

A Comparative Analysis of Feminist Lawyering and Traditional Lawyering in the Indian Perspective

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Abstract: *The common code of civil law pertains to the legal entitlements of individuals engaged in litigation, wherein a legal representative act on behalf of the aggrieved party. The absence of societal change may not necessarily be implied by the actions of a civil lawyer. A civil or criminal lawyer might establish new standards of legal analysis by addressing the complaints of parties or by broadening the application of law to the specific circumstances. However, it is important to note that common lawyers primarily serve the private interests of the involved parties, rather than prioritizing public benefit. In the context of typical litigation, the client's interests hold significant importance. Within the adversarial system, a lawyer has the authority to impose a fee in order to advocate for the clients' interests, regardless of whether those interests are detrimental to others or conflict with the broader public interest. This particular approach to legal practice is characterized as client-centered lawyering, which distinguishes it from public-good lawyering. This paper analyses how feminist lawyering is different from traditional lawyering.*

Keywords: Traditional lawyering, feminist lawyering, challenges

I. INTRODUCTION

Feminist lawyering places emphasis on adopting a proactive stance. This field involves both conventional courtroom litigation and the broader scope of critically studying the law, while also establishing connections to the everyday experiences of women. Feminist lawyering distinguishes itself from conventional legal methods by analyzing and tackling the various aspects of issues in order to actualize and give significance to constitutional and legal rights for women. In pursuit of this objective, various strategic lawyering activities are undertaken, encompassing community organization, legal literacy, and education. These activities involve raising awareness, educating and sensitizing both ordinary citizens and bureaucrats about the rights of individuals, fostering critical consciousness, influencing and shaping public opinion, engaging with the media, conducting fact-finding and research, reporting, mobilizing efforts, lobbying, negotiating policies, documenting and reporting instances of abuse, participating in law-making processes, monitoring the enforcement of laws, providing para-legal training, organizing class action movements, designing social campaigns, and engaging in a variety of other activities. In addition to assisting impoverished clients, offering legal aid, and engaging in litigation, which may encompass public interest litigation, depending on the social context, including aligning with political causes for broader social change. This entails collaborating with the judges, police, and the community, implementing legal reforms, and addressing policy and planning matters to effectively address the actual concerns at the grassroots level. The implementation of these techniques incorporates essential elements, including empathy, transparency, non-discrimination, equality, diversity, engagement of individuals impacted, and, notably, the utmost regard for human dignity during the provision of services. Feminist lawyering challenges the prevailing patriarchal paradigm by advocating for an alternative or democratic approach to legal practice. This approach prioritizes alternative lawyering, ensuring the preservation of client voices and dignity, while also addressing broader client issues. Feminist lawyering, in essence, rejects the notion of sacrificing broader political considerations in favor of a temporary solution of securing a legal victory.

Feminist lawyering is not impartial; rather, it encourages the implementation of positive acts

Another observation that has arisen from the aforementioned conversation is that the legal system operates under the assumption of impartiality within a society characterized by inequality. This inconsistency has an impact on its ability to deliver justice. Justice, then, remained elusive due to the lack of neutrality in the social order in which the courts and the clients are positioned. In order to uphold justice, it is imperative that the interests of survivors stay at the forefront of the legal conversation. However, the current structure of the legal system places significant emphasis on legal technicalities inside the judicial system. This predicament is encountered by feminists and human rights lawyers. Hence, in order to address these challenges, feminist lawyering endeavors to uphold legal objectivity via the lens of marginalized individuals. The focus lies not on upholding a neutral stance when confronted with injustice, but rather on adhering to the principles of truth. Feminist lawyering prioritizes the survivor-centered approach over the court-centered or technical approach when one party is being controlled and oppressed. A feminist lawyer advocates for the rights of the oppressed by revealing the adverse effects of laws and policies on marginalized communities.

Through a comprehensive examination of power relations and the mechanisms through which power functions, a feminist lawyer amplifies the perspectives of marginalized or ordinary individuals in opposition to those in positions of power. In essence, this practice entails narrating the tale from a lower vantage point. Recognizing the historical misuse of authority to maintain prevailing systems of control, feminist lawyers adopt legalism as an essential means of cultivating legal awareness to combat injustice.

Feminist lawyering involves active opposition to patriarchal systems unlike of traditional lawyering

Feminist legal practice does not revolve around a dichotomy between genders. Furthermore, it does not pertain to the pursuit of formal equality. Within a complex and hierarchical social structure, the objective is to critically examine and challenge prevailing patriarchal ideologies that perpetuate prejudice and bias. In a patriarchal society, feminist lawyering aims to dismantle the long-standing barriers of misogyny and sexism that have been established and solidified by the male-dominated society. The objective is to create a society that is characterized by greater diversity, femininity, and inclusivity. The objective is to establish platforms that facilitate the exploration of different perspectives on laws and regulations, as well as to question and contest practices that exhibit prejudice.

Feminist legal scholarship acknowledges the inherent bias within the justice system, which tends to favor the guilty while marginalizing the victim. This legal approach recognizes the imbalanced power dynamics within the relationships. In the context of domestic violence, a feminist lawyer endeavors to tackle a range of complex issues. These include providing guidance to clients in decision-making processes, offering counseling services, assisting in criminal cases, advocating for protection orders, custody orders, and maintenance, as well as representing women in counter proceedings such as divorce and custody disputes. Additionally, feminist lawyers may need to collaborate with non-governmental organizations (NGOs) that support women in community development programs or women's commissions. In certain instances, a comprehensive strategy may be necessary to facilitate the empowerment of women, confront gender-based inequities, and disrupt the perpetuation of violence. In addition to securing a victory, there are often instances where it is necessary to assist the client in overcoming the intricate web of emotional, mental, financial, social, and other challenges she may be encountering. Consequently, the lawyer must address the subjective aspects associated with the circumstance of dealing with violence.

Feminist legal practice presents distinct challenges

Being a woman in the predominantly male-dominated legal profession poses challenges for her as a judge, lawyer, or litigant. Numerous scholars specializing in women's studies have observed that courts often present a hostile environment for women⁶⁷. Women face social obstacles that hinder their participation in the legal profession and their access to courtrooms as plaintiffs or those asserting their rights. Sexual harassment incidents are documented within the confines of the judicial system. Some are disregarded. Instances of misogyny and sexism are widespread. The presence of systemic bias against women hinders the upward mobility of women lawyers.

Moreover, there exists a distinct disparity in the stylistic approach between male lawyers and their female counterparts. In other instances, Pierce made observations regarding the presence of double standards and sexist attitudes within law companies. Prominent legal professionals, whom she referred to as "Rambo litigators," exhibited assertive and

confrontational conduct. While guys assume authority in courtrooms, they anticipate that female paralegals will support and validate their elevated position inside the office hierarchy. The emotional work performed by paralegals is anticipated to perpetuate gender disparities inside law firms, perhaps resulting in harassment that negatively impacts the psychological well-being of female paralegals. The male colleagues perceive female attorneys who employ assertive strategies as arrogant or obnoxious, while their lack of toughness renders them ineffectual. Pierce claimed that the gendered allocation of labor confers economic, emotional, and personal advantages upon men. Nevertheless, female legal professionals and paralegals employ innovative approaches to challenge and subvert the prevailing male-centric norms. In the context of India, female lawyers encounter comparable challenges as they contend with assertive male litigators on a daily basis within the courtroom.

Feminist lawyering faces numerous challenges, including the necessity to establish a presence and assert oneself in the predominantly male legal field. Additionally, it entails confronting the prejudiced and biased stereotypes that are prevalent in society and permeate various aspects of daily life, such as families, communities, societies, and the legal system. Female lawyers in India encounter socio-cultural pressures and patriarchal conditioning that force them to make challenging decisions between their professional pursuits and their familial responsibilities. The presence of both visible and invisible barriers, sometimes referred to as the glass ceiling, within businesses, together with the adherence to traditional gender roles, contribute to the phenomenon of women leaving their jobs during their prime years. Additionally, prejudices play a significant role in perpetuating the substantial gender disparity observed in labor participation. Additional concerns encompass insufficient resources when dealing with impoverished clients, inadequate professional remuneration, and the demeanor of court personnel and male attorneys towards female lawyers. Notwithstanding these complexities, feminist lawyering continues to be a captivating domain in which attorneys are actively reshaping the legal system and the surrounding society.

II. CONCLUSION

The cornerstone of future feminist activism must be firmly grounded on acknowledging the imperative to eliminate the fundamental cultural underpinnings and origins of sexism and other manifestations of collective subjugation. The long-term influence of feminist change is contingent upon the critical examination and modification of prevailing philosophical frameworks.

Unlike of traditional lawyering; feminist lawyering driven by a strong commitment to justice, aims to broaden the legal perspective in order to encompass not only civil and political rights, but also social and economic rights. This is done within the framework of the right to life with dignity for all individuals. Feminist lawyering nevertheless maintains faith in the capacity of ordinary individuals to actively pursue transformation, even during challenging periods. The attitude of defiance exhibited by individuals serves to bolster the resistance against various manifestations of oppression, so fostering a sense of hope and potential for societal transformation. Feminist lawyering aspires to effectuate a legal transformation that envisions the eradication of gender-based oppression. The focus is on implementing good legal reforms that promote and streamline the involvement of women in political and judicial proceedings. The objective is to demonstrate affirmative rights in order to have a beneficial influence on the daily lives of ordinary individuals. Thus, feminist lawyering encompasses more than just litigation, since it involves the creation, implementation, and oversight of laws and policies from a gender-focused perspective. Its purpose is to defend the principles of inclusivity, justice, substantive equality, and liberty as outlined in the constitution. Feminist lawyers employ constitutional reasoning to shape the legal subjectivity in order to broaden the concept of just citizenship and create fresh visions for a just and compassionate world.

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