

**AN EPITAPH OR BORN AGAIN? CRITICAL REFLECTIONS ON FEMINIST ENGAGEMENTS  
WITH LAW IN INDIA<sup>1\*</sup>**

**BY PROFESSOR RATNA KAPUR**

I am delighted and honoured to be invited to deliver this distinguished lecture in honour of Professor S.P. Sathe, one of India's most distinguished contemporary legal thinkers. Prof. Sathe was a supporter of judicial activism and hence of creative interpretation and an understanding of law as partly constituted in and through its social context. I think it is so appropriate that this lecture is being delivered in the context of a feminist conference, as feminism has challenged the positivists boundaries of law in ways that Professor Sathe would most certainly have approved. With these opening remarks and in the same spirit as Professor Sathe, I hope through my provocative lecture to push the boundaries of feminist engagement with law as well as our own imaginations as lawyers and legal scholars.

Over the course of the past two decades, there has been an explosion of law reform in the area of women's rights and a proliferation of scholarship in what has largely come to be described as "Gender Justice." Women's groups and activists have successfully lobbied for changes in laws dealing with rape, domestic violence, dowry and most recently sexual harassment and trafficking. It looks as if the cause of gender justice has acquired an unstoppable momentum and is gradually being realised in this 21<sup>st</sup> century.

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In spite of this extraordinary proliferation of law and rights and the outward sense of progress, there remains some skepticism over this social justice project being pursued in the name of women's rights. More law and more rights has not necessarily resulted in more equality and more freedom for women. The promise of revolution remains elusive, and feminism itself is in a state of despair as the central object of its attentions, gender, comes increasingly under siege. There is a sense that the era of radicalism and revolution is over and the movement is bereft of a radical political vision. Some feminists are bewildered that contemporary campaigns such as *pink chaddhi* or *slutwalk* could ever become emblematic of a feminist political vision.

In this talk I provide some critical reflections on gender and feminist engagements with law in contemporary India, and in the process, provide a deeper understanding of the anxieties emerging over the relevance of feminist politics

The talk is divided into three parts

**First** – I set out some of the internal contradictions that have afflicted contemporary feminist engagements with law, and its prioritising of gender. I focus my attention primarily on the law reform struggles in the areas of equality and sexual violence.

**Secondly**, I look at some of the 'external' challenges to feminism by sexual rights groups and religious minorities, specifically to feminists hegemony over the meaning of gender as well as its Hindu moorings.

**Thirdly**, I discuss the recent *pink chaddhi* and *SlutWalk* protests and what they offer both in terms of critique as well as the possibilities of feminism and feminist engagements with law.

## **FEMINISM AGAINST ITSELF: INTERNAL CONTRADICTIONS**

Contemporary feminism was born partly out of the revolutionary zeal of the freedom movement, but it has not always been a force for radical change. This context of freedom and anti-colonial nationalism constituted the central features of early feminist activism and feminist engagements with law. In the period immediately prior to independence feminist engagements with law were focused on the 'upliftment of women,' and drew heavily on a revivalist discourse, embedded in the idea of 'Indian womanhood' – an idea that sought to return women to a position of respect that they enjoyed in some long lost ancient Hindu Past. It was an argument that women's distinctive roles and values as self-sacrificing mothers and dutiful wives could make an important contribution to the public sphere.

The discourse of 'uplift' developed alongside the discourse of equality over the course of the 20<sup>th</sup> century. Eventually, this equal rights discourse, and its emphasis on achieving equality for women within economic, political and familial spheres, marginalised, though it did not displace the discourse of women's uplift, which had dominated the earlier period. In fact, these efforts for more rights and the drive to equality met with mixed results. The discursive struggle to construct a legitimate political subjectivity for women in the public sphere was successful: political representation and constitutional equality rights were achieved. But, the discourse of equality proved to be considerably less well suited to the discursive struggles within the private sphere of the family, where it collided with the dominant ideological construction of women as heterosexual, as wives and mothers, and as fundamentally different from men. .

Both of these discourses of uplift and equality continue to produce tensions in the feminist pursuits for gender equality in the contemporary period. On the one hand there is a focus on formal equality and the idea that it could produce a world in which gender and sex would become history, and no longer be important markers of social difference. Yet this focus continues to sit in tension with the idea that difference should be retained – not only because this difference formed the core of contemporary feminism, women’s studies and feminist activism, but because, this difference was linked to the notion of Indian womanhood, which is what distinguished Indian women from Western women. Feminism has remained tied at one and the same time to a revolutionary as well as a non-revolutionary sensibility. It continues to invest in some notions of a distinct culture and Indian womanhood that remains inherently conservative and essentialist, not to mention largely Hindu, while pursuing this idea within the context of a revolutionary enterprise – that is - anti-colonial nationalism and a distinct Indian identity.

In the late 80’s when a new focus emerged on violence against women, including within the home, feminism was confronted with a similar tension. The campaign focused on rape and the systemic oppression of women by men. While rape was introduced in the public discourse, and produced a public awareness, the discourse was infused with outrage over the increasing attacks on women’s modesty, and of the shame and dishonour brought on women and their families. In this process, the discourse was reshaped and the legal result remained overwhelmingly protectionist in nature – that is – informed by the need to protect women's honour and chastity from violation. As a result the legal campaigns on rape also met with mixed results. The rape campaign raised awareness

about the issue but did not transform the legal meaning of rape; it did not succeed in displacing the problematic constructions of consent (as utmost or reasonable resistance) nor the assumptions about women's sexuality. Shame and dishonour continued to inform the popular and legal discourse and focussed overwhelmingly on women's victimisation rather than their subjectivity. As a result, sexual violence has been quite unproblematically embraced by conservative and orthodox players, and not just progressive movements.

Feminist engagements with law, coupled with an exclusive focus on gender, have produced sometimes troubling effects. The focus on sexual violence has largely been aligned with the discourse of victimisation. This position has been popularised by a theoretical position in which gender is understood to operate strictly within a structure of male domination and female subordination in the context of sexuality. While this tradition sought to transform various aspects of women's lives, including setting up domestic violence shelters, providing rape counseling and establishing a network of support for victims of sexual violence, it has also tended to be reductionist, operating against fixed understandings of gender – as anatomical males and females.

A commitment to fixed categories of gender, has not only produced untenable accounts of sexuality and a totalised understanding of heterosexuality, it has marginalised more critical traditions and positions. Feminists have found themselves trapped in a position of not only reinforcing the irrepressible image of women exclusively as victims within an essentialist account of Indian cultural values, but also producing hierarchies of who could be raped, or was more rapeable.

**Turning to my Second point:**

## **EXTERNAL CHALLENGES TO FEMINISM**

The revolutionary spirit of feminism has not only been challenged from within by the weight of its own history and emergence through anti-colonial nationalism as well as a problematic analysis of power, but it has also faced external challenges to its stranglehold on gender. Its focus on sexual violence and victimisation has found unlikely allies in Uma Bharati, Sadhavi Rithambara, and Sushma Swaraj. All these women are part of the rank and file of the Hindu Right, which is committed to a virulent agenda to turn India into a Hindu State. It has embraced the gender agenda re-tuned the campaign on women's rights - it is not just any man who is to blame for all that unrelenting violence perpetrated on women – it is the Muslim man. The communalisation of violence against women campaigns has been competing with feminists on the way in which the campaigns on violence against women are being run. Feminists have provided the body – the brutalised, victimised body – and the Hindu Right has weighed in with its specific claim that the body is Hindu.

The exclusive focus on gender, victimisation, and a universalised Indian women's identity papered over the differences within the feminist ranks especially in the area of legal advocacy. This tight narrative began to unravel as feminists faced a mounting challenge from women within religious minority communities who charged the movement with being Hindu dominated. Such allegations were initially met with an almost acidic and visceral disavowal from feminists who felt that their secular, atheistic credentials had been put into question. In subsequent years, Hindu-Muslim riots in Bombay, the victory of the Hindu Right in national elections in 1999, and the slaughter of

over 1000 Muslims in Gujarat in 2002, highlighted the need to address the minority communities' critiques of feminism.

Another set of challenges came from sexual rights advocates, in particular the sexual subalterns. This position came to be articulated in and through the mobilisation and organisation of the sex workers movement, as well as the emergence of 'queer' politics in India.

The contemporary sexuality debates initially erupted over the screening of *Fire* in 1998 (Ghosh, 2010). Gay and Lesbian groups used the film as a means to advocate for the recognition of the right to sexual identity and as a catalyst to repeal legislation that discriminated against such preferences. These groups emerged in opposition to those feminist advocates who advanced a univocal understanding of sexual relations within a structure of coercive domination and heterosexuality. Feminists were cast as anti-pleasure and unwilling to engage with the ambiguities of sexuality within the dynamics of power, for fear of relinquishing the victim subject through which their distinct Indian brand of feminism had been constituted.

The organised sex workers movement posed similar challenges, especially to feminists' nearly universal support for anti-trafficking laws and their specific focus on sex trafficking. These initiatives were invariably conflated with anti-sex work positions, deeply moralising, and reflected the feminist preoccupation with the "suffering female body." There was deep indignation and outrage over what appeared as a highly moralistic and imperious stand on the part of those who argued that sex work was *per se* violence against women. The sex workers were tired of feminist pontificating over their lives, representing women in sex work as always victims, lacking any capacity to take their

own decisions, and appropriating all decision making on their behalf. They opposed the objectification of the sex worker produced through the rhetoric of victimisation and challenged the denial of juridical entitlements simply on the basis of the sexual nature of their work.

From the sexual subalterns standpoint, feminists were emerging not as revolutionaries, but as retrograde, supercilious, and hostile. The repeated cycles of law reform in the areas of rape, sexual harassment or anti-trafficking have served primarily to align feminism with the highly regulatory apparatus of the state and exposed feminism to attacks on its progressive, secular credentials as well as its protectionist and at times patronising attitude towards its constituency. Such interventions seem to be strengthening the very political powers they are purporting to transform or overthrow. The sexual subalterns have staked a claim in sex as well as gender, detonating the idea that gender is a separate and exclusive analytical category that falls only within the domain of feminism. They are displaying the dexterity of gender, severing it from the incarcerating discourse of victimisation and homogenous and fixed identity to which it has been tethered.

Feminism thus appears to be hemorrhaging from these internal contradictions and external challenges. And law and rights as the centre piece of the emancipatory dream appears to be crumbling. Despite the proliferation of laws ostensibly for women's benefit, the idea that more rights produce more equality and more freedom for women appears to be quite mistaken. It is not evident that after many years of rights activism and legal reform, women are necessarily in a better place.

**Coming to my Third point:**



## SITUATING FEMINISM IN THE CONTEMPORARY MOMENT

The neo-liberal market which has transformed the way in which politics is being done. Indeed the market seems to have brought about two shifts – the first is a move away from law as a mechanism of empowerment towards the economic rationality of the market where law's role is primarily to establish the regulatory mechanisms to facilitate market expansion. The market holds out the possibility of freedom and emancipation rather than just a bag full of rights that may protect you, but not necessarily empower you. And secondly, the market with its demand for social intelligence, and open communication has been amenable to women. The presence of large numbers of women in the banking sector and finance as well as the proliferation of women entrepreneurs is but one reflection of this shift.

In this segment of my talk I want to highlight two campaigns in neo-liberal, contemporary India that provide a flicker of life for feminism and future engagements with law, while also throwing up some new contradictions and challenges: SlutWalk and the pink chaddhi campaign.

In early January of 2011, when the DGP of Andhra Pradesh, V. Dinesh Reddy, was asked why there was a serious increase in the number of rapes and murders in the state, he responded "People are turning out to be more fashionable .....[and] provoke these types of things [rape] which are not in the control of the police. ...When you are taking food which gives you good josh (urges), you tend to be more naughty'. Within minutes the comments of the DGP were posted on youtube and provoked an avalanche of protests from the Union home minister, women's groups and ordinary citizens to the suggestion that attire was somehow an indication of a woman's `availability'. In an effort to contain

the fallout the DGP issued a clarification stating that all he meant was that the wearing of provocative clothing was *one* of the factors and not *the* only factor contributing to rape over which the police had no control. And the fall out continued.

Earlier in 2011, in another part of the globe, similar remarks by a Toronto police officer were made in the course of delivering a lecture to students at Osgoode Hall law school on campus safety and self-protection evoking a response that flowed in a very different direction. The cop stated that in order for women to avoid being victimised, they "should avoid dressing like sluts." And in this moment 'SlutWalk' was born. It took little time for students to demonstrate their outrage that their right to wear what they wanted should be the basis of sexual profiling. SlutWalk went viral on the internet and global on the streets, including in India.

And finally, in early 2009 a mob of Hindu Right wing activists belonging to the Sri Ram Seva violently attacked and molested young women in a pub in Mangalore. Immediately following these attacks Pramod Muthalik, the founder of the SRS stated that "Whoever has done this has done a good job. Girls going to pubs[sic] is not acceptable. So, whatever the Sena members did was right. " And his colleague Pravin Valke added "These girls come from all over India, drink, smoke, and walk around in the night spoiling the traditional girls of Mangalore. Why should girls go to pubs? Are they going to serve their future husbands alcohol? Should they not be learning to make chapattis [Indian bread]? Bars and pubs should be for men only. We wanted to ensure that all women in Mangalore are home by 7 p.m." The SRS threatened further protests against anyone celebrating Valentine's Day.

In response, the *Pink Chaddi (Panty) Campaign*, a nonviolent protest movement was initiated by a diverse group of young women in India. The group self described as the *Consortium of Pub-going, Loose, and Forward Women* relied on both traditional as well as social networking sites such as facebook, to solicit women of all ages, backgrounds and sexualities to inundate the SRS headquarters with pink underwear. The SRS responded by offering to distribute pink saris to the campaigners and poor women.

The reactions to the pink chaddi campaign or SlutWalk protests have been varied and diverse. For some these campaigns reflect how affirmative expressions of female sexual subjectivity have found their way into the language of rights to sexual autonomy, bodily integrity, and pleasure in the contemporary moment. That's a good thing. Sex is out of the closet and it is no longer a dirty depraved, disgusting thing in which only "bad" or "loose" women engage or flaunt. But for others the campaigns are not feminist at all and actually deflect attention from women's daily experiences of sexual violence, victimisation and exploitation and further sexualise and objectify women's bodies. For others, such as Shobha De the queen of Indian erotic fiction, these responses are inappropriate in a Third World setting and represent nothing more than another western import or imperial move that has no relevance to the vast numbers of women living in grinding poverty in India and elsewhere around the globe. Yet the groundswell of protests against the DGP's remarks, the inundation of the Hindu Rights office with pink chaddis, and the fact that young Indian women and men did participate in the SlutWalks in India, indicates that the right to dress the way one wants to is no less a matter of concern for women in India than issues of poverty, lack of adequate healthcare or education.

These responses compel a reevaluation of the role of feminism in the contemporary moment. I argue that these campaigns offer the possibility of rebirth of a project that has lately appeared on the verge of extinction. At the same time they also represent the exercise of consumer agency in the public space by the Indian woman in this neo-liberal moment.

I describe these protests as a form of feminism lite - 'Lite' because they do not claim to bring about a transformation in the form of some big bang moment. Nor do they specifically advocate a distinct theoretical position. These campaigns can be situated as techniques of critique of the dominant attitudes towards women's sexuality as well as how some segments of the feminist movement have been complicit in reinforcing a sexually sanitised understanding of female subjectivity. The critique focuses on the ways in which gender operates within the asymmetries of power, and moves away from a notion that doing work in gender is per se progressive, transformative or revolutionary. What we need to do is examine the work that gender does.

Some feminists are irate that the term "slut" could ever be imbued with feminist meaning or that pink chaddis could be a serious feminist political response. But this response misses some of the deeper issues that are at play. Firstly, these campaigns are partly about claiming the right to bodily integrity and sexual autonomy, and in the process gutting arguments about rape that have plagued law reform efforts for decades, that skimpily clad women, or women who drink or visit pubs are easy prey for the testosterone stoked macho man. The 'biology made me do it' or josh argument not only justifies the rape of some women, it undermines any struggle to secure a society free from sexual violence. It also abdicates men from responsibility when they rape and projects an

extremely unflattering portrayal of all men as unlicensed sexual predators. When we tell our daughters that “there is no way in hell you’re going out dressed like that”, (and of course she does not listen), the fear is not that she will be ravished the moment she walks into the public space by unquenchable male libido. It is the knowledge that there is still a battle to be fought; that we continue to live in a society where the prevalence of rape is indicative of its ill health, where some men fear and do not respect women. Lack of respect is one of the central messages of these protest campaigns. They thus hardly qualify as being either anti-feminist, or opposed to feminism or just fluffy. They emanate from a critical feminist tradition, and finally make critiques of feminism itself respectable.

Secondly, these campaigns are also about the truth effects of speech by those in positions either of authority or belonging to the majority community that reinforce dominant sexual and cultural norms. These effects include putting down women who are sexual and to hurt, shame, and cast female sexuality as a bad, disgusting, and polluting thing that needs to be tamed. The authoritative speech by a law enforcement official or an exponent of the Hindu Right, is what did damage, rather than the appropriation of the term slut by the marchers or drinking late at night in a pub. These remarks were credited by the already existing supposition that women who dress like sluts or drink are inviting rape. What is relevant is not the truth or falsity of the proposition but the power effects that are produced. The official utterance produces reluctance on the part of a raped woman to report the assault unless she was fully confident that she was dressed appropriately and sober at the time of the assault in addition to not being a Muslim, sex worker or gay. The ‘asking for it’ attitude expressed by a cop in Toronto and India as well

as the statements by the Hindu Right puts all women down, by endorsing a litmus test for *real rape* – proper attire and sobriety. It encourages yet another divide between good women, who are not raped, and bad women, who are rapeable.

And finally, the campaigns also mark a moment of the middle-class urban woman's participation in global modernity in the heart of pleasure - that is visiting pubs and malls, wearing brand names, or buying lingerie - all markers of the arrival of the consumer citizen. The pub attacks and statements by public officials in part reflect the anxieties around women occupying public zones as citizens, professionals and consumers. If women are stepping outside the folds of middle-class respectability their desire to do so needs to be understood. Consumer agency is not just about shopping and drinking, it is also about being visible in public zones that were previously forbidden or tightly controlled. It is about the spread of a globalising culture.

SlutWalk and pink chaddhi amplifies how dress does not lie at the core of why women are raped. These campaigns actually expose all the tensions and contradictions that have left the feminist movement harassed and exhausted. They unmask the limitations of an analytical framework that focuses exclusively on gender and regards its own politics as universally virtuous.

## **Conclusion**

While Muslim women, sex workers, and gays and lesbians have turned away from the feminist projects dark side, the fact is that many young women and students are also distancing themselves from the very word feminism. If the term feminism has come to be so closely associated with the anti-sex apostles, then it is no wonder that it is losing credibility. If sexuality that exists outside of a victim subject position and the discourse

of violence is so thoroughly stigmatized, then the excess can only ever be a slut or a loose woman. And this excess becomes a technique of resistance and critique, operating within the politics of feminism lite. It is not seeking the overthrow of some elusive, universal, patriarchal order. Its function is to unmask, unveil and undrape a body that has been weighed down by a feminist politics that asphyxiates and mummifies the sexual subject. SlutWalk and pink chaddhis puts women's sexuality out there – in public – not as something that is shameful, embarrassing or disgusting. But as something that a healthy society should embrace, respect and defend. At the same time it is announcing the arrival of consumer agency drawing attention to the global impulses that are informing such responses.

So where does this leave feminist politics in a postcolonial context. I don't want to credit the campaigns with too much, as they are after all only a brief moment in the life of gender. Yet it is precisely in such performances embodying feminism lite where deeply held beliefs are decimated and analytical space clearing occurs. But the campaigns are themselves subject to scrutiny and producing contested and contradictory meanings. They may tell us more about the changes occurring within the neo-liberal moment in India, than about how sex is subordinating; about the new regimes of governance to which gender and sex are being subjected; about how the rules of the market are producing sexual subjectivity and consumer agency. SlutWalk and pink chaddhi hold within them the politics of their own critique and demise. This is not a bad thing. We need to constantly engage in critique for the purpose of space clearing and to ensure that the conceit that turned a certain brand of feminism into a self-righteous proselytizing project does not reemerge. It also allows newer incarnation to flourish.

