

# ***COURSE OUTLINE***

## **FEMINIST LEGAL THEORY**

**ILS College of Law**

**Lecturers**

**Dr Jaya Sagade**

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### **OBJECTIVES**

Feminist legal theory is a significant body of thought challenging the practice and theory of law. This course considers the role of the law in creating and perpetuating various inequalities and explores the potential of feminist theoretical perspectives to effect social transformation by creating new knowledge and understandings. Another important aim of the course is to encourage and develop critical thinking and therefore a significant portion of each class will be used to critically evaluate the methods and explanatory frameworks used in the articles we study. The course is intended to challenge participants to explore different understandings of law and its relationship to inequalities with a particular focus on the intersections of gender, race and class.

### **CONTENT**

This course begins by tracing the historical development of feminist legal theory in India and in the West from the nineteenth century until the 1970's. The course then considers the emergence of feminist legal theory as a recognised body of knowledge in the 1970's and traces its development until the turn of the century. This includes the concepts of formal and substantive equality, the public/private divide, and intersections between categories such as race, class and gender. To consider the usefulness of feminist legal theory as an explanatory and transformative tool we will explore a range of substantive issues of particular relevance to Indian society. Finally, the course will consider and critique three primary strategies proposed by feminist legal theorists to redress inequality - law reform, domestic litigation and legal literacy.

### **TEACHING METHOD**

This class will not be run in lecture format. Instead, an active learning approach will be used involving a combination of class discussion, class presentations by students, and group work. All students can expect to have equal opportunity to participate fully in the class activities.

## MATERIALS

The materials for this course are in the form of bound materials printed by the school and can be purchased at the .

## ASSESSMENT

There will be three components of assessment.

### 1. Class Participation. 20%

Class participation will be based on the following criteria: class attendance, papers on for classes (including evidence of reading, analysis and understanding of the relevant materials) and active engagement in all classes. This final component may include participation in full class discussion, participation in group work, and interest and attentiveness in class. There will be a range of opportunities to earn class participation marks.

### 2. Class presentation 20%

Students will be required to make a presentation of 10-15 minutes on a topic of their choice. Students may choose to present as part of a team. The presentation should include a background information about a topic that relates to a gender inequality, an application of the topic using one or more theoretical perspectives from the course and finally students should consider the potential either law reform, litigation or legal reform to resolve the inequality. You will be evaluated on the structure, clarity and content of the presentation.

### 3. Research Paper. 60%

The major piece of work required is a .....word research paper due .....The paper should examine a topic of your choice from the perspective of two or more feminist theories of law. Your choice of topic may go outside the issues discussed in the course. You will be evaluated on the content, clarity and presentation of the paper, your knowledge of the feminist theories of law as demonstrated by your application of them to your topic and your understanding of the topic chosen.

## Reading Guide

### Introduction

#### **Class 1. Introduction. The Historical development of Feminist Legal Theory in India and the West**

1. Introductions, structure of course etc
2. Hilaire Barnett, *Introduction To Feminist Jurisprudence* (1998: Cavendish, Sydney) 1-5. [Extract]
3. Ratna Kapur and Brenda Cossman, *Subversive Sites. Feminist Legal Revisions: Women, Law and Social Change* (New Delhi: Sage Publications, 1994) [Extract] 43-57.

### Theoretical Themes

#### **Class 2. Formal Equality/Substantive Inequality**

##### **Prescribed Readings.**

1. R Kapur and B Cossman, *Subversive Sites. Feminist Legal Revisions: Women, Law and Social Change* (New Delhi: Sage Publications, 1994) [Extract]
2. Patricia J. Williams, "The Obliging Shell: An Informal Essay on Formal Legal Opportunity" (1989) 87 *Michigan Law Review* 2128.

#### **Class 3. The Public/Private Distinction.**

##### **Prescribed Readings**

1. Nicola Lacey, *Unspeakable Subjects. Feminist essays in Legal and Social Theory* (Oxford: Hart Publishing, 1998) 72-77.

#### **Class 4. A Critique of the Formal Equality Approach Based on Social Constructionism.**

##### **Prescribed Readings**

1. Catherine MacKinnon, "Difference and Dominance" in *Feminism Unmodified. Discourses on Life and Law* (1987).

#### **Class 5. A Critique of the Formal Equality Approach Based on Biology**

##### **Prescribed Readings**

1. Robin West, "The Difference in Women's Hedonic Lives: A Phenomenological Critique in Feminist Legal Theory" (1987) 3 *Wisconsin Women's Law Journal* 145.

## **Class 6. Critiquing Essentialism**

### **Prescribed Readings**

1. T. Ciollo, "Anti-Essentialism and Intersectionality: Tools to Dismantle the Master's House" (1995) 10 *Berkeley Women's Law Journal* 16.

## **Class 7. Critiquing Essentialism**

### **Prescribed Readings**

1. Angela Harris, "Race and Essentialism in Feminist Legal Theory" (1990) 33 *Stanford Law Review* 581.

## **Class 8. Critiquing Essentialism**

### **Prescribed Readings**

1. Anushar, "Essentialism or Pluralism: The Future of Legal Feminism" (1993) *Canadian Journal of Women and the Law* 328.

## **Class 9. Universalism and Cultural Relativism**

### **Prescribed Readings**

1. S. Desai, "Hearing Afghan Voices: Feminist Theory's Re-conceptualisation of Women's Human Rights" (1999) 16 *Arizona International and Comparative Law Journal* 805.

## **Class 10. Cultural Relativism and Discrimination Against Women**

### **Prescribed Readings**

1. P. Viswanaraswamy, "Identity Within: Cultural Relativism, Minority Rights and the Empowerment of Women" (2002) 34 *George Washington International Law Review* 483.

## **Class 11. Marriage in India and the Application of Feminist Legal Theory**

### **Class 11. Marriage**

### **Prescribed Readings**

1. Martha Fineman, "The Sexual Family" in *The Neutered Mother, The Sexual Family and Other Twentieth Century Tragedies* (Routledge, New York, 1995).

## **Class 12. Motherhood**

### **Prescribed Readings**

1. Patricia Collins, "Shifting the Center: Race, Class, and Feminist Theorizing About Motherhood" in *Mothering: Ideology, Experience, Agency* (New York: Routledge, 1994).

## **Class 13. Personal Laws/Uniform Civil Code**

### **Prescribed Readings**

1. F Agnes, "Model Drafts and Legal Doctrines" in *Law and Gender Inequality. The Politics of Women's Rights in India* (New Delhi: Oxford University Press, 1999) 167-191.

## **Class 14 Employment**

### **Prescribed Readings**

1. J Eveline, "Heavy, Dirty and Limp Stories: Male Advantage At Work" in *Gender and Institutions* (Cambridge: Cambridge University Press, 1998) 90-105.

## **Class 15. Sexual Harassment**

### **Prescribed Readings**

1. Catherine MacKinnon, "Sexual Harassment *Feminism Unmodified. Discourses on Life and Law* (1987).
2. *Vishaka v State of Rajasthan* (1997) 6 SCC 241.

## **Class 16. Rape and the Criminal Justice System**

### **Prescribed Readings**

1. Julia Grix, "Law's Truth and Other Lies: Women, Sexual Assault and the Criminal Justice System" (1999) 12 *Australian Feminist Law Journal* at 83.
2. *Al-Amin v 5 Others* [Case-summary] A Digest of Case Law on the Human Rights of Women (Chiangmai: APWLD, 2003).
3. *Chairman Railway Board v Mrs Chandrima Das + Others* [Case-summary] A Digest of Case Law on the Human Rights of Women (Chiangmai: APWLD, 2003).

## **Class 17. Preventing Rape**

### **Prescribed Readings**

1. M Carmody and K Carrington, "Preventing Sexual Violence" (2000) 33 *The Australian and New Zealand Journal of Criminology* 341.

## **Legal Strategies For Feminist Social Transformation**

## **Class 18. Decentering Law**

### **Prescribed Readings**

1. Carol Smart, *Feminism and the Power of Law* (1989: Routledge, London) [Extract] 160-165.

## **Class 19. Law Reform**

### **Prescribed Readings**

1. R Kapur and B Cossman, *Subversive Sites. Feminist Legal Revisions: Women, Law and Social Change* (New Delhi: Sage, 1994).

## **Class 20. Litigation Strategies**

1. R Kapur and B Cossman, *Subversive Sites. Feminist Legal Revisions: Women, Law and Social Change* (New Delhi: Sage, 1994).

## **Class 21. Legal Literacy**

### **Prescribed Readings**

1. R Kapur and B Cossman, *Subversive Sites. Feminist Legal Revisions: Women, Law and Social Change* (New Delhi: Sage, 1994).

## **Class 22- 24 Class Presentations**