is protected from any sort of cruelty against her husband or the husband's relatives. This clause was included to the IPC to help women deal with the threat of dowry deaths. This section exclusively addresses wives, not husbands. The introduction of this section was necessary because a substantial proportion of married women faced abuse in their marital homes.

However, many women no longer use this section for their own safety, but rather to exact revenge on their spouses, collect money from their husbands, or simply to make their in-laws suffer. The women leveled bogus claims against their spouses. When the cross-

²¹ Indian Penal Code, 1860, § 498-A, No. 45, Act of Parliament, 1860 (India).

investigation was conducted to determine the legitimacy of this section, it was discovered that the number of acquittals exceeded the number of convictions.

The misuse of Section 498-A undermines its genuine legitimacy. The part should not only be handy for women, but it should also include the phrase "men" because, while it is currently just women who face cruelty in their marital homes, the number of husbands encountering cruelty has increased more than that of wives.

3. Rape is specified in Section 375 of the Indian Penal Code.²² The term "rape" literally means "forceful seizure." It is engaging in sexual intercourse with a lady without her consent or by assault. It is a much-needed provision to preserve women's dignity, but it does not allow women to make false charges of rape against males. Not every woman, but a significant number of women fabricate false charges about men in order to harm a man's reputation or take money from them.

Furthermore, Section 375 of the IPC can be considered gender-biased because sexual violence can affect men, transgender people, and women alike. The accused of rape should be given an equal opportunity to be heard, and the court should conduct many tests before passing judgment in such sensitive instances, as it is a question of men's entire lives and reputation. As stated above in the case of Vishnu Tiwari vs. the State of Uttar Pradesh, Vishnu Tiwari was accused of rape and condemned to prison, but he was judged "not guilty" after approximately 17 years.

There are additional legislation, such as the Sexual Harassment Act, which try to make the workplace safer for women. Many women have had conflicts with their coworkers or supervisors in the workplace. As time progressed, the women utilized this conduct against males, filing fake molestation accusations against them, harming their reputations and careers. The Hindu Adoption and Maintenance Act allowed divorced wives to seek maintenance and alimony from their husbands. Many women divorced their husbands simply to get alimony.

Case Studies- Misuse of Feminist Centric Laws

1. Sejalben Tejasbhai Chovatiya vs. State of Gujarat²³

In this case, the court noted that the petitioner (the wife) received sufficient money from the fixed deposit receipt, but she failed to provide it in evidence and claimed that she has no source of

²² Indian Penal Code, 1860, § 375, No. 45, Act of Parliament, 1860 (India).

²³ Sejalben Tejasbhai Chovatiya vs. State of Gujarat, 2017(3)RCR(Criminal)477.

income. The court charged her under Section 195 read with Section 340 of the CrPC. The court in this case believed that laws favoring women are frequently manipulated by them by giving false proof, and thus the wife's petition was dismissed.²⁴

2. Arnesh Kumar vs. State of Bihar²⁵

In this case, Arnesh Kumar's wife accused her mother-in-law and father-in-law of asking her for a dowry of Rs 8 lac and other items such as a Maruti car and an air conditioner, and she also accused her husband of siding with his parents when she informed him of their dowry demand. She also claims she was told to leave her marital house if the dowry demands were not paid. The accused rejects all of these claims and requests anticipatory bail, which is denied both the High Court and the Sessions Court. Then Arnish Kumar files a Special Leave Petition in the Supreme Court.

The Honourable Supreme Court ruled in this case that police officers should use caution while conducting arrests in cases where the sentence is less than seven years in jail, and that they should follow the broad standards established by the Supreme Court. These instructions inform the police on whether an arrest is required under Section 41 of the CrPC or not. The Supreme Court further stated that the judicial magistrate should study the report presented by the police officer. This Supreme Court ruling was also backed by a number of activists fighting for men's rights.

3. Vishnu Tiwari vs State of UP²⁶

This case can be considered one of the most important cases to demonstrate how women abuse the laws designed to protect them. In this case, Vishnu Tiwari was accused of rape and sentenced to prison in 2001 after being found guilty of rape; however, after approximately 17 years, when the matter came before the Allahabad High Court, they found the charges against him to be false and acquitted him.

4. Savitri Devi vs Ramesh Chand & Ors²⁷

In this instance, the court ruled that women's rights statutes were enacted to protect women from

²⁴ Soumya Vemulakonda, *Misuse of Women Centric Laws in India*, <https://www.hellocounsel.com/misuse-of-women-centric-laws-in-india/> [Last accessed 26 Feb, 2024].

²⁵ Arnesh Kumar vs. State of Bihar, (2014) 8 SCC 273.

²⁶ Vishnu Tiwari vs State of UP, (2019) 8 SCC 27.

²⁷ Savitri Devi vs Ramesh Chand & Ors, 2003(69) DRJ 6.

abuse. However, they abuse these laws by dragging her husband's distant relatives into the picture.

So, in this instance, the Court ruled that if a woman is subjected to violence by her husband or in-laws, the complaint should be launched against them alone, rather than the accused's entire family.

5. Rajesh Sharma vs. State of Bihar²⁸

In this instance, the court issued several directives to reduce the misuse of Section 498-A of the IPC. The court orders the formation of a welfare committee in each district, consisting of paralegal volunteers, social workers, and officers' spouses. Whenever the police authorities received a complaint under section 498-A, it was the job of the welfare committee members to investigate the problem and create a report for such cases, which they would then send to the authorities. The completed report must be given to the judicial magistrate, who will then express his views on such matters.

Landmark Cases of Gender Biasness

1. Nergesh Meerza v State of Bombay, AIR 1951 SC 233 (1951)- It was one of the earliest major cases in Indian equality law involving sex discrimination. The Nergesh Meerza²⁹ case was a major decision by the Indian Supreme Court in 1980 that declared illegal a clause of the Indian Constitution that excused women from military duty, declaring that the provision violated the constitutional promise of equal protection. The Court ruled that excluding women from military service based solely on gender was a form of discrimination and so could not be lawfully justified. This decision created a precedent for the Court to follow in other instances concerning gender discrimination. The decision also established a broad principle of equality before the law in India, which has been applied in future instances concerning discrimination based on gender, religion, caste, and other factors.
2. Vishaka and Others v. State of Rajasthan (1997)³⁰- This case was a historic decision by the Supreme Court of India, which recognized sexual harassment as a breach of a woman's

²⁸ Rajesh Sharma and Ors. v. State of Bihar, 2022 LiveLaw (SC) 33.

²⁹ Nergesh Meerza v State of Bombay, AIR 1951 SC 233 (1951).

³⁰ Vishaka v. State of Rajasthan, AIR 1997 SC 3011.

fundamental right to equality under the Indian Constitution. The lawsuit was filed in response to a gang rape of a social worker in Rajasthan, and the court issued rules to prevent and address workplace sexual harassment.

3. *Mary Roy v. State of Kerala (1986)*³¹- In this case, the Kerala High Court decided that Kerala's Christian personal law denied equal rights to women. *Mary Roy v. State of Kerala (1986)* was a landmark case that called into question the Travancore Succession Act's gender-biased inheritance regulations, which applied to Syrian Christian women in Kerala. The legislation specified that only men were eligible to inherit ancestral property, while women were only entitled to a small share of it.

Mary Roy, a Syrian Christian lady, challenged the ordinance, claiming that it violated her fundamental right to equality under the Indian Constitution. The Kerala High Court found in favor of Mary Roy, finding that the Travancore Succession Act discriminated against women and infringed their constitutional right to equality. The court ruled that Syrian Christian women in Kerala have the same right to inherit family property as men, and that the Travancore Succession Act must be amended appropriately.

4. *Shayara Bano v. Union of India (2017)*³²- This lawsuit was about the practice of triple talaq, a type of instant divorce performed by Muslim men in India. The Supreme Court of India found the practice unlawful and discriminatory against women, and it overturned the provision that permitted Muslim men to divorce their wives simply by reciting "talaq" three times.

Conclusion

Feminist analysis of legislation reveals both the potential and limitations of legal frameworks in achieving gender equality. Here are some key takeaways:

1. Progress achieved: Legislative advancements have outlawed discriminatory practices, provided protections against violence, and expanded women's rights.
2. Need for ongoing critique: Legislation can reinforce patriarchal structures if not crafted carefully. Laws should be reviewed for unintended consequences and potential to disproportionately burden marginalized women.

³¹ *Mrs Mary Roy & Ors v State of Kerala & Ors*, 1986 SCR (1) 371.

³² *Shayara Bano v. Union of India*, 2017 SCC OnLine SC 963.

3. Focus on social change: Effective legislation goes hand-in-hand with social transformation. Feminist movements play a crucial role in raising awareness, demanding enforcement, and pushing for cultural shifts that dismantle gender inequities.

Looking forward, a feminist approach to lawmaking should:

1. Center diverse experiences: Recognize the ways sexism intersects with race, class, and other identities. Legislation should address the needs of all women.
2. Promote economic justice: Address issues like unequal pay, lack of childcare options, and limited access to economic resources.
3. Shift focus from protection to empowerment: Laws should not just protect women from harm, but also create opportunities for them to thrive.

The fight for gender equality is an ongoing process. Feminist engagement with legislation is crucial to ensure laws are effective tools for creating a just and equitable society. By continuously evaluating and improving the legislative response, we can move closer to a future where women have equal rights, opportunities, and protection under the law.

