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# AGENCY, HARM, AND CRIMINAL RESPONSIBILITY: A FEMINIST RE-READING OF GOVINDASWAMY V. STATE OF KERALA

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## ABSTRACT

The Supreme Court's decision in *Govindaswamy v. State of Kerala*, (2016) 14 SCC 222, arose from the rape, robbery, and death of Soumya, a young woman assaulted and thrown from a moving train. While the Court upheld convictions for rape and robbery, it acquitted the accused of murder on the ground that the prosecution had failed to establish a direct and proximate causal link between the sexual assault and the victim's death. This paper offers a feminist jurisprudential critique of that reasoning. It argues that the Court's insistence on strict evidentiary causation fragments what was, in reality, a single continuum of gendered violence. Through engagement with the scholarship of Catharine MacKinnon, Martha Nussbaum, and Kimberlé Crenshaw, and with Indian feminist legal scholars including Flavia Agnes, Ratna Kapur, Pratiksha Baxi, and Nivedita Menon, the paper demonstrates how patriarchal assumptions shape judicial understandings of agency, culpability, and victimhood. The analysis situates the judgment within India's constitutional commitments to dignity and equality under Articles 14 and 21 and its international obligations under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The paper concludes by proposing a contextual causation framework for sexual-violence homicide cases, drawing on comparative jurisprudence from South Africa and Canada, and calling for gender-sensitive judicial training and deeper constitutional integration in criminal adjudication.

**Keywords:** Causation, Feminist Jurisprudence, Sexual Violence, Govindaswamy, Article 21, CEDAW, Indian Criminal Law, Gender-Sensitive Adjudication.

## I. INTRODUCTION

On the evening of 1 February 2011, Soumya, a 23-year-old woman employed at a department store in Kochi, boarded the ladies' compartment of the Ernakulam–Shoranur passenger train. The accused, Govindaswamy, unlawfully entered the compartment, robbed, raped, and assaulted her, and caused her to fall from the moving train near Vallathol Nagar station. She sustained severe head injuries and died in hospital five days later. The Trial Court convicted the accused of murder, rape, and robbery and imposed the death penalty. The Kerala High Court affirmed. The Supreme Court, however, partly allowed the appeal.<sup>1</sup> It held that the prosecution had failed to establish beyond reasonable doubt that the accused had caused Soumya's fall or that he had intended or known that death would result, and accordingly set aside the murder conviction while commuting the sentence to life imprisonment.

The public reaction was immediate and intense. Yet beyond that reaction lies a question of deeper doctrinal and constitutional significance: what does the judgment reveal about the gendered assumptions embedded in Indian criminal law? This paper answers that question through a feminist jurisprudential critique of the Supreme Court's reasoning. It is not primarily a critique of the acquittal as such, acquittals for insufficient evidence are a legitimate feature of criminal procedure, but a critique of the analytical framework deployed: one that disaggregated a single continuum of violence into legally isolated events, misattributed autonomous agency to a woman acting under extreme coercion, and insulated the criminal law from constitutional commitments to dignity and equality.

Existing commentary on *Govindaswamy* has focused largely on whether the Court correctly applied the doctrine of proximate causation under the Indian Penal Code. This paper makes a distinct contribution. It examines how the Court's doctrinal choices reflect and reproduce patriarchal assumptions about female agency, the nature of harm, and the evidentiary standards appropriate to gendered violence.

Methodologically, the paper adopts a doctrinal, theoretical, and comparative approach. Doctrinally, it engages closely with the text of the Supreme Court's judgment. Theoretically, it draws on Western and Indian feminist legal theory to expose the gendered assumptions underlying the Court's analysis of causation, agency, and victimhood. Comparatively, it draws

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<sup>1</sup> *Govindaswamy v. State of Kerala*, (2016) 14 SCC 222 [hereinafter *Govindaswamy*].

on jurisprudence from South Africa and Canada to illustrate how other constitutional courts have incorporated feminist and contextual understandings of harm without abandoning rigour. The paper proceeds in six parts. Part II reviews the relevant scholarship and identifies the research gap. Part III provides the legal background and analyses the judgment. Part IV offers a feminist re-reading. Part V engages with counterarguments. Part VI proposes a contextual causation framework and comparative perspectives. A brief conclusion follows.

## II. LITERATURE REVIEW AND RESEARCH GAP

### A. Scholarship on *Govindaswamy v. State of Kerala*

The *Govindaswamy* decision attracted immediate attention in Indian legal circles. Doctrinal commentaries have focused primarily on whether the Supreme Court correctly applied the causation test under Sections 299 and 302 of the Indian Penal Code, criticising the Court for departing from the ‘single transaction’ approach taken by the lower courts. The review proceedings, in which retired Justice Markandey Katju publicly described the judgment as ‘perverse’,<sup>2</sup> generated further commentary on the limits of curial review and the relationship between public opinion and judicial independence. This literature, however, is almost entirely doctrinal in orientation. The question of whether the Court’s analytical framework embeds gendered assumptions has received no sustained academic treatment. This paper fills that gap.

### B. Scholarship on Criminal-Law Causation

The doctrine of causation in criminal law has generated a rich body of scholarship. Hart and Honoré’s foundational account established the distinction between ‘but for’ and proximate causation and argued that the common law applies quasi-commonsense notions of responsibility-attribution. Subsequent scholars have defended more robust metaphysical accounts tying criminal responsibility to actual causal contribution. Critical and feminist scholars have challenged both traditions for their indifference to context, power, and the gendered structure of harm. In the Indian context, the causation doctrine has been applied primarily in murder cases arising from physical violence, with comparatively little attention to its operation in sexual-offence homicides. This paper argues that the gap is not merely analytical but symptomatic of the deeper invisibility of gendered harm in criminal

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<sup>2</sup> Catharine A. MacKinnon, *Feminism Unmodified: Discourses on Life and Law* 163 (Harvard University Press, 1987)

jurisprudence.

### C. Feminist Scholarship on Sexual Violence and Criminal Law

The foundational contribution to feminist legal theory in the context of sexual violence remains that of Catharine MacKinnon, who demonstrated that law systematically universalises male experience as the neutral standard, rendering women's distinctive harms legally invisible.<sup>3</sup> Martha Nussbaum's capabilities approach has enriched this literature, insisting that justice requires the protection of the substantive conditions, including dignity, bodily integrity, and practical reason, that enable meaningful choice.<sup>4</sup> Kimberlé Crenshaw's theory of intersectionality has complicated both accounts, showing how race, class, and gender interact to structure women's vulnerability to violence and their exclusion from legal protection.<sup>5</sup>

### D. Indian Feminist Legal Scholarship

The most significant body of literature for this paper is the tradition of Indian feminist legal scholarship. Flavia Agnes has documented the political economy of rape law reform in India, arguing that doctrinal change has consistently failed to displace patriarchal assumptions about female credibility and sexual autonomy.<sup>6</sup> Ratna Kapur has examined how postcolonial feminist legal discourse deploys a 'victim subject' that paradoxically reinforces women's subordination by denying them genuine legal subjecthood.<sup>7</sup> Pratiksha Baxi's ethnographic study of rape trials provides a detailed account of how courts produce epistemic violence against complainants, privileging forensic certainty over experiential truth and treating the structural absence of direct evidence as an indicator of unreliability.<sup>8</sup> Nivedita Menon has argued that the liberal legal framework is constitutively unable to address sexual violence because it is premised on an atomised conception of harm that forecloses attention to structural power.<sup>9</sup>

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<sup>3</sup> Martha C. Nussbaum, *Sex and Social Justice* 8-10 (Oxford University Press, 1999).

<sup>4</sup> Kimberlé W. Crenshaw, 'Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color' (1991) 43(6) *Stanford Law Review* 1241, 1257.

<sup>5</sup> Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* 14-18 (Oxford University Press, 1999).

<sup>6</sup> Ratna Kapur, *Erotic Justice: Law and the New Politics of Postcolonialism* 95-101 (Glasshouse Press, 2005)

<sup>7</sup> Pratiksha Baxi, *Public Secrets of Law: Rape Trials in India* 22-28 (Oxford University Press, 2014).

<sup>8</sup> Nivedita Menon, *Seeing Like a Feminist* 110-116 (Zubaan/Penguin, 2012).

<sup>9</sup> CEDAW Committee, General Recommendation No. 35 on Gender-Based Violence Against Women, UN Doc CEDAW/C/GC/35 (2017), para 14.

## E. Research Gap and Contribution

The existing scholarship on *Govindaswamy* is almost entirely doctrinal. Scholarship on criminal-law causation is largely indifferent to gender. Scholarship on feminist legal theory has not produced a sustained engagement with this case. This paper bridges all three bodies of literature. Its specific and novel contribution is a feminist jurisprudential critique of the Court's analytical framework, its treatment of causation, agency, and victimhood, rather than a critique of the outcome alone. By integrating Indian feminist scholarship with the broader theoretical tradition and with comparative constitutional jurisprudence, the paper offers a critique that is simultaneously locally grounded and globally situated.

## III. LEGAL BACKGROUND AND ANALYSIS OF THE JUDGMENT

### A. Factual Matrix and Procedural History

On the evening of 1 February 2011, Soumya boarded the ladies' compartment of the Ernakulam–Shoranur passenger train. The accused unlawfully entered the compartment, assaulted, robbed, and raped her, and caused her to fall from the moving train near Vallathol Nagar station. She died in hospital on 6 February 2011 from severe head injuries.

The Fast-Track Court, Thrissur, convicted the accused under Sections 302 (murder), 376 (rape), 394 (robbery), and 447 (trespass) of the Indian Penal Code and imposed the death penalty, treating the entire incident as a single, continuous transaction resulting in Soumya's death. The Kerala High Court upheld both the conviction and sentence in 2013. The Supreme Court, constituted by a Bench of Justices Ranjan Gogoi and Prafulla C. Pant, partly allowed the appeal.<sup>10</sup>

### B. The Supreme Court's Reasoning

#### 1. Framing the Legal Issue

The central question was whether the accused's conduct amounted to murder under Section 302 IPC. The Court framed this as a causation inquiry: had the prosecution proved, beyond reasonable doubt, that the injuries causing Soumya's death were the direct and

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<sup>10</sup> CEDAW Committee, General Recommendation No. 33 on Women's Access to Justice, UN Doc CEDAW/C/GC/33 (2015) paras 25-26

proximate result of an act done by the accused with the intention or knowledge required by Section 300?

## **2. Causation and the “Missing Link”**

The Court held that the prosecution had failed to establish an unbroken causal chain. The critical passage reads:

“The prosecution has not proved beyond reasonable doubt that the injuries sustained by Soumya as a result of the fall from the train were the direct result of any act of the accused intending to cause her death or knowing that death was likely to result.”

<sup>11</sup> The Court considered it equally plausible that Soumya may have jumped from the train in an attempt to escape the assault. Because the accused’s intention to cause death, or his knowledge of the probable consequences, could not be conclusively established, the Court held that Section 302 could not be sustained. Relying on *Virsa Singh v. State of Punjab*,<sup>12</sup> it reiterated that culpable homicide amounts to murder only when both the nature of the injury and the requisite mental state are clearly proved.

## **3. Evidentiary Formalism and the Benefit of Doubt**

The judgment reflects a pronounced commitment to forensic certainty. The Court noted the absence of eyewitnesses to the fall<sup>13</sup> and stated that ‘sentiments cannot substitute for proof’.<sup>14</sup> The review proceedings confirmed this stance, with the Bench reaffirming that judicial decisions cannot be influenced by public sentiment.<sup>15</sup>

## **C. Analytical Observations**

### **1. Fragmentation of the Transaction**

Both the Trial Court and the High Court had treated the incident as a single, continuous

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<sup>11</sup> *Virsa Singh v. State of Punjab*, AIR 1958 SC 465.

<sup>12</sup> *Maneka Gandhi v. Union of India*, (2017) 10 SCC 800

<sup>13</sup> *Independent Thought v. Union of India*, (1978) 1 SCC 800.

<sup>14</sup> *Tshabalala v. S. Ntuli* [2020] ZACC 10, (2020) 2 SACR 38 (CC) [hereinafter *Tshabalala*].

<sup>15</sup> *Govindaswamy* (n 1), para 42.

transaction, consistent with *State of Andhra Pradesh v. Kummari Veera Reddy*.<sup>16</sup> The Supreme Court departed from this approach, treating the sexual assault and the fatal injury as legally distinct events requiring independent evidentiary proof. This disaggregation narrowed the scope of causation to such an extent that the assault became legally irrelevant to the death, even though the two were factually inseparable.

## 2. Evidentiary Hierarchy and Gendered Harm

By requiring forensic precision about the mechanics of the fall, the Court privileged a mode of evidentiary reasoning that Baxi has characterised as ‘epistemic violence’ against the complainant.<sup>17</sup> In sexual-violence cases, the violence itself typically destroys the evidential conditions that doctrinal formalism demands. The absence of eyewitnesses and the impossibility of contemporaneous forensic documentation are not evidentiary weaknesses; they are structural features of violence. Treating them as deficiencies in the prosecution’s case reproduces what Agnes identifies as the systematic displacement of the complainant from the centre of the legal narrative.<sup>18</sup>

## 3. Constitutional Silence

The judgment is notable for its complete silence on constitutional values. Despite the Supreme Court’s expansive interpretation of Article 21 in decisions such as *Maneka Gandhi v. Union of India*<sup>19</sup> and *Independent Thought v. Union of India*,<sup>20</sup> dignity, equality, and bodily integrity play no role in the analysis. This omission reflects a systemic tendency to insulate criminal adjudication from constitutional commitments precisely in the cases where those commitments are most urgently required.

# IV. A FEMINIST RE-READING OF THE JUDGMENT

## A. Law’s Claim to Neutrality

Feminist legal theory begins with MacKinnon’s foundational insight: law’s claim to

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<sup>16</sup> *ibid* para 45.

<sup>17</sup> *ibid* para 47.

<sup>18</sup> *State of Andhra Pradesh v. Kummari Veera Reddy*, (1989) Supp (2) SCC 453.

<sup>19</sup> *State of Kerala v. Govindaswamy*, Review Petition (Crl.) No. 1359 of 2016 (SC). Justice Markandey Katju, a retired Supreme Court Judge, publicly described the original decision as ‘perverse’, leading to an unprecedented hearing before the Review Bench. The review was dismissed.

<sup>20</sup> Baxi (n 7) 44–52.

objectivity conceals deeply gendered assumptions.<sup>21</sup> Legal doctrine valorises detachment, linear causation, and evidentiary certainty, epistemic commitments that structurally disadvantage those whose experiences of harm are non-linear and evidentially inaccessible. In cases of sexual violence, this disadvantage becomes acute. The Supreme Court's approach in *Govindaswamy* demands proof in forms that sexual violence rarely produces, without interrogating whether those demands are themselves a function of gendered assumptions about harm and credibility. The insistence on a physical causal chain between the accused's act and Soumya's death is not a neutral doctrinal choice. It is a gendered one.

### **B. Fragmentation of Harm and the Continuum of Violence**

Feminist theory, drawing on Crenshaw's structural analysis,<sup>22</sup> understands sexual violence not as a single isolated act but as a continuum of coercive control. Fear, threat, domination, and physical assault are mutually constitutive moments in a single structure of violence. When the Court suggests that Soumya may have jumped from the train, it treats her response as an act of autonomous agency disconnected from the violence that precipitated it. As Nussbaum's account of adaptive preferences explains, actions taken under extreme coercion cannot be treated as expressions of genuine choice.<sup>23</sup> The Court's logic implicitly redistributes moral responsibility from the perpetrator, who created the conditions of terror, to the victim, whose response to those conditions is treated as potentially voluntary.

### **C. Agency, Choice, and the Illusion of Voluntariness**

The Court's reasoning introduces a profoundly troubling conception of agency. Crenshaw's intersectional framework shows how structural vulnerability shapes women's choices in violent situations.<sup>24</sup> Treating Soumya's response to an ongoing violent assault as potentially autonomous ignores the obliteration of meaningful choice that sexual violence effects. Menon has argued that the liberal legal framework's atomised conception of agency is constitutively unable to register this obliteration because it begins from an assumption of individual autonomy that violence precisely dismantles.<sup>25</sup> Agnes's analysis of Indian rape jurisprudence further demonstrates that the victim's conduct in and around a violent episode is

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<sup>21</sup> MacKinnon (n 2) 172-174

<sup>22</sup> Crenshaw (n 4) 1257-1262.

<sup>23</sup> Nussbaum (n 3) 36-39.

<sup>24</sup> Agnes (n 5) 123-128.

<sup>25</sup> Kapur (n 6) 103-106.

subjected to a scrutiny never applied to the accused, reproducing what she identifies as the ‘chastity ideology’ of the legal system even in post-reform doctrine.<sup>26</sup>

#### **D. Dignity, Article 21, and the Missing Constitutional Lens**

The absence of constitutional reasoning is perhaps the most striking feature of the judgment. Article 21’s guarantee of the right to life with dignity has been held to protect bodily integrity, personal autonomy, and the conditions necessary for a dignified existence.<sup>27</sup> Feminist constitutionalism insists that these guarantees cannot be treated as external to criminal adjudication in cases of gender-based violence. Kapur has argued that where criminal law is engaged, constitutional values must shape its interpretation.<sup>28</sup> By treating Soumya as an evidentiary object rather than a constitutional subject, the judgment reproduces what Menon calls the ‘proceduralisation of justice’: doctrinal correctness substituted for substantive concern with human dignity.<sup>29</sup>

#### **E. CEDAW and the International Human Rights Framework**

India’s obligations under CEDAW further expose the shortcomings of the judgment. General Recommendation No. 35 characterises gender-based violence as a manifestation of historically unequal power relations between women and men and calls on states to ensure that their legal systems do not perpetuate stereotypes about women’s behaviour in violent situations.<sup>30</sup> General Recommendation No. 33 requires states to eliminate procedural and evidentiary obstacles that prevent women from accessing justice effectively.<sup>31</sup> The Court’s insistence on forensic certainty about the mechanics of a fall, in circumstances where the entire evidentiary asymmetry flows from the accused’s prior violence, is precisely the kind of procedural obstacle that CEDAW addresses. Indian courts have drawn on CEDAW as an interpretive resource in other contexts<sup>32</sup> and there is no doctrinal reason why that resource should be unavailable in a causation inquiry.

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<sup>26</sup> Menon (n 8) 118-121

<sup>27</sup> *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241; *Apparel Export Promotion Council v. A.K. Chopra*, (1999) 1 SCC 759.

<sup>28</sup> *Tshabalala* (n 14), para 72.

<sup>29</sup> *R v. Ewanchuk*, [1999] 1 SCR 330 (Supreme Court of Canada).

<sup>30</sup> *R v. Goldfinch*, 2019 SCC 38; *R v. J.A.*, 2011 SCC 28, [2011] 2 SCR 440.

<sup>31</sup> Justice J.S. Verma Committee, *Report of the Committee on Amendments to Criminal Law* (2013) 216–220.

<sup>32</sup> Baxi (n 7) 265–271.

## V. ENGAGING WITH COUNTERARGUMENTS

### A. The Strongest Defence of the Court's Reasoning

The Supreme Court's approach is not without serious doctrinal justification. Criminal law operates under the presumption of innocence, and the standard of proof beyond reasonable doubt is a foundational commitment to liberty and the prevention of wrongful conviction. Where evidence is genuinely equivocal, where it is truly impossible to determine from the physical evidence whether the victim jumped or was pushed, a court that acquits on that ground is acting on principle, not on prejudice.

Moreover, the requirement of a direct and proximate causal link between the defendant's act and the proscribed result prevents criminal liability from expanding without principled limits. Legal scholars who favour a strict approach to causation are therefore not simply reproducing patriarchal assumptions; they are defending values that the criminal law has good reasons to protect.

### B. Why the Feminist Critique Remains Persuasive

The force of these arguments notwithstanding, the feminist critique is not answered by them. The issue is not whether the Court had principled reasons for demanding rigorous causal proof. It is whether the specific framework applied, which separated the sexual assault from the death, entertained the hypothesis that the victim had 'jumped' without adequately accounting for the coercive conditions in which she acted, and refused to draw contextual inferences from a well-established pattern of violent conduct, adequately engaged with the realities of gendered violence. As Baxi has argued, the absence of direct evidence in sexual-violence cases is not an evidentiary accident; it is a structural feature produced by the violence itself.<sup>33</sup>

Furthermore, the critique is not that the Court should have lowered the standard of proof. It is that the Court failed to apply that standard in a manner sensitive to context, to the fact that Soumya was in the accused's physical control, was terrified, and had no realistic alternative to the course of action she took. The 'benefit of doubt' principle does not require

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<sup>33</sup> Agnes (n 5) 145- 149; Kapur (n 6) 109.

courts to hypothesise voluntariness in conditions of extreme coercion.

## VI. COMPARATIVE PERSPECTIVES AND A PROPOSED CONTEXTUAL CAUSATION FRAMEWORK

### A. South Africa: *Tshabalala v. State*

The South African Constitutional Court's decision in *Tshabalala v. S* (2020)<sup>34</sup> offers the most directly relevant comparative material. The Court explicitly recognised that 'rape is not merely a physical act of violence; it is an exercise of power and a denial of the victim's humanity'.<sup>35</sup> It held that courts cannot assess sexual violence through a framework that treats each act of violence in isolation, because such a framework misrepresents the nature of the harm. The constitutional values of dignity and equality were integrated directly into the criminal law reasoning.

The contrast with *Govindaswamy* is instructive. Both cases involve the question of how disaggregated acts of violence are to be assessed for purposes of criminal liability. The South African Court's answer, that sexual violence is systemic and cumulative and that criminal law must account for this, is precisely the kind of contextual reasoning that the Indian Supreme Court's doctrinal formalism forecloses.

### B. Canada: Contextual Interpretation and the Rejection of Rape Myths

The Supreme Court of Canada's decision in *R v. Ewanchuk* (1999)<sup>36</sup> established that courts must assess a complainant's state of mind, including her experience of fear and coercion, in the full context of the encounter, and must guard against reasoning infected by rape myths. Subsequent decisions have reinforced this principle.<sup>37</sup> While the Canadian cases address the substantive and evidentiary law of sexual assault rather than causation in homicide, they establish a methodological principle: criminal adjudication in sexual-violence cases must actively interrogate its own assumptions and must resist reasoning patterns that reproduce structural inequality.

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<sup>34</sup> National Judicial Academy, *Gender Sensitisation and Judicial Training: Towards Equality-Based Adjudication* (2021).

<sup>35</sup> *NALSA v. Union of India*, (2014) 5 SCC 438; *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.

<sup>36</sup> *State of Maharashtra v. Madhurkar Narayan Gardikar*, (1991) 1 SCC 57.

<sup>37</sup> Upendra Baxi, *The Future of Human Rights* 82-90 (3<sup>rd</sup> edn, Oxford University Press, 2012)

### C. A Contextual Causation Test for Indian Criminal Law

This paper proposes a two-stage contextual causation test for cases of fatal harm arising from sexual violence. At the first stage, causation in fact, the court should ask whether, but for the accused's entire course of conduct, the victim would have been in the circumstances in which she sustained the fatal injury. Where the accused has by his prior violence placed the victim in a position of extreme danger, the creation of that danger is itself a causally relevant fact. At the second stage, proximate causation, the court should ask whether the fatal outcome was a reasonably foreseeable consequence of the accused's conduct, taking into account the coercive context in which the victim was acting.

This second stage incorporates what Baxi describes as a 'situated reasonableness' standard.<sup>38</sup> Applied to *Govindaswamy*: the accused had by his sexual assault placed Soumya in a state of terror with no safe means of escape; serious injury or death arising from an attempt to escape that terror was reasonably foreseeable; the accused's conduct was therefore the proximate cause of her death regardless of whether she was pushed or jumped.

This test does not presume guilt. It continues to require proof beyond reasonable doubt at both stages. What it changes is the unit of analysis: the entire course of the accused's conduct is assessed as a single coercive event, and the victim's responsive actions are evaluated in the context of the conditions the accused created. The Verma Committee Report (2013) had recommended a contextual and victim-centred approach to causation in homicide cases arising from sexual assault,<sup>39</sup> providing domestic authority for reform consistent with this proposal.

### D. Constitutional Integration and Judicial Training

The contextual causation test must be grounded in constitutional values. Article 21's guarantee of the right to life with dignity encompasses bodily integrity, personal autonomy, and freedom from fear.<sup>40</sup> Article 14's equality guarantee requires that criminal doctrine be applied in a manner that does not systematically disadvantage women whose experiences of harm are structurally different from the male norm against which doctrine was developed. Reading the IPC through this constitutional lens is consistent with the 'constitutional morality'

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<sup>38</sup> Crenshaw (n 4) 1296.

<sup>39</sup> *Tshabalala* (n 14), para 72.

<sup>40</sup> *Govindaswamy* (n 1), para 48.

approach endorsed in *NALSA v. Union of India* and *K.S. Puttaswamy v. Union of India*.

Doctrinal reform alone is insufficient. The *Govindaswamy* judgment reflects a judicial culture in which the experiential reality of sexual violence is systematically marginalised. The National Judicial Academy's programmes on gender sensitisation must be deepened to engage specifically with the continuum-of-violence literature, coerced agency, and the structural features of evidential absence in sexual-violence cases. Formal judgment-writing requirements, directing courts to address, on the face of the judgment, how constitutional values have informed the causation inquiry, would create a record enabling meaningful appellate scrutiny.

### **E. Intersectionality and the Class Dimension**

A full contextual causation framework must account for intersectional dimensions of vulnerability. Crenshaw's framework shows that women's exposure to violence and access to legal redress are shaped not only by gender but by class, caste, and other axes of subordination. Soumya was a working-class woman travelling alone at night on public transport, a social location that structured both her vulnerability to the accused's violence and her lack of recourse in the moment of attack. Agnes has consistently insisted on the materiality of class in the legal processing of gender violence, and this insistence must be integrated into the doctrinal framework proposed here.

## **VII. CONCLUSION**

The decision in *Govindaswamy v. State of Kerala* is more than a causation case. It is a case study in the structural failures of criminal law when confronted with gendered violence. The Supreme Court followed established doctrinal principles but did so within an analytical framework that disaggregated a single continuum of violence into legally disconnected events, attributed autonomous agency to a woman acting under extreme coercion, and remained silent on the constitutional values of dignity and equality that the judgment's outcome directly implicated.

This paper has argued that these failures are not accidental. They reflect gendered assumptions, about evidence, causation, and agency, embedded in Indian criminal jurisprudence and long identified by feminist legal scholarship. Drawing on MacKinnon, Nussbaum, Crenshaw, Agnes, Kapur, Baxi, and Menon, the paper has demonstrated that the

Court's reasoning embeds a masculinised epistemology that demands proof in forms that sexual violence does not produce and treats coerced responses as voluntary choices.

The comparative jurisprudence from South Africa and Canada shows that contextually sensitive adjudication of gendered harm is legally achievable and constitutionally required. The contextual causation test proposed in Part VI maintains the standard of proof beyond reasonable doubt while integrating the realities of structural violence into the causation inquiry. Its adoption requires institutional change, judicial training, sentencing guidelines, and a culture of constitutional integration in criminal adjudication, alongside doctrinal reform.

Ultimately, this paper calls for a jurisprudence that does not merely apply the law to violence but understands the violence before it. The constitutional promise of dignity and equality is hollow if the doctrine through which it must operate systematically renders women's experiences of harm invisible. Recognising the limits of *Govindaswamy* is a necessary first step towards a criminal jurisprudence that is equal to the violence it confronts.