

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



**Course Materials: Selected and Edited By**

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## **GENDER JUSTICE AND FEMINIST JURISPRUDENCE'**

### **Paper LB-4031**

This course aims to analyse the prevailing understanding of law as universal, impartial, and equally accessible to all. It specifically explores issues of gender discrimination, focusing on women and individuals with non-heteronormative sexual orientations, to highlight the inequalities perpetuated by legal systems and processes. Historically, it has been acknowledged that the law, legal practitioners, and the judiciary have often been unaware or insensitive to the challenges faced by women and marginalized sexual minorities, leading to significant injustice. In response to these concerns, Law schools, in particular, can play a pivotal role in fostering awareness of gender biases present in both society and the legal system in India.

This course aims to focus on the discrimination based on sex and sexual orientation within the current legal framework and judicial decisions. It delves into the jurisprudential explanation for the gender placement, examining the patriarchal structures of both the state and the family. It engages with contemporary feminist theoretical debates, encouraging students to critically analyse legal provisions and judicial responses from the perspectives of marginalized and disenfranchised groups in society. The course also focuses upon the significance of Indian feminist jurisprudence that lies in its ability to critically analyze and address the gender biases embedded within the Indian legal system. It plays a crucial role in challenging patriarchal norms, advocating for legal reforms, and highlighting the intersectional nature of discrimination that women and marginalized genders face in India. The course provides a framework for understanding and dismantling the structural inequalities within the law and society in India while offering solutions to ensure that the Indian legal system becomes more inclusive, just, and equitable.

Upon completion, students will acquire essential analytical skills and knowledge to scrutinize legal systems both domestically and internationally, addressing issues of discrimination not only within national boundaries but also in the context of the global divide between the First and Third Worlds. These skills are integral to understanding and challenging inequities in municipal 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)
9. Handbook on Combatting Gender Stereotype in India; The Supreme Court of India, 2023.

# CONTENTS

## TOPIC ONE: GENDER AND GENDER JUSTICE

1. Understanding Sex, Gender, Gender Dysphoria and Gender Identities: LGBTQA++.
2. Private-public Dichotomy.
3. 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.

## TOPIC TWO: PATRIARCHY AND FEMINIST JURISPRUDENCE

1. Patriarchy, evolution of patriarch in India, effect of patriarchy on men.
2. Feminism: Liberal feminism, Radical feminism, Socialist/Marxist feminism, I-feminism, Eco-feminism, Cultural feminism, The sameness and difference debate.
3. Understanding Indian Feminist Jurisprudence.

## TOPIC THREE: THE THIRD GENDER

1. The Transgender Persons (Protection of Rights) Act 2019:
  - I. Definitions:
    - a. Section 2 (i) "person with intersex variations"
    - b. Section 2 (k) "transgender person"
  - II. Prohibition against discrimination: Sections 3
  - III. Recognition of the Identity of the Transgender Persons: sections 4- 7.
  - IV. Education, employment and health of transgenders: Sections 9 - 12.
  - V. National Council for Transgender Persons: Sections 16-17.
2. Critical Analysis of the Transgender Persons (Protection of Rights) Act 2019.

### Cases:

1. National Legal Services Authority v. Union of India, [(2014) 1 SCC 1]
2. Arun Kumar v. Inspector General, AIR 2019 MAD 265
3. Navtej Singh Johar & Ors v. Union of India Ministry of Law and Justice Secretary, AIR 2018 SC 4321
4. Supriyo @ Supriya Chakraborty & Anr. Writ Petition (Civil) No. 1011 of 2022, Judgment on 17th October, 2023. (Same sex marriage case)

## TOPIC FOUR: INTERNATIONAL INSTRUMENTS ON GENDER JUSTICE

1. UDHR: Preamble, Articles 1, 2,3,7,8,12,16,18,23 and 25.
2. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979 (CEDAW):
  - i. Basic Principles
  - ii. State Obligations
  - iii. Impact of CEDAW on women empowerment in India.
3. The Yogyakarta Principles, 2007 and 2017(YP+10)

## TOPIC FIVE: BODY AUTONOMY, SEXUALITY AND CONSENT

1. Bhartiya Nyaya Sanhita, 2023:
  - i. Offences Against Woman and Children
    - Section 63 – Rape.
    - Section 64 – Punishment for rape.
    - Section 65 – Punishment for rape in certain cases.
    - Section 66 – Punishment for causing death or resulting in persistent vegetative state of victim.
    - Section 67 – Sexual intercourse by husband upon his wife during separation.
    - Section 68 – Sexual intercourse by a person in authority.
    - Section 69 – Sexual intercourse by employing deceitful means etc.
    - Section 70 – Gang rape.
    - Section 71 – Punishment for repeat offenders.
    - Section 72 – Disclosure of identity of the victim of certain offences, etc.
    - Section 73 – Printing or publishing any matter relating to Court proceedings without permission.
    - Section 74 – Assault or criminal force to woman with intent to outrage her modesty.
    - Section 75 – Sexual harassment.
    - Section 76 – Assault or use of criminal force to woman with intent to disrobe.
    - Section 77 – Voyeurism.
    - Section 78 – Stalking.
    - Section 79 – Word, gesture or act intended to insult the modesty of a woman.
  - ii. Marital Rape.
  - iii. Rape Jurisprudence in India.

### Cases:

5. Tuka Ram And Anr. v. State of Maharashtra,1979 AIR 185, 1979 SCR (1) 810
6. The State of Punjab v. Gurmit Singh & Ors,1996 AIR 1393
7. Sakshi v. Union of India, AIR 2004 SC 3566
8. Independent thought case, (2017) 10 SCC 8004
9. RIT Foundation v. Union of India, W.P.(C) 284/2015 & CM Nos.54525-26/2018
10. State v. Ram Singh & Ors, AIR 2014 SC 2595

2. **Adultery: Section 497 of IPC,1860**

**Case:**

11. Joseph Shine v. UOI, 2018 SCC online SC 1676
3. **Immoral Traffic Prevention Act, 1956 read with sections 96, 97 and 141 of Bhartiya Nyaya Sanhita, 2023.**

**Cases:**

12. Budhadev Karmaskar v. State of West Bengal on 19 May, 2022
13. Aveek Sarkar & Anr. v. State of West Bengal & Ors. reported in (2014) 4 SCC 257
4. **Obscenity:**
  - i. Sections 294 – 297 of Bhartiya Nyaya Sanhita, 2023.
  - ii. Indecent Representation of Women (Prohibition) Act, 1986

**Cases:**

14. Bobby Art International, etc. v. Om Pal Singh Hoon & others, 1996 AIR SCW 2156
15. Maqbool Fida Husain v. Raj Kumar Pandey, Crl. Revision Petition Nos. 282/07; 280/2007

**TOPIC SIX: ECONOMIC EMPOWERMENT AND LAW**

1. Constitution, Labour Laws and Economic Empowerment of Women in India.
2. Law Protecting Women against Sexual Harassment at Workplace:  
The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013

**Cases:**

16. C.B. Muthamma v. Union of India, 1979(4) SCC 260
17. Air India and others v. Nergesh Meerza, 1982 SCR (1) 438
18. Charu Khurana v. Union of India, 2014 SCC Online SC 900
19. Aureliano Fernandes v. State of Goa and Others, [2023] 7 S.C.R. 772
20. Mrs. Rupan Deol Bajaj & Anr. v. Kanwar Pal Singh Gill & Anr., 1996 AIR 309

**TOPIC SEVEN: REPRODUCTIVE RIGHTS**

1. Bhartiya Nyaya Sanhita, 2023: Sections 86-90
2. Medical Termination of Pregnancy Act, 1971: Section 3,4 and 5
3. Maternity Benefits Act, 1964, Sections 4- 13
4. PC & PNDT Act 1994:
  - i. Regulation of genetic counselling centres, genetic laboratories, genetic clinics
  - ii. Regulation of pre-natal diagnostic techniques
  - iii. Functions of Central, State and Union Territory Supervisory Board
  - iv. Registration of genetic counselling centres, genetic laboratories, genetic clinics

**Cases:**

21. Municipal Corporation of Delhi v. Female Workers (Muster Roll) & Anr., (2000) 3 SCC 224
22. Sabu Mathew George v. Union of India & Ors (2008 SC)
23. Vinod Soni v. UOI, 2005 Bombay High Court

24. X v. Union of India on 16 October, 2023, 2023 INSC 919
25. X v. The Principal Secretary Health & Family Welfare, 2022 LiveLaw (SC)809
26. Deepika Singh v. Central Administrative Tribunal on 16 August, 2022, C.A. No 5308/2022

#### TOPIC EIGHT: LAWS PROTECTING WOMEN AGAINST DOMESTIC VIOLENCE, DOWRY HARASSMENT, SATI AND DEVDASI

1. Protection of Women against Domestic Violence Act, 2005
2. Dowry Prohibition Act, 1961
3. Commission of Sati (Prevention) Act, 1987
4. Dedication of girls as Devdasis.

#### Cases:

27. S.R. Batra and Anr v. Taruna Batra, (SC 2006)
28. Hiral P. Harsora and Ors v. Kusum Narottamdas Harsora, 2016 SCC OnLine SC 1118,
29. All India Democratic Women's Association & Janwadi Samiti v. Union of India, 1989 SCR (2) 66.

#### Suggested Readings:

1. Vageshwari Deswal and Vinirjal Singh: Pro-choice Versus Pro-life: Navigating the Conundrum of Woman's Right to Abort under Indian Laws, Assam State Unit of Indian Law Institute, 2024, Part -I, pp. 104-125.
2. Gender Justice Anca Gheaus JOURNAL OF ETHICS & SOCIAL PHILOSOPHY VOL. 6, NO. 1, JANUARY 2012.
3. GENDER JUSTICE – A LEGAL PANORAMA (Talk delivered by Justice Yatindra Singh in the colloquium on 'Gender and Law' organised by the National Judicial Academy, British Council and Allahabad High Court at JTRI Lucknow on 14 October 2001).
4. Chaudhuri, Maitrayee. Feminism in India (Issues in Contemporary Indian Feminism) New York: Zed, 2005.
5. Chaudhuri, Maitrayee. Feminism in India (Issues in Contemporary Indian Feminism) New York: Zed, 2005.
6. Altekar, A.S. (1958). The Position of Women in Hindu Civilization., Banaras University: The Cultural Publication House, 1958. p338.
7. Bala, Indu (2014). Women Issues and Arya Samaj. International Journal of Science and Research, Vol. 3, Issue 7 (online).
8. Jones, Kenneth W. (1976). Arya Dharma: Hindu Consciousness in the 19th Century Punjab. New Delhi: Manohar, pp.1.3.
9. Saraswati, Dayananda. Light of Truth (English translation of the Satyarth Prakash) by Ganga Pd. Upadhyay, p.198.
10. Rakshith Shetty; Nurturing the Divine: Swami Vivekananda's Vision for Women and Womanhood, January 2024, available at <https://www.vifindia.org/article/2024/january/12/Nurturing-the-Divine-Swami-Vivekananda-s-Vision-for-Women-and-Womanhood>.
11. Naseera N. M., Moly Kuruvilla: The Sexual Politics of the Manusmriti: A Critical Analysis with

Sexual and Reproductive Health Rights Perspectives, Volume 23, Issue 6 (2022) 7th World Conference on Women's Studies Special Issue: Transnational Feminisms--Contexts, Collaborations, Contestations: Toward a Liveable Planet.

12. Chaudhuri, Maitrayee. *Feminism in India (Issues in Contemporary Indian Feminism)* New York: Zed, 2005.
13. Kamla Bhasin, *What is Patriarchy*, Kali/Women Unlimited (2004).
14. Ratna Kapur and Brenda Cossman, *Subversive Sites: Feminist Engagements with Law in India* 43-75 (1996).
15. Alison Jagar "Introduction : Living with Contradictions: Controversies in Feminist Social Ethics" (1994).
16. Westview Press Heywood, "Feminism in Political Ideology: An Introduction" pp. 252-265 (2004) Palgrave MacMillan.
17. Moira Gatens, "A Critique of the Sex/Gender Distinction" in A Phillips ed. *Feminism and Subjectivity*, pp. 139-154
18. Carol Pateman, "Feminist Critique of the Public and Private" in A Phillips ed. *Feminism and Equality*, pp. 103-123.
19. 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>.
20. 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>.
21. Rajesh Talwar, "Introduction" in *The Third Sex and Human Rights* (2016).
22. Vageshwari Deswal; Same sex marriages and freedom of choice, in *Legally Speaking, India*, TOI, April 25, 2023.
23. 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.
24. 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)
25. 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](https://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/19/41)
26. 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.\\_512016TandonLuthra\\_.pdf](http://www.fichl.org/fileadmin/user_upload/160615_PBS_No._512016TandonLuthra_.pdf).
27. 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](https://www.huffingtonpost.com/vanessa-sheridan/transgender-economic-equality-the-new-frontier_b_3914614.html).
28. *Women, Social Movements and Change: UNIT 16, WOMEN AND LABOUR LAWS*, <https://egyankosh.ac.in/bitstream/123456789/25919/1/Unit-16.pdf>.
29. *Staying Alive: Evaluating Court Orders Sixth Monitoring & Evaluation Report 2013 on the Protection of Women from Domestic Violence Act, 2005* (Lawyers Collective).
30. Sati, a writeup of Raja Ram Mohan Roy about burning of widows alive by Rammohun Roy, Raja, 1772-1833, Available at <https://archive.org/details/satiwriteupofraj0000ramm>