

Courting Equality



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Landmark Cases in the Battle for
Women's Rights

Mihira Sood

 juggernaut

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*For PC,
who makes everything better,
and
S & T,
who make it all worth it.*



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Author's Note

In writing this book, the biggest challenge was choosing what to include and what to leave out – eighty thousand words cannot possibly cover the range of issues that impact women's equality. The second challenge was making sure it stayed true to the original aim – writing about law, but in a way that would appeal to a wider public. Law is very much its own language, and it is easy to forget that not everyone is accustomed to casual conversations being peppered with Latin maxims and obscure jargon. Nor, unfortunately, is anyone particularly impressed with it. It has its own value, but legal writing especially in the area of social justice, serves no purpose unless it is widely understood.

The 2010s can rightly be called the decade of gender, and this has meant a renewed interest in law – both philosophically, as an interrogation of its potential and limitations, as well as in what it actually says. Today, much of this information is available online. Broadly speaking, to find out the legal position on a subject, one looks at the relevant statute, and then at cases that have been decided by the court. Statutes, while written in legalese, are relatively straightforward, but our common law system is as much about what the courts have said, and this is where it can get confusing. One High Court can say one thing while another says

the opposite. Three judges agree on eight out of eleven issues, but two of them write separate opinions about the remaining three issues. A new judgment in substance seems to override a previous one, but doesn't explicitly say so. And so on. Navigating this maze can be daunting.

Additionally, there is the fairly unique concept of public interest litigation (PIL) in India, which was conceived in the post-Emergency era, when the Supreme Court was anxious to redeem itself over its capitulation to the government on the suspension of fundamental rights.¹ PIL is a concept whereby any party can bring a suit to the top court on the grounds that certain actions, whether by the government or by private actors, have violated public interest in any way. This was aimed at increasing access to justice, through extremely relaxed rules of *locus standi*,² and an expanded interpretation of the right to life under Article 21 of the Constitution, giving the court enormous powers of remedial action.

In many ways, this innovation has been a force for good, democratizing justice and leading to genuine reforms, for example, in environmental protection,³ the rights of undertrials,⁴ legal protection of transgender individuals,⁵ or the adoption of sexual harassment guidelines to fill the legislative vacuum.⁶

On the flip side, there are valid concerns about abuse of the system and judicial overreach. The Supreme Court has been criticized for conducting itself as a municipal court on occasion, or worse, a law-making authority, as it dispenses guidelines on all aspects of governance, from managing Delhi's stray dog population⁷ to deciding the number of autorickshaws that can ply in the city.⁸

PIL also dispensed with judicial formalities, allowing courts to entertain petitions sent to them on a postcard or to take *suo motu* cognizance of matters, for example, from news reports.⁹ Procedural flexibilities were also introduced in terms of the nature of evidence that could be submitted as well as innovations such as 'continuing mandamus', whereby the court passes orders, but instead of then disposing of the petition, retains it as pending in order to monitor its implementation by seeking regular compliance reports from the parties. Often, PILs are filed on narrowly drafted issues, which are enlarged by the court as the hearings progress.

The Supreme Court has a sanctioned strength of thirty-eight judges, and is presided over by the Chief Justice of India. The court normally sits in benches of two to hear each case, so not all cases are heard by every judge. The result is that the same court may pass judgments that appear to contradict its own prior judgments (precedents), through different benches. This varied jurisprudence also allows subordinate courts to select applicable precedent at the discretion of individual judges, which can frustrate a coherent analysis, but is also immensely useful, providing the court with the necessary wiggle room to adapt and evolve without too much friction. Hopefully, these explanations will assist readers in appreciating the discussion that follows.

Part 1 of this book examines the women's movement as it evolved from the 1970s to its current moment. The anti-dowry protests and the rape law reforms of the time were pivotal not only for the issues they raised, but also in organizing and strengthening women's rights activism in the country. The rise of Hindutva as a political force through the 1980s, and the opening

up of India's markets in 1991 redefined many feminist positions, while the media explosion of the 2000s created new possibilities for mobilization that became evident in the anti-corruption and anti-rape protests in 2011–12, which saw lasting political and legal impact.

Part 2 looks at the position of women within the family, arguably the greatest site of oppression in Indian society, and the system of religion-based personal laws that sanctifies this oppression. Despite ample opportunities to remedy this, the judiciary has skirted the issue, preferring instead to devise creative interpretations to dispense justice in cases where it is so inclined. In other cases, it cites judicial restraint and passes the buck to the legislature.

Within the workplace, discrimination in recruitment and remuneration, a refusal to accommodate responsibilities of care that disproportionately fall on women and sexual harassment remain significant issues that undermine women's abilities to participate fully in the labour force. The resulting lack of independent financial resources is a major impediment to women's equality, directly affecting their ability to leave an abusive situation, be it at work or in the family. These issues are discussed in Part 3.

Part 4 looks at the double-edged sword that is the freedom of speech and expression. In one sense, this is a freedom that is of particular importance to women's rights. The ability to interrogate social norms, challenge patriarchal traditions, call out abuse and participate equally in society depends on it. On the other hand, a great deal of misogynistic abuse, especially online, hides behind free speech, and the consequences of this cannot be easily dismissed. How should the court craft an approach that

protects this right while guarding against the weaponization of free speech? One possibility discussed here is the application of hate speech laws to such abuse.

No discussion on women's relationship with law is complete without an examination of the role of religion. Personal law is one aspect of this, which has already been discussed. Another is the outsized importance accorded to religion in public life, often to the extent of excluding basic fundamental rights of liberty and equality. The interplay of individual and group rights, and the evolving doctrine of constitutional morality, particularly in the context of the Sabarimala litigation, is the subject matter of the last part.

Readers may find it a curious choice not to have a specific chapter on the issue of rape. It is, after all, central to women's relationship with law, and its jurisprudence has contributed significantly to how the law both sees and defines women. But sexual violence is not an isolated chapter in women's lives. Whether at home, within marriage, at work, on the streets, at police stations or online – it is everywhere, and the structure of the book reflects this.

Despite this reality and the overwhelming evidence of gender-based discrimination that pervades every facet of our lives, the fact remains that the topic of women's rights can be deeply polarizing, and often provokes strong defensive reactions. Even among lawyers, there is surprisingly little regard for a field that spans practically every area of law and life. The hardest questions in law, be it constitutional law, criminal law, family law or employment law, concern the equal rights and status of women. And yet, there is greater professional respect for someone who describes their

practice in terms of these 'neutral' branches of law than for one whose practice may involve all of them, but specifically on behalf of women.

Part of this is, of course, the result of a traditionally male-dominated Bar, and its ingrained sexism that dismisses women's issues as non-serious. Another aspect is the presumption of innocence, a basic tenet of criminal law which states that the court must presume every accused person to be innocent until they are proven guilty. The burden lies on the prosecution to prove guilt and not on the accused to prove innocence. This refers to the initial burden of proof, which can see-saw through the trial once a side proves certain facts that tilt the presumption of law in their favour.

However, there are exceptions. The law does, in certain cases, reverse this initial burden, placing it on the accused, provided certain conditions are met. For example, *if* a woman meets an unnatural death within the first seven years of getting married, *and* it is shown that before her death, she was subjected to cruelty or harassment in relation to dowry demands, there will be a presumption that it was a dowry death and the accused has to prove otherwise. In rape law, if the case is one of aggravated rape (such as custodial rape or abuse of one's dominant position), then absence of consent is presumed *if* sexual intercourse is proved *and* the woman says that she didn't consent. These are specific reversals that have been formulated based on various factors, such as the difficulty of prosecuting certain crimes, the likelihood of the crime having been committed and the social impact of such crimes, and they remain confined to the starting position of the trial. They do not result in an automatic conviction.

Several other areas of law employ this reverse burden too, such as the Narcotic Drugs and Psychotropic Substances Act or the Prevention of Money Laundering Act and laws against terror. Still, the strongest condemnation of it is reserved for laws that address gender and caste atrocities. Similar concerns were raised about the MeToo movement and its alleged disregard for evidentiary norms, even though these norms are only meant to apply to courts, and nobody was getting convicted over the comments section of a social media post. 'Believe her' only ever meant that a woman's complaint of sexual abuse should be recorded, investigated and prosecuted seriously and with sensitivity (which is itself a big ask), not that the man should be sent to jail immediately for the rest of his life. Yet, these hard-won shifts are frequently cited to show an apparent lack of legal rigour and rationality in women's rights lawyering.

I have often wondered whether this apparently unshakeable belief in the presumption of innocence (at its highest when it comes to accusations made by women against men) has gone too far beyond a fair trial demand of the courts. There is a general hostility towards women's rights and other social justice lawyering – that they pre-judge cases and choose sides based on their personal ideology, and that this is somehow wrong and unbecoming of a lawyer. Which is absurd because, of course, all lawyers choose a side. They are not required to be neutral; the court is. Yet it is seen as better to choose one's side based on who pays the fee, rather than on one's moral beliefs. In this way, presumption of innocence has been twisted into a bit of a self-serving catch-all by which lawyers not only assuage their own moral voice but also deride those who choose otherwise.

To be amoral and mercenary is believed to be more noble, professional and intellectual than to engage in socially conscious lawyering, which usually marks one out as either a lightweight or a troublemaker. Nevertheless, the Bar has a strong tradition of exceptional lawyers who have walked this path and shattered this stereotype.

Years ago, I spoke about my experience of sexual harassment in the legal profession.¹⁰ At the time, I wrote that feminism gave me a vocabulary and a discipline to think beyond the binaries and assumptions of litigation, and the ability to free myself from thinking in these limited terms. In public perception, seeking legal redress is imperative to show the seriousness of one's allegations, but the MeToo movement demonstrated that many women simply sought catharsis, and were willing to forego the possibility of justice.

It is not that they were lying or lacked courage, but the ways in which the legal system repeatedly betrays women were simply not worth it. The victim-blaming, the incessant questioning of 'why now?' or insinuations that the woman must have encouraged it, are enough to make one give up before a trial has even started. And when it does, women are faced with traps they are not trained to evade – the idea that silence equals complicity, but speaking out makes you a troublemaker; that for a crime to be taken seriously, there must be a high degree of trauma, but that trauma also makes you incapable of providing lucid testimony. If you stay in an abusive situation, you must have chosen it, and if you leave, then the harm is over.

Traditional legal scholarship doesn't consider this analysis worthwhile or relevant to any understanding of sexual violence.

It is in feminist jurisprudence that these phenomena are named and given adequate study, and it is in the women's movement that I have found courage, clarity, and a deeply cherished community.

Often though, people are reluctant to describe themselves as feminists or associate with feminism or they question the continuing need for it. Women in positions of privilege are at times unable to see the struggles of others, and many point to their own success as 'evidence' that feminism is no longer required. Some perceive it to be anti-men, rather than a struggle for equality. There are also women who embrace more traditional gender roles and feel excluded or disrespected by feminism. I hope that this book is able to dismantle some of the myths and stereotypes surrounding the subject, and show readers that feminism is for everyone.

In particular, I hope this book will speak to younger readers, who may not be well-versed with some of the events and struggles of the past fifty years, and the contributions of those who came before. Despite knowing this history, at various points in the writing of it, I too, had to pause, just to absorb the enormity of it, and the uphill battle that women have had to fight. This is a story everyone should know.

New Delhi, August 2026

Mihira Sood



Part 1

Mathura to MeToo: The Story of a Nation

The 1970s and 1980s are generally regarded as the 'golden age' of activism against sexual and familial violence against women, be it rape, dowry, or the prevention of sati. During the 1980s, right-wing forces started to gain a foothold in the country's politics, bringing issues such as personal laws and temple construction to the fore, while also developing their own women's organizations with a religious and cultural agenda that aligned with the moral panic of post-liberalization India. The 1990s also saw a focus on women's representation and their entry into male-dominated arenas and the emergence of a more individualistic, neoliberal outlook. A surge in youth activism was visible from 2006, starting with the Jessica Lal protests. The subsequent anti-corruption mobilization created conditions for the fourth wave of feminism that spurred the 'Nirbhaya' anti-rape protests in 2012 and its reverberations in the form of new laws and the MeToo movement.