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Ruth Bader Ginsburg And Her Influence On Development Of Feminist Jurisprudence In India

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Abstract
This paper examines the profound impact of Ruth Bader Ginsburg on feminist jurisprudence on development of feminist jurisprudence in India. It explores her contributions as an advocate, jurist, and Supreme Court Justice in advancing gender equality through legal doctrines. The study aims to contextualize Ginsburg's legacy in the ongoing struggle for gender justice in India.

Keywords: Ruth Bader Ginsburg, Feminist Jurisprudence, Gender Equality

Introduction
Gender inequality has a deeply entrenched history in both the United States and India, and while the Constitutions of both countries affirm the principle of legal equality, their approaches and legal frameworks differ significantly. In the United States, the Constitution does not contain an explicit guarantee of gender equality (except in the 19th Amendment ratified much later in 1920)[1]. Therefore the Supreme Court of the United States has addressed gender discrimination primarily through the lens of formal equality which mandates equal treatment for individuals who are similarly situated. In contrast, the Constitution of India explicitly prohibits gender-based discrimination and provides a more comprehensive equality framework[2]. Thus, the American Constitution initially accepted gender-based distinctions, often under the guise of protecting women due to perceived biological or social differences but with time moved away from endorsing such assumptions[3]. This evolution was significantly influenced by the advocacy of Justice Ruth Bader Ginsburg[4]. Ruth Bader Ginsburg (1933–2020) stands as a prominent figure in the evolution of feminist jurisprudence and for valid reasons. She was the second woman to be appointed as Judge of the Supreme Court of the United States. That this is not her sole achievement is what truly establishes her as an icon. She remains a venerated figure whose opinions have shaped legal

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[1] *Joint Resolution of Congress Proposing a Constitutional Amendment Extending the Right of Suffrage to Women, approved June 4, 1919, in Ratified Amendments, 1795–1992, Gen. Records of the U.S. Gov't, RG 11, Nat'l Archives, https://catalog.archives.gov/id/1408913.*

[2] ***India Const. art. 14****, cl. 1 (as amended) ("The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."), https://cdnbbsr.s3waas.gov.in/s380537a945c7aaa788ccfcdf1b99b5d8f/uploads/2023/05/2023050195.pdf.*
India Const. art. 15*, cl. 1 (as amended) ("The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them."), https://cdnbbsr.s3waas.gov.in/s380537a945c7aaa788ccfcdf1b99b5d8f/uploads/2023/05/2023050195.pdf.*
India Const. art. 16*, cl. 1 (as amended) ("There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State."), https://cdnbbsr.s3waas.gov.in/s380537a945c7aaa788ccfcdf1b99b5d8f/uploads/2023/05/2023050195.pdf.*

[3] *Women and Law: A Comparative Analysis of the United States and Indian Supreme Courts' Equality Jurisprudence, 34 Ga. J. Int'l & Comp. L. 557 (2005–2006).*

[4] Freeman, M. D. A., & Lloyd of Hampstead, D. L., *Lloyd's introduction to jurisprudence* (9th ed. 2014)..

discourse not only in the United States but also in India. This paper is not intended to be a biographical sketch of her achievements as a lawyer, professor, judge or feminist scholar which can fill an entire book. The aim is limited to identify the distinctive characteristics of her feminist legal thought and to attempt and analyse how far it influenced the Indian Supreme Court in bestowing the evolution of feminist jurisprudence in India.

Gingsburg's jurisprudence

The first distinctive characteristic was her approach to the feminist jurisprudence. She has been called a "*proceduralist*"[5] and "*lawyer's lawyer*"[6]. She recognised the importance of precedent and as the director of the American Civil Liberties Union Women's Rights championed the legal strategy of litigating cases deemed "clear winners" even when the litigants were men[7]. This strategy proved effective in constructing a doctrinal framework for addressing gender discrimination, which ultimately served to benefit women[8].

During her 1993 confirmation hearing before the United States Senate Judiciary Committee, she was called upon to explain her position on *stare decisis*, the legal theory that requires judges to follow established precedent[9]. The question was put in the context of the decisions of the Supreme Court overturning its earlier decisions[10].**She responded by** quoting Justice Brandeis that "*some things are better settled than settled right, especially when the legislature sits"*and responded that when a precedent dictates the interpretation of a statute, the doctrine of *stare decisis* holds significance beyond the mere persuasiveness of its reasoning[11].

She was a firm believer in Justice Benjamin Nathan Cardozo who said that "*Justice is not to be taken by storm. She is to be wooed by slow advances*". During her nomination hearings held in July 1993, she was critical of the Supreme Court's decision in Roe v. Wade[12] even

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[5] Katherine Franke, *Symposium: The Liberal, Yet Powerful, Feminism of Ruth Bader Ginsburg*, SCOTUSblog (Oct. 9, 2020), https://www.scotusblog.com/2020/10/symposium-the-liberal-yet-powerful-feminism-of-ruth-bader-ginsburg/.

[6] Linda Hirshman, *Sisters in Law: How Sandra Day O'Connor and Ruth Bader Ginsburg Went to the Supreme Court and Changed the World* 40 (HarperCollins 2016).

[7] Judith Resnik, *Justice Ruth Bader Ginsburg's Jurisprudence of Process and Procedure*, 20 U. Haw. L. Rev. 647, 657–58 (1998).

[8] Ruth Bader Ginsburg, *Decisions and Dissents of Justice Ruth Bader Ginsburg: A Selection* xxviii (Penguin Books 1st ed. 2020).

[9] *Hearings on the Nomination of Ruth Bader Ginsburg to be Associate Justice of the Supreme Court*, 103d Cong. S. Hrg. 103-482, at 196 (July 20–23, 1993), https://www.govinfo.gov/content/pkg/GPO-CHRG-GINSBURG/pdf/GPO-CHRG-GINSBURG-4-44-1-19.pdf. https://www.govinfo.gov/content/pkg/GPO-CHRG-GINSBURG/pdf/GPO-CHRG-GINSBURG.pdf

[10] ***United States v. Dixon, 509 U.S. 688 (1993)*** *overturned* ***Grady v. Corbin, 495 U.S. 508 (1990)*** *holding that criminal prosecutions for substantive offenses are barred when the defendant has already been held in criminal contempt for the same conduct.* ***Payne v. Tennessee, 501 U.S. 808 (1991)****reversed previous decisions on the admission of victim impact statements in death sentence cases. Payne argued that admitting such victim impact evidence violated the Eighth Amendment, relying on prior Supreme Court decisions (Booth v. Maryland and South Carolina v. Gathers), which had barred such evidence in capital sentencing. The Tennessee courts upheld the sentence, leading to U.S. Supreme Court review on whether victim impact evidence is admissible in capital sentencing proceedings.*

[11] Ibid

[12] *Roe v. Wade, 410 U.S. 113 (1973).By a vote of 7–2, the Supreme Court enacted a trimester framework whereby during the first trimester, decision to terminate the pregnancy rest solely with the woman but in the*

though it was prima facie a judgement that recognised reproductive rights of the women. Justice Ginsburg was of the view that the Supreme Court had failed engaging in a constructive dialogue with legislative bodies before issuing its ruling even when numerous state legislatures were already in the process of liberalizing abortion laws. In her view, the Court effectively removed the issue from the legislative domain and imposed its own regulatory framework, leaving almost no existing state abortion laws intact. She warned that legal doctrines developed too hastily may lack stability[13]. Nineteen years later, the Supreme Court reaffirmed the decision in Roe but narrowed its scope by permitting regulations on abortion so long as they did not impose a substantial obstacle to a woman seeking the procedure[14]. In 2007 the Supreme Court upheld the federal ban on the ground that law targeted a specific medical procedure and did not constitute an undue burden on abortion access[15]. The law imposed a restriction on a specific abortion method known as ***"intact dilation and extraction" (D&X),*** also referred to as ***"partial-birth abortion"***. The method involved delivering the foetus before surgically terminating the pregnancy and was banned on the grounds that it blurred the distinction between abortion and infanticide. Justice Ginsburg in her dissent supported by Justices Stevens, Souter, and Breyer, criticised the majority's decision pointing out that it compromised women's health in favour of purported state interest[16]. In her view, law was expected to ensure that a woman's health is not compromised by compelling them to resort to less safe methods of abortion particularly particularly when such a law would adversely affect younger and indigent women who may not be able discover the pregnancy in the early stages or women carrying fetus with anomalies and health problems that cannot be diagnosed or developed until the second trimester[17]. She also , criticising the majority for departing from the established precedents. Thus she argued that the decision undermined women's autonomy and the precedential framework of the Court's abortion jurisprudence[18].

On June 24, 2022, the Supreme Court overruled *Roe v. Wade* in *Dobbs v. Jackson Women's Health Organization*[19] holding that the right to abortion was not a right "mentioned" in the constitution. The Court found historical analysis in Roe *(supra)* as flawed holding that it lacked justifications for permitting pre-viability abortions, without explaining why viability was decisive[20]. As per the court the unresolved conflict came to the forefront *in Dobbs v. Jackson Women's Health Organization.* The Court held abortion rights were neither "deeply rooted in this Nation's history and tradition" nor implicit in the concept of ordered liberty

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second, the State may regulate to protect her health and after viability, it may restrict or prohibit abortion, with exceptions for the mother's health.

[13] *Nomination of Ruth Bader Ginsburg to Be Associate Justice of the Supreme Court of the United States: Hearings Before the S. Comm. on the Judiciary*, 103d Cong. 149 (1993) (Serial No. J–103–21), https://www.govinfo.gov/content/pkg/GPO-CHRG-GINSBURG/pdf/GPO-CHRG-GINSBURG-4-44-1-19.pdf. ISBN 0-16-046174-5.

[14] *Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833 (1992).*

[15] *Gonzales v. Carhart, 550 U.S. 124 (2007).*

[16] *Gonzales v. Carhart, 550 U.S. 124, 171 (2007).*

[17] *Ibid at 172-176*

[18] Corey Brettschneider, *Decisions and Dissents of Justice Ruth Bader Ginsburg: A Selection* 54–55 (Penguin Publ'g Grp. Kindle ed. 2020).

[19] *Dobbs v. Jackson Women's Health Org.*, 2022 SCC OnLine US SC 9.

[20] *Roe v. Wade, 410 U.S. 113, 132–52 (1973).*

under the Fourteenth Amendment[21]. The decision called *Roe (supra)* an "abuse of judicial authority," and concluded that abortion regulation must be left to the democratic process, reaffirming that "direct control of medical practice in the States is beyond the power of the federal government"[22]. Justice Ginsburg's foresight in July 1993 proved accurate, revealing that jurisprudence lacking a firm foundation in established legal reasoning may ultimately fail to endure over time. Justice Ginsburg's opinions embodied a visionary interpretation of the constitution as a living document, albeit on sound principles[23].

The second distinctive characteristic was her commitment to liberal values[24]. A frequently repeated observation following the announcement of her nomination to the Supreme Court was that she opposed being labelled as liberal or conservative judge. She was often seen mediating between the Court's ideological divisions. In her words, judicial decision-making is not inherently liberal or conservative[25] . Nevertheless, her opinions as a lawyer as well as a judge reflect an ideology of feminism embedded in liberal values that credited each individual with reason, autonomous will and entitlement to dignity[26]. The central argument in her opinions is aimed at providing 'equal dignity' to all which must necessarily include women[27]. For instance in *M.L.B. v. S.L.J.[28],(1996)* where she authored the majority opinion in a 6–3 decision, she reasoned that an indigent parent cannot be denied the opportunity to appeal the termination of parental rights solely due to inability to pay for trial transcript emphasising that Equal Protection Clauses of the Fourteenth Amendment provided for access to appellate review which could not be conditioned on wealth, especially in matters so fundamental as the parent-child relationship. Her more famous dissent in *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007) criticising the majority holding a pay discrimination claim under Title VII of the Civil Rights Act of 1964 time-barred. The Supreme Court held that each pay cheque where the woman was discriminated against did not renew the limitations period. Justice Ruth Bader Ginsburg strongly dissented from the bench, criticising the majority for failing to recognise the unique nature of pay discrimination that often unfolds gradually and in secrecy, with victims becoming aware only after a considerable period. Her dissent proved prophetic in 2009 as Congress passed the Lilly Ledbetter Fair Pay Act, effectively overturning the Court's decision by clarifying that each discriminatory pay cheque resets the period of limitation. In *Stenberg, Attorney General of*

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[21] *Dobbs v. Jackson Women's Health Org., 597 U.S. 215, 227 (2022) at 235 (quoting Washington v. Glucksberg, 521 U.S. 702, 721 (1997)).*

[22] *Ibid. at 228 (quoting Linder v. United States, 268 U.S. 5, 18 (1925)).*

[23] Corey Brettschneider, *Decisions and Dissents of Justice Ruth Bader Ginsburg: A Selection* xxxv (Penguin Publ'g Grp. 2020) (Kindle ed.).

[24] Katherine Franke, *Symposium: The Liberal, Yet Powerful, Feminism of Ruth Bader Ginsburg*, SCOTUSblog (Oct. 9, 2020), https://www.scotusblog.com/2020/10/symposium-the-liberal-yet-powerful-feminism-of-ruth-bader-ginsburg/.

[25] *Nomination of Ruth Bader Ginsburg to Be Associate Justice of the Supreme Court of the United States: Hearings Before the S. Comm. on the Judiciary*, 103d Cong. 22 (1993) (Serial No. J–103–21), https://www.govinfo.gov/content/pkg/GPO-CHRG-GINSBURG/pdf/GPO-CHRG-GINSBURG-4-44-1-19.pdf.

[26] *Robin West & Cynthia G. Bowman, eds., Research Handbook on Feminist Jurisprudence 6 (Edward Elgar Publ'g 2019).*

[27] Jamera Sirmans, *The "Liberal Lioness": Associate Justice Ruth Bader Ginsburg and Her Understanding of Equal Protection Under the Constitution* 13 (2016) (Student scholarship, Seton Hall Univ. Sch. of Law), https://scholarship.shu.edu/student_scholarship/766.

[28] *M.L.B. v. S.L.J., 519 U.S. 102 (1996)*

Nebraska, et al v. Carhart[29], the Supreme Court struck down a Nebraska law banning so-called "partial birth abortions" on the ground that it lacked an expectation to protect mother's health and that the law's vague and expansive language encompassed the most commonly used second-trimester abortion method imposing a substantial obstacle to abortion access and creating an undue burden on women. Justice Ginsburg provided the pivotal fifth vote to form the majority. She criticized the statute as an attempt to place barriers in the path of women seeking abortions, rather than a genuine effort to protect women's health or foetal life. Thus her view was rooted in the belief that reproductive rights are rooted in the guarantee of equal protection and personal autonomy[30]. In *Burwell, Secretary of Health & Human Services, Et Al. v. Hobby Lobby Stores, Inc*[31]*. Et Al.*, the challenge was to Affordable Care Act that mandated companies with more than fifty employees to provide affordable health coverage to all their employees, including access to contraception, or else pay a fee[32]. The Hobby Lobby, a "*closely-held corporation*" challenged the law on the ground that they could not be forced to provide some forms of contraceptive coverage against their religious beliefs and sought an exemption under the Religious Freedom Restoration Act[33]. In a majority opinion authored by Justice Alito, it was held that the Affordable Care Act violated the Religious Freedom Restoration Act of 1993 which was applicable to extended to closely held corporations. The court interestingly determined that the government could have covered the cost of providing the four contraceptives in question to women whose health insurance policies did not cover them due to their employers' religious objections which would not have imposed restrictions on religious freedom[34]. Justice Ginsburg in her dissent pointed out that the Religious Freedom Restoration Act should not be extended to corporations as the corporations ought not to be allowed to impose their religious beliefs on employees whereas the government does have a compelling interest in protecting women's health through the contraceptive mandate[35]. Thus in her view the principle of equality had to be balanced pragmatically and could not have an effect of disregarding the rights and health of female employees by effectively allowing corporate owners to impose their religious beliefs on others. Ginsburg found the government's interest in ensuring women's access to contraceptives compelling and

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[29] *Stenberg v. Carhart*, 530 U.S. 914 (2000).

[30] Jamera Sirmans, *The "Liberal Lioness": Associate Justice Ruth Bader Ginsburg and Her Understanding of Equal Protection Under the Constitution* 49 (2016) (Student scholarship, Seton Hall Univ. Sch. of Law), https://scholarship.shu.edu/student_scholarship/766.

[31] *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014).

[32] *Jared Ortaliza & Cynthia Cox, The Affordable Care Act 101 (Kaiser Family Foundation, updated July 29, 2024),https://www.kff.org/health-policy-101-the-affordable-care-act/?entry=table-of-contents-what-is-the-affordable-care-act.*:On March 23, 2010, President Obama signed the Affordable Care Act (ACA). Earlier, high rates of uninsurance were prevalent due to unaffordability and exclusions based on preexisting conditions. The statute aimed at covering all aspects of the health system making changes to Medicare, Medicaid, and employer-sponsored coverage.

[33] *Religious Freedom Restoration Act of 1993, Pub. L. No. 103-141, 107 Stat. 1488 (1993): Prohibits any agency, department, or official of the United States or any State (the government) from substantially burdening a person's exercise of religion even if the burden results from a rule of general applicability, except that the government may burden a person's exercise of religion only if it demonstrates that application of the burden to the person: (1) furthers a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.…*

[34] *Burwell v. Hobby Lobby Stores, Inc., 573 U.S. 682, 730–31 (2014)*

[35] *Corey Brettschneider, Decisions and Dissents of Justice Ruth Bader Ginsburg: A Selection (Penguin Liberty Book 1) 65–66 (Penguin Publ'g Grp., Kindle ed.).*

stressed that decisions concerning contraception lie with the woman and her physician, not her employer.

Thirdly, her feminist legal thought is more aligned to the politics of equality than liberty. Justice Ginsburg looked at reproductive rights not as an end in itself, but as instrumental to the larger cause of sex-based equality necessary to secure women's participation in public life. Understandably, she was less inclined to defend sexual rights as independently fundamental[36]. As a lawyer, in *Struck v. Secretary of Defense*[37], argued that for a female officer who had been forcibly discharged from the Air Force because she was pregnant. The Air Force regulations then in effect as per which the services of a woman officer could be terminated when it is "*determined by a medical officer that she is pregnant*"[38]. The Regulations thus prohibited pregnant women as well as mothers to continue in the service unless the pregnancy was aborted irrespective of their career record. On the other hand male officers could continue working for the Airforce even if they had become fathers. This compelled the officer to file a suit for injunctive and declaratory relief challenging the regulation as unconstitutional. Justice Ruth Bader Ginsburg (then a lawyer) drafted the brief[39] and instead of basing her argument on privacy she attempted to put abortion rights on the same pedestal as the other freedoms and opportunities that Fifth and Fourteenth Amendments' Due Process and Equal Protection Clauses guaranteed to women. Airforce provisions for sick leave for all other physical conditions that resulted in a period of temporary disability but such leaves were not extended to pregnant female officers. She thus argued that it was a case of discrimination to female officers on stereotypical foreclosing the opportunities irrespective of their merit. She thus put forth her famous argument that the officer was not seeking *favors or special protection but was* asking to be judged on her capacities and qualifications[40]. As a judge of the Supreme Court, in *Gonzales v. Carhart*[41],Justice Ginsburg relied upon *Planned Parenthood of Southeastern Pennsylvania*[42] hold that the governments cannot enforce traditional roles on women. She red flagged the *convictions accepted as ethical and moral principles*, does not empower a State to enforce its views "*on the whole society through operation of the criminal law*"[43]. In her dissent, she held that the law was a reflection of *ancient notions about women's place in the family and under the Constitution ideas that have long since been discredited*[44] by citing *Bradwell v. State*[45] which had justified the bar on women from practicing law in 1873 as outdated and

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[36] *Dipika Jain & Payal K. Shah, Reimagining Reproductive Rights Jurisprudence in India: Reflections on the Recent Decisions on Privacy and Gender Equality from the Supreme Court of India, 39 Colum. J. Gender & L. 1, 31 (2020), https://scholarship.law.columbia.edu/human_rights_institute/7.*

[37] *Struck v. Secretary of Defense, 460 F.2d 1372 (9th Cir. 1972), cert. granted, 409 U.S. 947 (1972) (No. 72-178), vacated and remanded for consideration of mootness, 409 U.S. 1071 (1972).*

[38] *Ibid*

[39] *Corey Brettschneider, Decisions and Dissents of Justice Ruth Bader Ginsburg: A Selection 45 (Penguin Publ'g Grp., Kindle ed. 2020).*

[40] *Corey Brettschneider, Decisions and Dissents of Justice Ruth Bader Ginsburg: A Selection 46–47 (Penguin Publ'g Grp., Kindle ed. 2020).*

[41] *Gonzales v. Carhart, 550 U.S. 124 (2007).*

[42] *Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833 (1992)*

[43] *Ibid at 176-183*

[44] *Ibid at 185*

[45] *Bradwell v. The State, 83 U.S. 130 (1872)*

unenforceable[46].The dissent also pointed out that the majority opinion pejoratively referred to physicians as "abortion doctors" rather than by their specialties and described fetuses as "unborn children" or "babies"[47].

Scholarships have claimed that her strong stand against gender stereotyping was inspired by her 1961 visit to Sweden to study the country's court procedures. She found herself at the heart of the Swedish feminist revolution. At the time, Sweden had introduced parental leave for men, initiated efforts to design public transportation and urban zoning that facilitated dual-income households, and actively sought to dismantle traditional gender role stereotypes[48]. Influenced by Swedish policy while working on court procedures she continued to develop a strong anti-sterotyping stance. In the United *States v. Virginia*[49] Justice Ginsburg held that Virginia's Military Institute's (VMI) male-only admissions policy violated the Constitution's Equal Protection Clause of the Fourteenth Amendment[50] rejecting the argument that admitting women would require altering the program in ways that would "transform, indeed destroy" VMI as very few women would be able to tolerate the rigorous demands of its program. Justice Ginsburg countered this position by referencing testimony from expert witnesses during the lower court proceedings, where it was acknowledged that some women were indeed capable of performing all the individual tasks required of VMI cadets and meeting the physical standards imposed on men. She drew a parallel between the fight for admission to VMI and earlier struggles for women's access to institutions such as law schools, medical schools, and federal military academies. These historical battles underscored a broader pattern of resistance to women's full participation in public and professional life. Thus her feminist thought advocated for gender neutral decision-making that rejected stereotypes and group-based assumptions[51].

Influence on Indian Jurisprudence The Indian Constitution values which professes equality as a fundamental right[52]. Article 21 of the Indian Constitution is a counterpart to the

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[46] *Linda Hirshman, Sisters in Law (Kindle ed., Kindle Locations 4770–4796).*

[47] *Ibid. at 134, 138, 144, 154–55, 161, 163*

[48] Linda Hirshman, *Sisters in Law: How Sandra Day O'Connor and Ruth Bader Ginsburg Went to the Supreme Court and Changed the World* 56 (HarperCollins 2016).

[49] *United States v. Virginia*, 518 U.S. 515 (1996).

[50] *U.S. Const. amend. XIV, § 1, available at National Archives, Milestone Documents: 14th Amendment (July 9, 1868), https://www.archives.gov/milestone-documents/14th-amendment.: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."*

[51] *United States v. Virginia*, 518 U.S. 515 (1996)., *Gonzales v. Carhart, 550 U.S. 124 (2007).*

[52] *INDIA CONST. art. 14.:**Equality before law**.—The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.*

*INDIA CONST. art. 15.:**Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth**(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to—(a) access to shops, public restaurants, hotels and places of public entertainment; or(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.(3) Nothing in this article shall prevent the State from making any special provision for women and*

Due Process Clause[53] in the constitution of the United States. The reason that Justice Ginsburg's opinion has been referred to in several judgments of the Supreme Court of India (some of them have been mentioned in the following paragraphs) cannot be credited only to shared constitutional values. Justice Ginsburg's method of developing jurisprudence in line

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children.(4) Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.(5) Nothing in this article or in sub-clause (g) of clause (1) of Article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes insofar as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of Article 30.(6) Nothing in this article or sub-clause (g) of clause (1) of Article 19 or clause (2) of Article 29 shall prevent the State from making,—(a) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5); and (b) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) insofar as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of Article 30, which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten per cent of the total seats in each category. Explanation.—For the purposes of this article and Article 16, "economically weaker sections" shall be such as may be notified by the State from time to time on the basis of family income and other indicators of economic disadvantage.

*INDIA CONST. art. 16.:**Equality of opportunity in matters of public employment**.—(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. (2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State. (3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office 14[under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory] prior to such employment or appointment. (4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.(4-A) Nothing in this article shall prevent the State from making any provision for reservation 16 in matters of promotion, with consequential seniority, to any class] or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.(4-B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4-A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent reservation on total number of vacancies of that year.(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.(6) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any economically weaker sections of citizens other than the classes mentioned in clause (4), in addition to the existing reservation and subject to a maximum of ten per cent of the posts in each category.*

[53] *U.S. Const. amend. V :"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury,except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, **without due process of law**; nor shall private property be taken for public use, without just compensation".*

with the constitutional values has a universal appeal. For instance in *Anuj Garg*[54], the constitutional validity of Section 30 of the Punjab Excise Act, 1914, which prohibited the employment of "any man under the age of 25 years" or "any woman" in any part of premises where liquor or intoxicating drugs are consumed by the public, was challenged. Supreme Court relied upon the opinion of Justice Ginsburg in *Virginia*[55] holding the law to be a case of "*invidious discrimination perpetrating sexual differences"*. It was held that legislations with a pronounced aim of "protective discrimination,"can function as double-edged swords and therefore require a strict scrutiny test focusing not only on the stated objectives but also on the actual implications. The court held that the law was rooted in rigid stereotypical morality and fixed notions of sexual roles.

Just like In the United *States v. Virginia*[56] where the Virginia's Military Institute's (VMI) had hoped to justify its male-only admissions policy on the ground that admitting women would require altering the program in ways that would "transform, indeed destroy" VMI as very few women would be able to tolerate the rigorous demands of its program, the he Indian Government too challenged the plea of women of officers in Army for grant for Permanent Commission (PC) on par with their male counterparts citing "physiological limitation" and "inherent risks" in accommodating women officers. The government contended that no formal discrimination existed between male and female Short Service Commission (SSC) officers. The Supreme Court rejected the argument holding that it was based on generalized assumptions about women about their purported physiological limitations and flawed views of women as intrinsically less capable than men. The premise that women should be excluded from full military participation due to potential maternity leave or childcare responsibilities presupposes that domestic obligations are exclusively women's responsibility. It was held that an absolute prohibition on women limiting them solely to staff roles, lacks rational justification and fails the test of constitutional scrutiny under Article 14 and should the Army seek to exclude women from specific appointments, it must do so based on individual assessment of each case based on concrete evidence and rational justification and not on assumptions rooted in outdated gender roles[57]. Despite the judgement, the female officers had to again approach the Supreme Court raising grievances with respect to implementation of the decision[58]. The judgement authored by Justice Chandrachud notably began with a quotation from Justice Ginsburg: "*I ask no favour for my sex. All I ask of our brethren is that they take their feet off our necks*." The court found that the evaluation criteria constituted *indirect* and *systemic discrimination* against female officers, resulting in economic and psychological harm. Justice Ginsburg's decision in *Smith* v. *City of Jackson, Mississippi*[59] and *Texas Department of Housing & Community Affairs*[60] was referenced in the judgement by Justice D.Y Chandrachud. In *Smith (supra)* the US Supreme Court had interpreted the Age Discrimination in Employment Act, 1967 which prohibited actions which "otherwise adversely affect" an employee and held that the phrase *"focuses on the effects of the action on the employee rather than the motivation for the action of the employer*". In *Texas*

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[54] *Anuj Garg v. Hotel Association of India, (2008) 3 S.C.C. 1 (India).*

[55] *United States v. Virginia*, 518 U.S. 515 (1996).
[56] *United States v. Virginia*, 518 U.S. 515 (1996).
[57] *Ministry of Defence v. Babita Puniya*, (2020) 7 SCC 469 (India).
[58] *Nitisha v. Union of India*, (2021) 15 SCC 125, 134 (India).
[59] *Smith v. City of Jackson*, 544 U.S. 228, 231 (2005).
[60] *Texas Dep't of Hous. & Cmty. Affs. v. Inclusive Cmtys. Project, Inc., 576 U.S. 519 (2015).*

Department of Housing & Community Affairs, the Court held that claims of disparate impact liability must be evaluated with prudence to ensure that defendants are afforded adequate latitude to formulate necessary policies specifically adapted to their operational requirements. The principles enumerated in the said decisions provided the analytical framework for comprehending indirect discrimination in India. The court recognised that substantive equality necessitates the prohibition of indirect discrimination, even in the absence of discriminatory intent. The doctrine of indirect discrimination was held to be a consequence of unconscious or implicit biases, or an inability to recognize how existing structures, institutions, and methodologies perpetuate an unjust status quo[61]. The judgement developed the doctrine of indirect discrimination allowing deeper scrutiny into laws and policies that may prima facie appear rational but are embedded in stereotypical assumptions. The effect of the jurisprudential shift is visible even in innocuous smaller orders of the Supreme Court thereafter. For instance, in a matter involving discharge of a woman officer from the Military Nursing Service was held unlawful despite the arguments raised by the government that a Permanent Commissioned Officer in the Military Nursing Service, could have been legally discharged solely on the ground of marriage. The Rule applied exclusively to women nursing officers and reflected an outdated and patriarchal mindset which was incompatible with constitutional values[62].

In *Navtej Singh Johar[63],* the constitutional vires of Section 377 of the Indian Penal Code[64] was under challenge on the ground that "right to sexuality", "right to sexual autonomy" and "right to choice of a sexual partner" were part of the right to life guaranteed under Article 21 of the Constitution of India. Supreme Court relied upon the dissenting opinion of Justice Ginsburg (supported by Justice Sotomayor in *Masterpiece Cakeshop[65]* wherein she had held that a *"sensible application"* of Colorado Anti-Discrimination Act should look at refusal of the baker to sell a wedding cake to a same sex couple as violation. The Supreme of India held that sexual orientation constitutes an intrinsic element of liberty, dignity, privacy, individual autonomy, and equality, thereby precluding legal discrimination against same-sex relationships and that proactive measures were needed to ensure equal protection[66]. While adjudicating the petition concerning the right to marry for non-heterosexual individuals, the Hon'ble Supreme Court of India referred to *Obergefell[67]* which held that the fundamental

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[61] *Ibid*

[62] ***Union of India v. Selina John**, 2024 SCC OnLine SC 5011 (India).*

[63] ***Navtej Singh Johar v. Union of India**, (2018) 10 S.C.C. 1 (India).*

[64] *Indian Penal Code, § 377 (1860) (India).: Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with **[imprisonment for life]**, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.*

[65] *Masterpiece Cakeshop, Ltd. v. Colo. C.R. Comm'n, 584 U.S. 755 (2018).: A bakery in Colorado had refused to bake a wedding cake for a same sex couple citing religious objections which led to the couple lodging a complaint with the Colorado Civil Rights Commission, asserting discrimination on the grounds of sexual orientation, in contravention of the Colorado Anti-Discrimination Act (State of Colorado itself did not recognize same sex marriages at that time).The Commission held that the shop's actions violated the Act and ruled in the couple's favor which was affirmed by Colorado Court of Appeals. The majority view held that the state's interest ought to have been weighed against sincere religious objections in a manner consistent with the requisite religious neutrality that must be strictly observed. Ginsburg, J., with whom Justice Sotomayor joins, dissenting.*

[66] ***Navtej Singh Johar v. Union of India**, (2018) 10 S.C.C. 1 (India).*

[67] *Obergefell v. Hodges, 576 U.S. 644 (2015): The Due Process and Equal Protection Clauses of the Fourteenth Amendment grant same-sex couples a basic right to marry. Justice Kennedy's majority decision, which was*

right to marry is guaranteed to same-sex couples under both the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. Justice Anthony Kennedy authored the majority opinion, which was joined by Justices Ruth Bader Ginsburg, Stephen Breyer, Sonia Sotomayor, and Elena Kagan. Supreme Court though did not legalise the same sex marriage but acknowledged the evolving global consensus on the rights of individuals to form relationships of their choosing, and to situate such rights within the broader framework of privacy, dignity, and equality[68]. The above judgments are only few of the many instances where the opinions of Justice Ginsburg have shaped the development of feminist jurisprudence by the Indian Supreme Court especially in the areas of substantive equality, gender justice, and nondiscrimination. Indian courts have actively used her judicial theory to assess the validity of legislation and state acts through the prism of systemic prejudice and indirect discrimination.

Conclusion

In the United States, the application of formal equality theory has worked to dismantle the patriarchal assumptions while in India, the Supreme Court's approach to equality claims is more nuanced, reflecting the Constitution's guarantee of right to equality.[69] Nevertheless both Supreme Courts have corrected the gender-based power imbalances. However the influence of Justice Ginsburg cannot be attributed only to the constitutional commitment of equality.

Her jurisprudence's methodical development, offering solutions without undermining constitutional principles. The opinions of Justice Ginsburg referred to above display a balance between progressive reform and constitutional adherence. The enduring change that happens with one step at time promises to retain the basic constitutional values while aspiring to keep pace with changing times. The Indian Supreme Court in Kesavananda Bharati[70] and I.R. Coelho[71], had underscored the importance of interpreting constitutional provisions without changing the basic structure of the constitution[72]**.** In *E.V. Chinnaiah[73],* the decision of the US Supreme Court in *Bollinger[74]* referred to the minority opinion of Justice Ginsburg wherein she had held jurisprudence treats race as a "suspect" category, "*not because [race] is inevitably an impermissible classification, but because it is one which usually, to our national shame, has been drawn for the purpose of maintaining racial inequality*." The minority opinion of Justice Ginsburg was found to align with the Indian constitutional framework. Justice Ginsburg's approach to feminist jurisprudence engages directly with gender-based disparities sans constitutional boundaries. Her method of investigating the impact of seemingly neutral laws, particularly in gender and civil rights cases is a skill mandatory for Indian judiciary's to safeguard rights considering social circumstances and historical disadvantage embedded in Indian society. Put differently, irrespective of ??? and

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backed by Justices Ginsburg, Breyer, Sotomayor, and Kagan. The decision upheld marriage as a fundamental component of social order and guaranteed its rights to everyone, irrespective of sexual orientation.

[68] *Supriyo v. Union of India, 2023 SCC OnLine SC 1348 (India).*

[69] *Women and Law: A Comparative Analysis of the United States and Indian Supreme Courts' Equality Jurisprudence, 34 Ga. J. Int'l & Comp. L. 557 (2005–2006).*

[70] Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225

[71] *I.R. Coelho v. State of Tamil Nadu, (2007) 2 SCC 1*

[72] *Kesavananda Bharati v. State of Kerala, (1973) 4 S.C.C. 225 (India).Supreme Court held that while Parliament has the power to amend the Constitution, it cannot alter or destroy its basic structure.*

[73] *E.V. Chinnaiah v. State of A.P., (2005) 1 S.C.C. 394 (India).*

[74] *Gratz v. Bollinger, 539 U.S. 244 (2003).*

nationality, one can apply her methods and ask why Jack, who climbed the beanstalk, and Cinderella, who lost her shoe at midnight, should be subject to different treatment. While Jack independently chose to sell the cow for magic beans and confront the giant, Cinderella relied on the prince to recover her lost shoe. Ginsburg's jurisprudential method includes a means to ask whether Cinderella was hindered by patriarchal constraints that made her ascent more difficult than Jack's. Crucially, her method envisions a reality where Cinderella might recognize her own ability to climb the beanstalk or recover the shoe herself. Moreover, upon reaching the throne, it asks whether other girls in her realm were able to rise, challenge authority, or find their own place among the clouds.