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**COURSE MANUAL**

**Feminist Judgment Project: Reading and Writing Workshop**

**Course Instructor:**

Professor Jhuma Sen

**Semester A 2017**

**Elective**

This document is prepared by the course instructor and is the basic information relevant to the execution of the course. It is the official record for all intends and purposes as far the seminar course, *Feminist Judgment Project: Reading and Writing Workshop*, is concerned.

This course manual is can be used as a general guide to the subject. However, the instructor can modify, extend or supplement the course (without tampering its basic framework and objectives) for the effective and efficient effectuation of the course.

**Part I**

Course Title:  **Feminist Judgment Project: Reading and Writing Workshop**

Course Code:

Course Duration: **One Semester (15 Weeks)**

No. of Credit Units: **4 credits**

Level:  **Undergraduate**

Medium of Instruction: **English**

Pre-requisites: **None**

Pre-cursors:  **None**

Equivalent Courses:  **N/A**

Exclusive Courses:  **N/A**

**Part II**

**1. Course Description**

The *Feminist Judgments Project* (FJP) has taken over feminist legal scholarship across the world by storm. The project situates writing alternative judgments to judgments that could have been written better or written differently by using a feminist lens. In 2008 number of Canadian feminist scholars, activists and lawyers set up the *Women’s Court of Canada*, a collaborative to rewrite Supreme Court decisions on section 15, the equality clause in Canadian Charter of Rights and Freedom. The goal of this ‘shadow judgment’ project was to see what substantive equality could look like in judicial expression. The Canadian experiment was repeated in Australia and UK. Thirty-one feminist legal academics rewrote legal decisions in Australia from a feminist perspective. Fifty academics, legal practitioners and activists rewrote twenty-three significant cases in English law in a similar vein. There have been similar shadow judgement writing projects by feminist law professors in USA. In Ireland and Northern Ireland, the methodology has considered the specific Irish and Northern Irish challenges and aspirations and consequently themes of collective identity have interacted and intersected with the theme of women’s experience with law.

The project serves as a critical pedagogical tool bridging the distance between feminist theory and practice by radically re-imagining the role of the judge to adjudicate differently by remaining faithful to the same constitutional and legal rules that bind her. Feminist scholarship has indicated how legal rules as well as their applications by the courts continue to remain sites of embedded patriarchy with the reasonable man being the standard against whom reasonable expectations are evaluated. The emancipatory potential of the feminist judgment project lies in the fact that the ‘alternative judgments’ or ‘missing judgments’ or ‘dissenting opinions’ reveal the extent to which cases could (and should) have been decided while remaining faithful to the legal and constitutional limitations. At the heart of the project is an attempt to engage in ‘real-world’ judgment writing exercise and move away from a detached exercise in feminist academic critique of judicial decisions.

***This course, as the title suggests, is designed as a reading and writing workshop.*** In the first few weeks, students will be introduced to the feminist world of legal theory, by exploring what happens when law is infused with feminism. This will be accompanied by introducing participants to scholarships that scrutinize the complexities of reimagining feminist theory in practice. This will be followed by exploring the role of a feminist judge, and the tools that she must use for feminist judging. In doing so, the course will borrow from the Feminist Judgments Projects across jurisdictions to discuss how to read and write judgments as feminists. The second half of the course will be devoted entirely to re-writing ***two*** select Indian judgments from different areas of law. We would discuss these judgments in detail by scrutinizing their legal reasoning and narrative style, discuss ways in which these judgments could be re-written and think about the politics and possibilities of these different ways of re-writing. Additionally there is a third judgment to be selected by the participant, critiqued and rewritten by the participant as an end term take home assignment.

**2. Course Aims**

The course aims to introduce students to *feminism in practice* by exploring how feminist theory can be applied to the practical world of judgment writing. In doing so, it is expected that participants will be exposed to the radical possibilities of feminist judging; it is also expected that the course will introduce participants to the practical field of *writing (feminist) judgment.* Overall, the course is expected to help participants ---

1. Develop a basic understanding of feminist jurisprudence
2. Develop a basic understanding of feminist legal theory
3. Develop a critical understanding of feminist judging
4. Explore and critically engage with case laws, statutes, academic scholarship, policy documents
5. Explore the art and craft of writing judgments.
6. Learn how to *collaborate* and write judgments.

**3. Teaching Methodology**

This is a workshop therefore it requires a good deal of class participation and collaborative learning. There will be approximately 30 pages of reading assigned every week. Participants are expected to come to class having read the materials to fully participate in class discussion. Students are not expected to be passive listeners but active participants in the class room and beyond. Everyone must read, think and critically engage with the scholarship on feminist judgment offered. Please note however, that active participation is not the same as engaging in monologues or aggressively talking other participants down. It involves listening to others, asking questions, building on ideas of others as well as your own and letting a conversation evolve. This isn’t *just* a requirement of the course, but imperative for any course employing feminist methodologies, such as this.

The class will cover between one and two topics each week as per the lecture program. This course work will advance primarily through class discussions that will prod you to critically *read* and *(re)write judgments*. If you are unable to attend a class meeting, or to complete one of the reading assignments before the class session, you should contact the course instructor in advance.

**4. Grading of Student Achievement**

Of the total score required to pass this course, a minimum of 50% shall be obtained by the student in the course work (i.e., combined score of internal assessments and end semester examination).

**Grade Sheet**

| **Percentage of Marks** | **Grade** | **Grade Value** | **Grade Description** |
| --- | --- | --- | --- |
| 80 and above | O | 8 | **Outstanding** – Exceptional knowledge of the subject matter, thorough understanding of issues; ability to synthesize ideas, rules and principles and extraordinary critical and analytical ability |
| 75 – 79 | A+ | 7.5 | **Excellent** - Sound knowledge of the subject matter, thorough understanding of issues; ability to synthesize ideas, rules and principles and critical and analytical ability |
| 70 – 74 | A | 7 | **Very Good** - Sound knowledge of the subject matter, excellent organizational capacity, ability to synthesize ideas, rules and principles, critically analyse existing materials and originality in thinking and presentation |
| 65 – 69 | A- | 6 | **Good** - Good understanding of the subject matter, ability to identify issues and provide balanced solutions to problems and good critical and analytical skills |
| 60 – 64 | B+ | 5 | **Fair** – Average understanding of the subject matter, limited ability to identify issues and provide solutions to problems and reasonable critical and analytical skills |
| 55 – 59 | B | 4 | **Acceptable**- Adequate knowledge of the subject matter to go to the next level of study and reasonable critical and analytical skills. |
| 50 – 54 | B- | 3 | **Marginal**- Limited knowledge of the subject matter and irrelevant use of materials and, poor critical and analytical skills |
| Below 50 | F | 0 | **Fail** - Poor comprehension of the subject matter; poor critical and analytical skills and marginal use of the relevant materials. Will require repeating the course |

**6. Criteria for Student Assessments**

Internal assessment of the participants will be based on the following criteria.

| **Assessment** | **Weightage** | **Remarks** |
| --- | --- | --- |
| Class Participation | 20 |  |
| Rewriting two judgments provided in class (including commentary) | 20x2=  40 | Group Assignment |
| End Semester Examination [Rewriting a judgment of one’s choice including commentary] | 40 marks | This will be a take home examination. |

**Part IV**

**Course/Class Policies**

**Academic Integrity and Honesty**

Learning and knowledge production of any kind is always a collaborative process. As such, collaboration demands an ethical responsibility to acknowledge who we have learnt what from, and how reading and learning from others have helped us shape our own ideas. Even originality requires an acknowledgement of the sources and the processes that helped you achieve it. Thus, any idea, sentence or paragraph you refer to or are inspired by must be cited in the piece of writing or any presentation being made. Any source from the internet, articles, books, journals, magazines, case law, statute, photographs, films, paintings, etc. must be credited with the original source. If the source or inspiration for your idea is a friend, a casual chat, something that you overheard, or heard being discussed at a conference or in class, even these must be credited. If you paraphrase or directly quote from a web source in the exam, presentation or essays, the source must be explicitly mentioned. The university has strict rules with consequences for students involved in plagiarism. This is an issue of academic integrity on which no compromise will be made, especially as students have already been trained in the perils of lifting sentences or paragraphs from others and claiming authorship of them

**Disability Support and Accommodation Requirements**

JGU endeavors to make all its courses accessible to students. All students with a known disability needing academic accommodations are required to register with the Disability Support Committee dsc@jgu.edu.in. The Committee has so far identified the following conditions that could possibly hinder student’s overall well-being. These include: physical and mobility related difficulties; visual impairment; hearing impairment; medical conditions; specific learning difficulties e.g. dyslexia; mental health.

The Disability Support Committee maintains strict confidentiality in its discussions. The students should preferably register with the Committee in the month of June/January as disability accommodation requires early planning. DSC will approve and coordinate all the disability related services such as appointment of academic mentors, specialized interventions and course related requirements such as accessible classrooms for lectures, tutorials and examinations.

All faculty members are required to refer students with any of the above-mentioned conditions to the Disability Support Committee for addressing disability-related accommodation requirements.

**Safe Space Pledge**

This course may discuss a range of issues and events that might result in distress for some students. Discussions in the course might also provoke strong emotional responses. To make sure that all students collectively benefit from the course, and do not feel troubled due to either the contents of the course, or the conduct of the discussions, it is incumbent upon all within the classroom to pledge to maintain respect towards our peers. This does not mean that you need to feel restrained about what you feel and what you want to say. Conversely, this is about creating a safe space where everyone can speak and learn without inhibition and fear. This responsibility lies not only on students, but also the instructor.

**Cell Phones**

I do not allow cell phones in class.

**Laptops and Similar Gadgets**

Usually at my discretion. Preferably no laptop in my class unless you are using it to read materials with my permission.

**Part V**

**Reading Materials**

Provided in the weekly plan.

**Keywords for the Syllabus**

Feminist legal theory, critical judgments, feminist litigation, feminist judgment, gender and law

**Course Design and Overview (Weekly Plan)**

**Week 1.**

***Introduction: Seeing Like a Feminist***

In the first week, the instructor shall introduce the course, its objective(s), expectations and possible outcomes. More importantly, the participants will explore the possibilities of reading texts (literary or otherwise) through a feminist lens. It is expected that this exercise will introduce the participants to the radical emancipatory possibilities of *feminist* reading of texts including the juridical text, which shall be the subject of our scrutiny in the forthcoming weeks.

**Reading Materials:**

***Core Readings***

1. Hossain, Rokeya Sakhawat. *Sultana’s Dream*. Available: <http://digital.library.upenn.edu/women/sultana/dream/dream.html>
2. Althouse, Anne. *Beyond King Solomon’s Harlots: Women in Evidence.* 65 S. Cal. L. Rev. 1265 (1992). Available: <https://media.law.wisc.edu/m/zkzy2/althouse_beyond_king_solomons_harlots_65_s_cal.pdf>
3. Francis, Leslie and Smith, Patricia, "Feminist Philosophy of Law", *The Stanford Encyclopedia of Philosophy*(Summer 2015 Edition), Edward N. Zalta (ed.). Available: <https://plato.stanford.edu/entries/feminism-law/>

***Additional Readings***

1. Ashe, Marie. "Abortion of Narrative: A Reading of the Judgement of Solomon." *Yale JL & Feminism* 4 (1991): 81.
2. Lubet, Steven, and Harper Lee. "Reconstructing Atticus Finch." (1999): 1339-1362.

**Audiovisual**

A Question of Silence <http://www.imdb.com/title/tt0086369/?ref_=ttpl_pl_tt>

**Week 2.**

***Subversive Sites: Mapping Feminist Engagement(s) with Law***

In the second week, we shall probe feminist engagement(s) with law, by understanding the complex relationship feminism has shared with law. On the one hand, feminists have often identified law as a site of articulating feminist goals of equality and anti-discrimination, on the other hand, the complex and contradictory nature of law (described by Smart as the ‘uneven development of law’) itself has been critiqued by feminists both globally and in India. Simultaneously, feminists by questioning the ‘neutrality’ of law and by dismantling its universalist assumptions have framed *reasonable woman standards, feminist common knowledge* and reimagined the ‘truth-seeking’ purpose of law.

**Reading Materials:**

***Core Readings***

1. Excerpt from Kapur, Ratna and Brenda Cossman. *Subversive sites: Feminist engagements with law in India.* New Delhi: sage Publications, 1996.
2. Excerpt (Pg. 8-9) from Gangoli, Geetanjali. *Indian feminisms: Law, patriarchies and violence in India.* Routledge, 2016.
3. Childs, Mary, and Louise Ellison. "Evidence Law and Feminism." *Feminist Perspectives on Evidence* (2000): 1-12.
4. Ramanathan, Usha. "Reasonable Man, Reasonable Women and Reasonable Expectations." *Engendering Law: Essays in the honour of Lotika Sarkar. Pp* (1999): 33-70. Available: <http://www.ielrc.org/content/a9906.pdf>

***Additional Readings***

1. Cahn, Naomi R. "Looseness of Legal Language: The Reasonable Woman Standard in Theory and in Practice." *Cornell L. Rev.* 77 (1991): 1398.
2. Excerpt (Pg. 3-9) from Menon, Nivedita. *Recovering subversion: Feminist politics beyond the law*. University of Illinois Press, 2004.

**Week 3.**

***Feminist Theory in Practice: Feminist Lawyering***

The purpose of this week’s exercise is to understand, how feminist intervention in law has informed lawyering and may transform judging. We will address what it means to be a feminist lawyer or a judge and how they bring feminism to law. While feminists working with law have often grappled with the problem of bridging theory and practice, because of the inevitable tension that legal processes generate for women in law, there have been attempts at integrating feminism with lawyering in a bid to ‘inform feminism and transform lawyering’ (Naomi Cahn). This week’s readings will interrogate this complex relationship between feminist theory and practice by looking at some of the ways in which feminist lawyering has been used as a transformative tool. It is expected that participants engaging with the readings on feminist lawyering will be able to critically look at feminist judging in the subsequent weeks and explore the ways in which feminist judging is similar to, or different from, or can learn from feminist lawyering. Additionally, we shall have a feminist lawyer, as a guest speaker this week.

**Reading Materials:**

***Core Readings***

1. Cahn, Naomi R. "Defining Feminist Litigation." *Harv. Women's LJ* 14 (1991): 1.
2. Abrams, Kathryn. "Feminist lawyering and legal method." *Law & Social Inquiry* 16.2 (1991): 373-404.
3. Bartlett, Katharine T. "Feminist legal methods." *Harvard Law Review* (1990): 829-888.

***Additional Readings***

1. Cahn, Naomi R. "Styles of lawyering." *Hastings LJ* 43 (1991): 1039.
2. Shalleck, Ann. "The Feminist Transformation of Lawyering: A Response to Naomi Cahn." *Hastings LJ* 43 (1991): 1071.

**Week 4 and Week 5.**

***Feminist Theory in Practice: Feminist Judging***

This week’s readings will focus on three questions—who is a feminist judge, what is a feminist approach to judging and what are the constraints of feminist judging in the institutional framework of traditional judging? In trying to engage with these questions, the readings will first scrutinize how feminist judging departs from traditional judging, and then interrogate the role the feminist judge plays in bringing feminism to law, and the challenges she encounters when she does so.

**Reading Materials:**

***Core Readings***

1. Hunter, Rosemary. "Can feminist judges make a difference?." *International Journal of the Legal Profession* 15.1-2 (2008): 7-36.
2. Feenan, Dermot. "Editorial introduction: Women and judging." *Feminist Legal Studies* 17.1 (2009): 1-9.
3. Davies, Margaret. "Feminism and the Idea of Law." *feminists@ law* 1.1 (2011).
4. Zerilli, Linda MG. "Toward a feminist theory of judgment." *Signs: Journal of Women in Culture and Society* 34.2 (2009): 295-317.
5. Rush, Sharon E., Feminist Judging: An Introductory Essay (1993). Southern California Review of Law and Women's Studies, Vol. 2, No. 2, 1993. Available at SSRN: <https://ssrn.com/abstract=2574280>
6. Resnik, Judith. "Feminism and the Language of Judging." *Ariz. St. LJ* 22 (1990): 31.

***Additional Readings***

1. Solimine, Michael E., and Susan E. Wheatley. "Rethinking feminist judging." *Ind. LJ* 70 (1994): 891.
2. Hunter, Rosemary. "The power of feminist judgments?." *Feminist Legal Studies* 20.2 (2012): 135-148.

**Week 6.**

***Postcards from around the world: Introducing the Feminist Judgment Project(s)***

Participants will be introduced to the Feminist Judgment Project this week. We shall explore the history of the project by closely looking at some of the successful Feminist Judgment Projects from around the world.

**Reading Materials:**

***Core Readings***

1. Majury, Diana. "Introducing the Women’s Court of Canada”(2006)." *Canadian Journal of Women and the Law* 18: 1.
2. Rackley, Erika. "Why feminist legal scholars should write judgments: Reflections on the feminist judgments project in England and Wales." *Canadian Journal of Women and the Law* 24.2 (2012): 389-413.
3. Berger, Linda L., Kathryn M. Stanchi, and Bridget J. Crawford. "Introduction to the US Feminist Judgments Project." (2016) in Stanchi, Kathryn M., Bridget J. Crawford, and Linda L. Berger. *Feminist Judgments: Rewritten Opinions of the United States Supreme Court*. Cambridge University Press, 2016.
4. Douglas, Heather Anne, et al. "Introduction: Righting Australian Law." (2014): 1-18 in Douglas, Heather, et al., eds. *Australian feminist judgments: Righting and rewriting law*. Bloomsbury Publishing, 2014.

***Additional Readings***

1. McCandless, Julie et al. “Introduction: Troubling Judgment”. (2017) in Enright, Máiréad, Julie McCandless, and Aoife O'Donoghue, eds. *Northern/Irish Feminist Judgments: Judges' Troubles and the Gendered Politics of Identity*. Bloomsbury Publishing, 2017.

**Week 7.**

***Rewriting Judgments: Method(s) and Methodologies***

What are the *methodologies* that the Feminist Judgment Project(s) have adopted? How did feminist scholars, lawyers and activists frame and tailor the methodology of *doing* the project keeping in mind the the specific needs of each jurisdiction? These are some of the questions we shall explore this week.

**Reading Materials:**

***Core Readings***

1. Hunter, Rosemary. "An Account of Feminist Judging." (2010): 30-43 in Hunter, Rosemary, Clare McGlynn, and Erika Rackley, eds. *Feminist judgments: From theory to practice*. Bloomsbury Publishing, 2010.
2. Rackley, Erika. "The art and craft of writing judgments: notes on the feminist judgments project." Hart Publishing, 2010. 44-56 in Hunter, Rosemary, Clare McGlynn, and Erika Rackley, eds. *Feminist judgments: From theory to practice*. Bloomsbury Publishing, 2010.
3. O'Donoghue. “Judging and theJudgment Writing Process: A Northern Irish Perspective.” (2017): 75-94 in Enright, Máiréad, Julie McCandless, and Aoife O'Donoghue, eds. *Northern/Irish Feminist Judgments: Judges' Troubles and the Gendered Politics of Identity*. Bloomsbury Publishing, 2017.
4. Douglas, Heather Anne, et al. "Reflections on rewriting the law." (2014): 19-40 in Douglas, Heather, et al., eds. *Australian feminist judgments: Righting and rewriting law*. Bloomsbury Publishing, 2014.

***Additional Readings***

1. Cover, Robert M. "Foreword: Nomos and narrative." *Harv. L. Rev* 97 (1983): 4.
2. Appleby G. and Roberts H. “Law and literature: Analyzing Style in Judgment Writing” in *The Critical Judgments Project: Re-reading Monis v The Queen.* The Federation Press, 2016.
3. Kirby, Michael. "On the Writing of Judgments." *Australian Journal of Forensic Sciences* 22.3 (1990): 104-124.

**Week 8.**

***Illustrating some method(s)***

In this week, we shall explore some of the rewritten judgments in the UK, USA, Irish and Australian projects to demonstrate and understand how *it is done.*

**Reading Materials:**

***Core Readings***

1. R v A (No. 2) [UK Project]
2. Loving v Virginia [USA Project]
3. Wilkinson v Kitzinger [UK Project]
4. Roe v Wade [USA Project]

**Week 9.**

***Imagining a Feminist Judgment Project in India***

In this week, we shall inquire into the possibilities of *doing* a feminist judgment project in India by closely looking at two judgments delivered by the Indian Supreme Court-- *Sakshi v Union of India* and *Sarla Mudgal v Union of India.* In doing so, participants will explore the challenges, limitations and radical emancipatory possibilities of imagining a Feminist Judgment Project in India. We shall study how the feminist judgment project may serve as a powerful intervention to disrupt the gendered narrative of the embedded patriarchy in the judicial institutions by looking at these two judgments and their rewritten versions.

**Reading Materials:**

***Core Readings***

1. Mukherjee, Madhumanti. "Judging in the Presence of Women as Legal Persons–Feminist alternative to the Indian Supreme Court Judgment in Sakshi v. Union of India." *feminists@ law* 1.2 (2011).
2. Sen, Jhuma. "Righting Sarla Mudgal v Union of India and Others." *Jindal Global Law Review* 7.1 (2016): 97-112.

***Additional Readings***

1. Jaising, Indira. "Gender justice and the Supreme Court." *Supreme but not infallible: Essays in honour of the Supreme Court of India* (2000): 288-320.
2. Excerpts from Agnes, Flavia. "Law and gender inequality: The politics of women's rights in India." *New Delhi* (1999).

**Week 10 and 11**

***Reading and rewriting Batra v Batra [2007 3 SCC 169]***

In this week, participants shall closely read the judgment delivered by the Supreme Court in *Batra v Batra* (2007), explore the feminist critiques of the judgment drawing from a reading of scholarships on the domestic violence law in India and then rewrite the *Batra* judgment in a collaborative fashion. This is also part of graded internal assessment (20 marks) and more specific information about this will be circulated later.

**Reading Materials:**

***Core Readings***

1. *Batra v Batra* [2007 3 SCC 169]
2. Jaising, Indira. "Bringing rights home: Review of the campaign for a law on domestic violence." *Economic and Political Weekly* (2009): 50-57.
3. Sunder Rajan, Rajeswari. "Rethinking Law and Violence: The Domestic Violence (Prevention) Bill in India, 2002." *Gender & History* 16.3 (2004): 769-793.

***Additional Readings***

1. Agnes, Flavia. "Protecting women against violence? Review of a decade of legislation, 1980-89." *Economic and Political Weekly* (1992): WS19-WS33.
2. Staying Alive: Monitoring and Evaluation Reports 2008-2013 Available: <http://www.lawyerscollective.org/publications>

**Week 12 and 13**

***Reading Tukaram v State of Maharashtra [AIR 1979 SC 185]***

In this week, we shall read the (ill)famed *Mathura* case, that eventually launched a feminist campaign for rape law reform. While the law was changed by criminal law amendment *post Mathura* in 1983, participants will explore the possibilities of arriving at a different conclusion than what the Supreme Court judgment arrived at by drawing nourishment from feminist scholarship and other resources. This is also part of graded internal assessment (20 marks) and more specific information about this will be circulated later.

**Reading Materials:**

***Core Readings***

1. *Tukaram v State of Maharashtra* [AIR 1979 SC 185]
2. Gangoli, Geetanjali. "Controlling women’s sexuality: Rape law in India." *International approaches to rape* (2011): 101-120.
3. Open letter to the Chief Justice. Available: <http://aud.ac.in/upload/open%20letter.pdf>
4. Excerpt from 185th Law Commission Report: Available- <http://lawcommissionofindia.nic.in/reports/185thReport-PartIIIB.pdf>

***Additional Readings***

1. Excerpt from Baxi, Pratiksha. "Public secrets of law: Rape trials in India." (2014).
2. Excerpt from Satish, Mrinal. *Discretion, Discrimination and the Rule of Law*. Cambridge University Press, 2016.