



LL.B. IV TERM
LB 4031
GENDER JUSTICE AND
FEMINIST JURISPRUDENCE



Course Materials: Selected and Edited By

Ved Kumari

Usha Tandon

Vageshwari Deswal

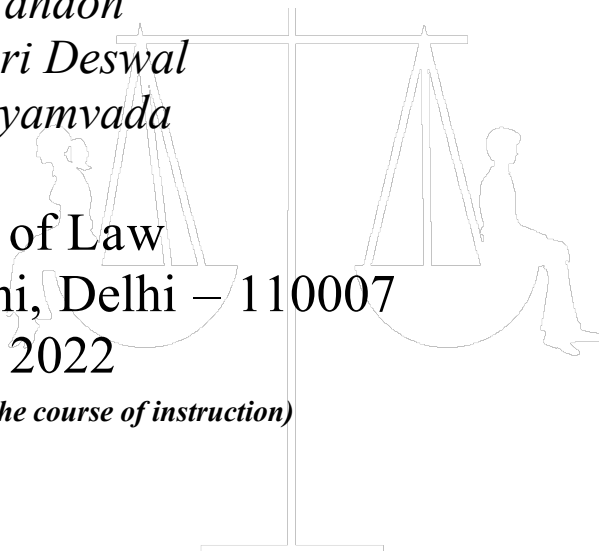
Shiva Priyamvada

Faculty of Law

University of Delhi, Delhi – 110007

May 2022

(For private use only in the course of instruction)



GENDER JUSTICE AND FEMINIST JURISPRUDENCE

Paper LB-4031

This course aims at questioning the understanding that law is universal, protects everybody equally and is accessible to all equally. It uses gender, particularly in relation to women and persons with non-heterosexuality as examples to show discrimination perpetuated by law and legal processes. It has long been recognised that law, lawyers and judges are insensitive and unaware of the problems and perspectives of women resulting in grave injustice to them in various ways. Orientation and in-service refresher training programmes for lawyers and judges on these aspects have been suggested by all concerned and indeed such training programmes are being organised too. Law Schools in this scenario have the important obligation to generate awareness of the gender bias operating in society and legal system in India. This course aims to focus on discrimination on the ground of sex and non-heterosexuality in the extant law and judicial decisions. It also explores the jurisprudential explanations for the existing state of affairs. It focuses on the patriarchal nature of state and family and contemporary feminist and queer debates.

It is expected that the students will acquire analytical skills and knowledge to critically analyse functioning of legal provisions and judicial responses from the perspectives of the deprived and powerless groups in society as an outcome of this course. These skills are important not only from the perspective of municipal laws but also in the context of discrimination between the first and third world countries and international law.

Prescribed Readings:

1. Sarla Gopalan, TOWARDS EQUALITY – THE UNFINISHED AGENDA – STATUS OF WOMEN IN INDIA 2001. National Commission for Women.
2. Amita Dhanda, Archana Parashar (ed) ENGENDERING LAW ESSAYS IN HONOUR OF LOTIKA SARKAR (1999). Eastern Book Depot.
3. Ratna Kapur and Brenda Cossman, SUBVERSIVE SITES: FEMINIST ENGAGEMENTS WITH LAW IN INDIA (1996).
4. TOWARDS EQUALITY Report of the Committee of Status in India Government of India (1974).
5. Kalapana Kannabhiran (ed), WOMEN AND LAW CRITICAL FEMINIST PERSPECTIVES (Sage Publications India 2014)
6. Usha Tandon (ed), Gender Justice: A Reality or Fragile Myth (2015)
7. Rajesh Talwar, The Third Sex and Human Rights (2016)
8. National Family Health Survey-4 (2017)

CONTENTS

(15 weeks course - Total Classes = 60+15)

TOPIC ONE: INTRODUCTION (7 LECTURES)

- What is Gender justice
 - Notions of sex and gender
 - Deconstructing 'Man', 'Woman', 'Other'
 - Private-public dichotomy
- Women in ancient, medieval and modern India: An overview
- Indicators of Status: Difference in - likelihood of survival; female foeticide, assigned human worth; and control over property, valued goods and services, working conditions, knowledge and information, political processes, symbolic representation, one's body, daily lifestyles, reproductive processes

Readings:

1. *Maira Gatens, "A Critique of the Sex/Gender Distinction" in A Phillips ed. FEMINISM AND SUBJECTIVITY, pp. 139-154
2. Carol Pateman, "Feminist Critique of the Public and Private" in A Phillips ed. *Feminism and Equality*, pp. 103-123
3. *India Report under CEDAW 2011* available at http://www2.ohchr.org/english/bodies/cedaw/docs/AdvanceVersions/CEDAW-C-IND-4-5_en.pdf
4. National Family Health Survey-4 (2017), available at <https://dhsprogram.com/pubs/pdf/FR339/FR339.pdf>
5. Lotika Sarkar, "Women's Movement and the Legal Process" Occasional Paper 24, CWDS, <http://www.cwds.ac.in/wp-content/uploads/2016/09/WomensMovement.pdf>
6. *Usha Ramanathan, "Images (1920-1950) Reasonable Man, Reasonable Woman and Reasonable Expectations" in Amita Dhanda, Archana Parashar (ed) ENGENDERING LAW, pp. 33-70 (1999). Eastern Book Company. <http://www.ielrc.org/content/a9906.pdf>
7. *Rajesh Talwar, "Introduction" in THE THIRD SEX AND HUMAN RIGHTS (2016)

TOPIC TWO: PATRIARCHY AND FEMINIST JURISPRUDENCE (8 LECTURES)

- Understanding Patriarchy
 - Issues and contradictions in feminism
 - Sameness and difference debate
 - Liberal feminism
 - Radical feminism
 - Socialist/Marxist feminist approaches
8. *Kamla Bhasin, *What is Patriarchy*, Kali/Women Unlimited (2004)

9. Ratna Kapur and Brendia Cossman, *Subversive Sites: Feminist Engagements with Law in India* 43-75 (1996).
10. Alison Jagar “*Introduction : Living with Contradictions: Controversies in Feminist Social Ethics*” (1994) Westview Press
11. *Heywood, “*Feminism in Political Ideology: An Introduction*” pp. 252-265 (2004) Palgrave McMillan.

TOPIC THREE: “**LGBTQH++ and Human Rights**” (4-5 LECTURES)

12. **National Legal Services Authority v. Union of India*, [(2014) 1 SCC 1]
13. *Arun Kumar v. Inspector General, 22nd April 2019 Mad HC, available at <https://indiankanoon.org/doc/188806075/>
14. *Arvind Narrain, “*‘That despicable specimen of humanity’: Policing of homosexuality in India*” in Kalpana Kannabiran (ed), *CHALLENGING THE RULE(S) OF LAW: COLONIALISM, CRIMINOLOGY AND HUMAN RIGHTS IN INDIA* (2008) Sage India
15. *Navtej Singh Johar & Ors v. Union of India Ministry of Law and Justice Secretary*, Writ Petition(s)(Criminal) No(s).76/2016 available at <https://indiankanoon.org/doc/119980704/>
16. *EXCERPTS: Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law (UN Human Rights Office of the High Commissioner) **HR/PUB/12/06 (2012)**
17. Report of the United Nations High Commissioner for Human Rights on Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity (2014) available at https://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/19/41
18. The Transgender Persons (Protection of Rights) Act 2019

TOPIC FOUR: INTERNATIONAL INSTRUMENTS ON GENDER JUSTICE (4-5 LECTURES)

- UDHR, ICESCR, ICCPR
- UN Convention for the Elimination of Discrimination against Women
- The Yogyakarta Principles, 2007, available at http://data.unaids.org/pub/manual/2007/070517_yogyakarta_principles_en.pdf
- UN Human Rights Council Resolution on Human rights, Sexual Orientation and Gender Identity, 2011
- Human Rights Council Resolution on sexual orientation and gender identity (2014), available at https://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/19/41

TOPIC FIVE: SEXUALITY AND MORALITY IN LAW (6 LECTURES)

- Indian Penal Code 1860
 - Rape Laws

➤ Adultery

- Immoral Traffic Prevention Act 1956 read with section 370 IPC
- Indecent Representation of Women (Prohibition) Act, 1986
- 19. *Ved Kumari, “Gender Analyses of Indian Penal Code” in Amita Dhanda, Archana Parashar (ed) ENGENDERING LAW Essays in Honour of Lotika Sarkar, pp.139-160 (1999). Eastern Book Company.
http://www.womenstudies.in/elib/crime_ag_women/ca_gender_analysis.pdf
- 20. *Usha Tandon and Sidharth Luthra, “Rape: Violation of the Chastity or Dignity of Woman? A Feminist Critique of Indian Law”, FICHL Policy Brief Series No. 51 (2016)
http://www.fichl.org/fileadmin/user_upload/160615_PBS_No._51_2016_Tandon_Luthra_.pdf
- 21. **Bobby Art International, Etc v Om Pal Singh Hoon&Ors* (SC 1996)
- 22. *Joseph Shine v. UOI*, 2018 SCC online SC 1676

TOPIC SIX: ECONOMIC EMPOWERMENT AND LAW (8 LECTURES)

- Labour Laws:
 - Gender protective laws
 - Gender neutral laws
 - Gender corrective laws
- Law Protecting Women against Sexual Harassment at Workplace
 - The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013
- 23. **C.B. Muthammav. Union of India*, 1979(4)SCC 260
- 24. **Air India and others v.Nergesh Meerza*, 1982 SCR (1) 438
- 25. **Richa Mishra v. State of Chhattisgarh*, (2016) 4 SCC 179,
<http://judis.nic.in/supremecourt/imgs1.aspx?filename=43378>
- 26. *Charu Khuranav. UOI* , WRIT PETITION (CIVIL) NO.78 OF 2013 decided by SC on November 10, 2014
- 27. *Medha Kotwalv. U.O.I* (2013)1 SCC 297
- 28. *Catharine A. MacKinnon, Where #MeToo Came From, and Where It’s Going: The movement is moving the culture beneath the law of sexual abuse, available at
<https://www.theatlantic.com/ideas/archive/2019/03/catharine-mackinnon-what-metoo-has-changed/585313/>
- 29. Vanessa Sheridan, “Transgender Economic Equality: The New Frontier” in HUFFPOST available at https://www.huffingtonpost.com/vanessa-sheridan/transgender-economic-equality-the-new-frontier_b_3914614.html

TOPIC SEVEN: REPRODUCTIVE RIGHTS (6 LECTURES)

- Indian Penal Code, 1860

- Medical Termination of Pregnancy Act, 1971
- Maternity Benefits Act, 1964
- PC & PNDT Act 1994
- 30. **Municipal Corporation of Delhi v. Female Workers (Muster Roll) and Another*, (2000) 3 SCC 224
- 31. **Sabu Mathew George v. Union of India & Ors* (2008 SC)
- 32. **Vinod Soniv. UOI*, 2005 Bombay High Court

TOPIC EIGHT: LAW PROTECTING WOMEN AGAINST VIOLENCE AT HOME: DOMESTIC VIOLENCE, DOWRY HARASSMENT, SATI. (5 LECTURES)

- Protection of Women against Domestic Violence Act 2005
- Dowry Prohibition Act 1961
- Commission of Sati (Prevention) Act 1987
- 33. **S.R. Batra and Anrv. Taruna Batra*, (SC 2006)
- 34. **Hiral P. Harsora And Orsv. Kusum Narottamdas Harsora*, 2016 SCC OnLine SC 1118, decided on 06.10.2016
- 35. **All India Democratic Women's Association and Janwadi Samitiv. Union of India & Ors.*, 1989 SCR (2) 66
- 36. **Staying Alive: Evaluating Court Orders Sixth Monitoring & Evaluation Report 2013 on the Protection of Women from Domestic Violence Act, 2005 (LAWYERS COLLECTIVE)*

Readings with an asterisk (*) indicate that these are supplied in the Course Materials. Students are required to study the other readings from the Library.

It may be noted that the list of reading prescribed and suggested is subject to revision with new publications and developments.