

Study on Various Aspects of Feminist Legal Practice in India

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Abstract: *There is a significant amount of literature on feminist lawyering in Western countries. However, it is important to consider the goal of feminist lawyering within the patriarchal framework of third-world states. This essay contends that feminist lawyering in India, a society characterized by deep hierarchies, encompasses a wider scope than traditional lawyering. In traditional lawyering, the primary objective is not to win the case, but rather to address broader goals such as eliminating inequalities, eradicating oppression, challenging sexist stereotypes, abolishing fascism, and addressing conditions that perpetuate domination. In a societal framework wherein certain groups are deprived of citizenship rights on the basis of social factors such as gender, color, caste, class, or religion, feminist lawyering must be comprehended comprehensively as a profession that provides assistance to marginalized individuals while simultaneously ensuring governmental responsibility. This inquiry pertains to the interrogation of androcentric norms both within and outside the confines of courtrooms. It advocates for the legal system, courts, and society at large to exhibit sensitivity towards gender-related issues, while also acknowledging and upholding the citizenship rights of two-thirds of the global population. This study asserts that the primary objective of feminist lawyering is to engage in negotiations and challenges pertaining to rights across different levels. Feminist lawyers endeavor to reshape the androcentric legal system and the stratified, hierarchical structure of society, with the ultimate goal of upholding constitutional principles of equality, liberty, and social justice in practical terms*

Keywords: Legal practices, Feminist lawyering, Social justice

I. INTRODUCTION

Overview: What is Feminist lawyering and why it is required?

In the case of Kesvananda Bharathi v State of Kerala, Justice Chandrachud made an observation. The Constitution is not designed to serve as a platform for legal disputes among individuals with substantial financial resources. It is designed for the general populace. It should be interpreted in a manner that allows them to comprehend and value it. As their comprehension deepens, their affection and appreciation for it intensify.

The ruling additionally observed,

"The Court's protection is necessary for millions of impoverished, malnourished, and thoughtless individuals to ensure their enjoyment of human rights." In the event that there is no clear directive, it is advisable for the court to refrain from invalidating a constitutional amendment that seeks to eliminate all forms of suffering.

Nevertheless, there are inconsistencies, as Baxi observed that it took numerous decades for the Supreme Court of India to address the concerns of ordinary individuals and transition from a "conventional subordinate institution with limited public exposure to an emancipated societal entity with significant socio-political prominence." Throughout the years, individuals from various backgrounds, such as undertrials, convicts, men and women in custody, children in juvenile institutions, women who have been trafficked, bonded laborers, agricultural laborers, slum and pavement dwellers, and relatives of victims of extrajudicial executions, have sought legal recourse to alleviate their suffering caused by state repression, lawlessness, chaotic bureaucracy, and administrative oppression. Certain individuals gain justice, while others are deprived of it. Denial of justice can be attributed to various factors, including limited access to justice, high litigation costs, inadequate infrastructure and personnel, subjective prejudices, poverty, corruption, and numerous other causes. Indeed, the current state of affairs demonstrates a disparity between legal frameworks and the hardships

experienced by the general populace. Although the legal system places importance on the concept of people-oriented measures such as Public Interest Litigation, Lok Adalats, National Legal Literacy mission, and the enactment of the Legal Service Authority Act, 1987, it continues to be dominated by privileged, powerful, and resourceful men, resulting in the suppression of the voices of marginalized individuals, including women. The constitutional assurance of equality, affirmative action, liberty, fraternity, and justice remained an unattainable aspiration.

Furthermore, the field of law has historically been characterized by the dominance of privileged individuals. A small number of men hold positions of power and establish legislation and policies for women, enforce regulations, and enforce the law without allowing women the opportunity to make their own decisions. Women, in their roles as citizens, lawyers, judges, activists, women's organizations, and members of the broader women's movement, are advocating for justice and equality in order to address these disparities. In the pre-colonial era, women actively participated in the pursuit of freedom. In the context of a post-colonial society, the women's movement is actively engaged in endeavors aimed at improving the circumstances of women. Feminist lawyering has been actively fighting the male-dominated, elite paradigm for many years in order to provide an environment that enables equal access to justice for everyone. Feminist lawyering serves as a means to enact, enforce, and enforce legislation with a feminist perspective. Its objective is to empower individuals to express their grievances, advocate for justice, and confront instances of oppression.

The field of feminist lawyering perceives law as a tool for confronting deeply ingrained disparities, including but not limited to patriarchy, elitism, class-based prejudice, communalism, fascism, exclusion, misogyny, and sexism. It advocates for the implementation of laws and policies that facilitate the inclusion of feminist perspectives in both public and political spheres. According to Cahn, the act of participating in feminist litigation entails the practice of feminist lawyering pertaining to feminist matters. Within the context of a patriarchal society, feminist litigation encompasses the practice of feminist lawyering, which focuses on addressing both feminist concerns and broader societal challenges that are interconnected and crucial for the realization of broader feminist ideals. Feminist attorneys might be characterized as reformers due to their commitment to not just addressing the consequences within the existing legal system, but also actively pursuing changes in socio-legal norms.

Feminist lawyering is founded on a cooperative and diverse approach that seeks innovative methods to confront deeply ingrained systemic prejudice. The objective is to deconstruct social hierarchies in order to reshape an inequitable social framework through a critical analysis of power dynamics within the interaction between an oppressor and an oppressed, inside the sociocultural framework of domination, with the aim of reducing oppression. Hence, it diverges from a reductionist perspective on the legal system that simplifies the relevant facts into techno-legal inquiries. Feminist lawyering diverges from a competitive traditional legal approach that prioritizes 'winning a case' by integrating professional dedication to broader gender-related objectives. The success of such lawyering is not determined by income or earnings, the size of the legal firm, or the number of cases won by a lawyer. Instead, it is evaluated based on nuanced indicators such as achieving social change, effectiveness in influencing individual clients, the current policy landscape, peace, contentment, job satisfaction, contribution to the larger cause, changes in gender justice norms, heightened feminist consciousness, increased social awareness, and most importantly, making a positive social impact on the ground.

Feminist theorists in the Western world have put forth many theories that establish connections between feminist law-making, legal theory, and the legal profession. These theories aim to demonstrate the interrelationships between these elements and their influence on the practice of law. Over the course of time, four prominent schools of legal theory have emerged. These theories encompass the formal equality theory, which advocates for equal treatment of women and men, the cultural feminist theory, which emphasizes the need for law to consider the differences between men and women, the dominance theory, which highlights the underlying power structures and privileges, and the anti-essentialism approach, which recognizes that the term "female" is not a singular category but rather a result of the intersection of race, class, ethnicity, or caste. The majority of disputes are influenced by the distinct experiences of women regarding pregnancy and motherhood, as well as the many forms of violence they encounter, such as domestic abuse, rape, and sexual assaults, which are a result of patriarchal power structures. These crucial observations are influencing the field of law.

Academic scholars have posited a correlation between the manner in which the law is implemented and its tendency to uphold norms imposed by males, rather than effectively attaining the objectives of justice. Catharine Mackinnon expressed the viewpoint that legal norms are established based on the masculine standards prevalent in the workplace, which serve as a benchmark for evaluating the performance of individuals. Conversely, women perceive legal circumstances through the lens of their feminist consciousness. She contended that feminist lawyers employ the methodology that prioritizes women's narratives of their lives, recognizing that these narratives expose instances of mistreatment perpetrated by men. Abrams differentiates between legal procedures and feminist methods while studying Mackinnon's work. She stated that feminist lawyering has revolutionized the concepts of gender justice and the practice of law, resulting in significant changes to the legal system.

Feminist lawyering in the Indian context

Numerous legal professionals, activists, and organizations in India exhibit reluctance in employing the label feminism. An often-cited objection to the usage of the phrase is its incompatibility with the Indian context, as it is being employed within the unique framework of the Western world. Nevertheless, this perspective is antiquated. This is primarily due to the fact that feminism is no longer a singular and homogeneous concept. In Western societies, the concept of feminism has undergone significant transformations over the course of several decades, with the active participation of various marginalized groups such as black women, migrant women, and local women. Spivak (2010) contended that feminism, in contrast to Marxism, lacks a singular definition and instead relies on the firsthand experiences of women. The resistance and struggle against dominance by Indian feminists possess a unique character, which is influenced by Indian culture. However, many of their practices are frequently influenced by Western influences.

Furthermore, both tyranny and lawyering do not operate independently. Feminist lawyering has emerged as a reaction to the systemic oppression imposed by patriarchal structures. The global challenges against oppression exhibit numerous shared attributes and are deeply entrenched in historical events such as colonialism, World Wars, the Holocaust, systems of dominance, and the development of contemporary political ideologies like democracy and citizenship. Furthermore, individuals in India adhered to various ideologies, including Marxism, socialism, capitalism, and others. These various concepts have been employed and refined on a global scale. Numerous Western words, philosophies, terminologies, and similar concepts have been adopted by researchers in this context, and conversely. In the contemporary neoliberal, globalized, and digitalized society, the distinction between local, national, and international matters is becoming increasingly indistinct. This phenomenon can be attributed to the economic and structural changes occurring as a result of heightened digital connectivity, cross-border migration, global trade, and various other factors. An illustrative example of the global dissemination of debates is the #MeToo Movement, which originated in the Western hemisphere and subsequently gained traction in India. Furthermore, it is worth noting that international human rights norms have exerted a significant influence on community behaviors globally, permeating the constitutions and legal frameworks of many nations to varying degrees. Social movements are employing the terminology of citizens' rights to advocate for the provision of entitlements to marginalized communities. Furthermore, in the context of "development," the indigenous population is actively resisting the encroachment of global capitalism on third world markets, which is exerting influence over economics and politics. This encroachment has resulted in the loss of forests, land, and livelihoods for the most marginalized individuals. In response, the indigenous population is employing various strategies to safeguard their natural resources, including water, forests, and land. Furthermore, within the realm of law, the influence of colonialism over the course of several decades has resulted in the incorporation of several jurisprudence theories, legal concepts, and principles from the Western world into Indian jurisprudence. The current legal system in India is primarily the result of the colonial rulers' enactments and interpretations of indigenous customs and practices. Thomas Babbington Macaulay, a British individual, formulated the Indian Penal Code, drawing inspiration from the prevailing Victorian morality of the era. Furthermore, during the colonial era, the imperial rulers exerted considerable influence in defining laws and policies, leading to debates and discussions regarding the enactment of laws against Sati, widow remarriage, child marriage, the Age of consent Bill, and various other issues.

Indian feminist attorneys have historically engaged in the practice of feminism through various means. Prior to gaining independence, the arduous battle faced by women attorneys in colonial India to gain admission into the legal profession has been well-documented. During the early 1900s, women lawyers like Regina Guha, Suchansubala Hazra, and

Cornelia Sorabji challenged the limits of the legal system and advocated for women's right to practice in the courts. However, in April 1923, the regulations that prohibited women from practicing law were modified. Moreover, throughout the process of constitution-making, a total of fifteen women actively participated in the deliberations held within the Constituent Assembly. The constitutional provisions pertaining to liberty, equality, substantive equality, and affirmative action are indicative of the lawmakers' intention to eradicate patriarchal tyranny. Dr. BR Ambedkar, MK Gandhi, and other attorneys in the post-independent nation have advocated for women's rights, including the Hindu Code Bill and other legislation.

In post-independence India, numerous legal cases have been filed to challenge the discriminatory legislative provisions and policies, citing the constitutional guarantees of equality, liberty, and social justice. Women have actively opposed patriarchy through a series of legal cases, such as *CB Muthamma v Union of India*, *Nargesh Mirza's case*, *Mary Roy, Sabrimala issue*, and *ABC v Union of India*. These cases have highlighted the historical subordination that has placed women in a subordinate position relative to men. In every instance of this nature, women advocated for substantive equality rather than nominal equality. *Vishakha's case* involved the court's development of a guideline to safeguard women against sexual harassment in the workplace. This guideline was based on international women's human rights treaties and aimed to ensure that the state and other individuals involved in the workplace were held responsible for their actions.

Hence, feminist lawyering in India has undertaken an examination of the women's issue through the lens of substantive equality, with the aim of dismantling long-standing sexist stereotypes and prejudiced attitudes that have persisted and been perpetuated over generations. Kaufman (year) conducted a comparative analysis of the implementation of equality provisions in the Indian and US Constitutions. He posited that while both countries' courts adhere to formal equality principles, India's dedication to affirmative action and protective measures has played a significant role in mitigating the longstanding marginalization of women. The emphasis on "substantive equality" offers optimism in facilitating women's complete and equitable involvement in society.

Feminist lawyering aims to advance social justice by extending the application of Articles 14 and 15 of the constitution to advocate for liberty and substantive equality. It also connects these principles with the provisions outlined in Article 21, which guarantees the right to life with dignity, in order to promote autonomy and freedom. Establishing a correlation between various liberties to guarantee fairness is a significant aptitude of a feminist attorney. The interconnection of social, economic, and political factors renders them inseparable and contradictory. From the perspective of a feminist lawyer, human rights are perceived as inseparable and interrelated, whereas a conventional lawyer may hold a contrasting viewpoint.

Key Components of Feminist Legal Practice

Feminist lawyering necessitates a balanced combination of fervor akin to that of a fervent attorney in advocating for the rights of marginalized individuals, a profound sense of outrage towards severe injustices, a resolute dedication accompanied by a measure of bravery, fervor, and unwavering belief. Additionally, it demands adeptness in pleading that incorporates a compassionate viewpoint, the capacity to establish connections between specific instances of rights infringement and subjugation and the broader systemic oppression, as well as the ability to critically examine and reinterpret constitutional and legal provisions from the standpoint of those who are oppressed. Significantly, the cultivation of sensitivity and empathy towards individuals who experience oppression, together with a fervent commitment to gender-just legal practice, constitutes essential components in the development of a feminist lawyer. In the absence of scholarly terminology or the assertion of legal entitlements, the primary function of a feminist lawyer is to facilitate the expression of marginalized individuals, safeguard the authenticity of their emotional experiences, and confront the androcentric condition via the lens of the oppressed.

II. CONCLUSION

Feminist lawyering encompasses a unique amalgamation of legal theory, cognitive processes, practical application, proactive measures, and interventions, necessitating both professional and personal dedication. A feminist lawyer, in their capacity as a legal and social reformer, employs legal instruments to influence the development of social

institutions that exhibit sensitivity, empathy, and justice. Additionally, they seek to redefine the conventional approaches employed in traditional legal practices.

Feminist legal practice inside a patriarchal society in the third world envisions a world devoid of oppression. This movement aims to eradicate marginalization and subjugation by dismantling social hierarchies and transforming unequal power structures. It employs various strategies, including litigation, to ensure that law and society are sensitive to gender issues and eliminate all forms of oppression. Feminist lawyering seeks to dismantle the system of power and the interconnectedness of oppression based on women, race, class, and caste.

Feminist lawyering entails arduous and unremarkable labor, often without compensation or with minimal remuneration. It involves navigating trial courts, which may contradict the aspirations of aspiring professionals in the neoliberal era, characterized by intense competition and a focus on quick financial gain. However, cause lawyering has facilitated professionals in establishing a connection between the practical issues of life and the legal principles outlined in law books. This allows them to acquire knowledge of aspects of the law that cannot be taught in traditional classrooms and derive satisfaction from making significant contributions to society and the legal field.

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