# LEGAL EDUCATION AND FEMINIST PEDAGOGY: A BRIDGE TO RADICAL LEGAL CHANGE

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**ABSTRACT**

*Education plays a pivotal role in shaping a person's life choices and the conduct of the profession. Education forms the theoretical aspect for the applied part, vis-à-vis professional conduct and choices. Likewise, legal education affects the person's knowing and approaches to professional life. Legal education has a potential to transform the entire legal tapestry. However, given the current scenario legal education in India is marooned in a sorry state. The legal education regulatory body, Bar Council of India has put in meager efforts to free the legal education of the old methods. In this article I outline the premise that feminist pedagogy is the answer for arriving at a transforming legal learning methodology and changing the legal system from within by juxtaposing an extrinsically imposed regulatory regime. In doing so, I first analyze the existing legal learning techniques and their enduring effect on applied aspect. Then I shift the focal lens on problems with the existing learning methodology of law, examine why these issues exist and, the following part would make incursions into feminist methodology and substantiate the potential role of it in reshaping the legal system. The last part would state some final remarks and reflections.*

***Keywords**: Legal Education, Feminist, Methodology, Learning, India*

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## I. INTRODUCTION

Legal education shapes a law student's approach to the profession, perspectives of what s/he should and should not do, how s/he must answer questions, cross-question and so forth. The importance of it cannot be emphasized more. A catena of seminars, conferences, counseling, and now, webinars are common on career options in law. A more detailed view by law schools of legal education encapsulates the course structure, syllabus, instruments (ICT in teaching, field visits etc.) and marking system. A further closer look would reveal that most of the law schools' prospectuses are silent on pedagogy and class engagement. A trailing question emerges, from what perspective the students would view the world generally and legal issues specifically. Which perspective approximates to a holistic view of all stakeholders? Which is the soundest pedagogy to capture many perspectives? I, here argue that, the feminist pedagogy is the way ahead to maximize the horizons of viewpoints in most of the legal arenas. A sober consideration of feminist pedagogy can be fruitful in reorienting the legal market. But before I proceed to unfold this pedagogy, it is important to understand the pitfalls of the current legal education regime.

## II. RADICAL REFORM FROM WITHIN 'FOUR WALLS': A DERAILED EXERCISE

The entire gamut of Indian legal education is regulated by an autonomous body, Bar Council of India ("BCI"). The body is entrusted with a plethora of responsibilities[1] to manage legal profession under the parent legislation, Advocates Act, 1961. To take stock of the legal educations and ensure quality control, BCI has laid down detailed "Rules of Legal Education" in 2008. The rules prescribe the minimum infrastructural requirements, library resources, formula for planning an integrated five years course or three years standalone law course, inspection of the prescribed requirements etc.[2] For the purposes of this article, I would focus on the academic part of the rules, highlighting the glaring miss-outs. To do so, I would argue that the legal education reforms are enclosed by four walls which form the kaleidoscope

[1] Advocates Act § 7, (1961).
[2] See Rules of Legal Education, 2008.

for its reforms, thereby making changes but not substantially. This in turn tarnishes the radicalism of the spirit with respect to which educative reforms may be undertaken. The four walls mutually reinforcing and supporting each other are: divorced ground reality assessment in mooting education reforms, binary view of law, blind adherence of Socratic teaching methodology as the "gold charm" and inattention to diversified students' experiences. These four walls are cemented and roofed by traditionalist views of law. A replacement of cement by feminist pedagogy can break the 'status quo' and the legal community can make a case for radical legal reforms that can potentially alter the legal landscape in India.

BCI has specifically laid down mandatory law papers, optional law papers, specialization papers and clinical papers to blend theory and practice. To further take academics seriously the 2008 rules provided for the establishment of Directorate of Legal Education[3], a body that is dormant since birth *qua* legal education reforms.[4] The other body is Legal Education Director under the Directorate of Legal Education. Its role is again questionable, given the fact that there is meager trace of official documentation of legal education reforms in legal education section of the BCI.[5] Again, the legal education officer is not to be found on the BCI's website which is again mandated by 2008 rules.[6]

The BCI has drafted two cardinal pieces center-staging the substantial ensuing value of legal education on legal profession. An understanding based on the fact, 'the best of education world' would bring out 'the best of professional world'. Both these documents are essentially a gloss on ever existing paradigm.

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[3] Rules of Legal Education, 2008, Rule 34.

[4] The BCI website does not specifically spell out the events organized or reforms undertaken under the Directorate. BCI organizes competitions, conducts seminars etc. See Bar Council of India, http://www.barcouncilofindia.org/.

[5] See Also Bar Council of India, http://www.barcouncilofindia.org/about/about-the-bar-council-of-india/directorate-of-legal-education/. http://www.barcouncilofindia.org/about/legal-education/.

[6] Rules of Legal Education, 2008, Rule 36.

## A. BONNIE CASE BIRTHING REFORMS: SUPREME COURT SAVED US? NOT REALLY

Traditionalists typically resist radical reforms even though they may refer it to as an overhaul but fundamentally it's just another stack of hay added to the existing heavy load. The legal education reforms report of 2009 was a judicially mandated and to some extent, a judicially managed work also. To be clear, role of the Directorate of Legal Education or the two offices under it is unclear in this report. The Supreme Court in *Bonnie case*[7] directed the constitution of a three member committee for undertaking a comprehensive review of the then existing legal education in India, vis-à-vis "the inspection, recognition and accreditation of law colleges by the Bar Council of India".[8] The reference implied "law teaching" and did not delve into it specifically. It appears almost to be paradoxical; on the one hand the Supreme Court expresses concern with legal education and on the other hand, remains silent on the method of teaching law which could possibly better the professional standards.

The report turned out to be a gloss on the current 2008 rules. The probable reason for the lack of radical reforms was the presence of an all advocates panel at the Apex committee. The Supreme Court didn't include a single academician on the committee so directed to be constituted. However the report states consultation with the academicians. The report additionally examines the previous Law Commission reports and National Knowledge Commission report which translated into nearing naught reforms in the professional standards. A few speculative reasons may help to probe the failure of the BCI to bring about a desirable change in professional standards. First, the entire exercise is based on the assumption that the top legal professionals know what the best way to achieve a behavioural change could be; thereby a top-down model was followed instead of a coordinate and collaborative committee having extensive membership. Second, a connected reason the say of students who are the ultimate stakeholders of legal education and the future of legal fraternity found no presence in the report

[7] Bar Council of India v. Bonnie FOI Law College, 11 SCC 185, 191(2009).
[8] Id. See Also Bar Council of India, Final Report of The 3-Member Committee on Reform of Legal Education (2009).

or in other words, a deliberative voice from amongst the students was absent. This made the report divorced from the ground reality. Third, the report tried to achieve make integrated professionals for better 'practice' standards by making amends in the infrastructure, library, 'contents' of law, use of technology etc. Necessary heed should also have been paid to the methodology of teaching law, which pervades the entire five years (or three years) programme to bring about the 'behavioral' shift. Consequently, the Indian judicial system is marred by manufactured adjournments, unscrupulous lawyers and judges, under the table processes for legal documentation and verification, fomentation of litigation etc.

The second document[9] is an affirmative directory note on legal education reforms encompassing institutional reforms, content and structure reforms, and pedagogical reforms. The pedagogical reforms again emphasizes on tools of teaching rather than methods of teaching. It endorses an outcome based model, which again has little to with approaches to teaching. The outcomes are usually modeled to achieve the deliverance of course contents and ensure students remember them.

All these 'proposed' reforms are an 'outcome' of the second wall that I proposed hinders legal change, that is, a binary view of law.

## B. BINARIES OF BLACK & WHITE: BUILDING THE STATUS QUO

The entire legal education is hard-wired into a science of knowing the right from the wrong following a particular procedure with exceptions and limitations. The case method study that is an extensively deployed pedagogical tool in India is designed to teach what is 'wrong' and 'right'. The students make this one method, the whole and sole of analysing any given factual situation and apply law to it. The same exercise advocates a dangerous precedent when there are matters of 'multiple competing interests', Public Interest Litigation is the best example indicating fallibilities of this method. Assuming that the lawyers who later became judges are already baptised into this 'binary model of legal education', and hence are

[9] Bar Council of India, Note on Proposed Directions for Reform, http://www.barcouncilofindia.org/wp-content/uploads/2010/07/LegalEducationReformRecommendations.pdf (2009).

always on a crusade for the 'right' and in doing so, ignore many other aspects of the case. The PIL jurisdiction has been under the scanner for non-authoritative outcomes, all mostly stemming from the search of one 'right' and translating it into one remedy, overlooking the reality of many problems requiring many solutions involving multiple rights and a comprehensive final remedy where there can be more than one benefactor. Lavanya Rajmani[10]uses two case studies to exhibit the failure of PIL. In adjudicating Delhi Vehicular Pollution Case, the court missed out on many aspects one of which was the inconvenience to the general public on immediate cession of diesel buses which led to non-compliance with the order. Another case examined by her is Municipal Solid Waste Management case wherein the alternative to switch to machines for garbage picking deprived rag pickers of their livelihood. The both of these issues require 'polycentric' view instead of a 'binary' view to arrive at a solution which is just to all.

Bhuwania, in his work[11] has academically reprimanded and rightly so, the Delhi High Court in adjudicating the Slum Demolition cases. To make the long story short, the court expanded the scope of the issues and went on a slum demolition drive, which left the destitute without adequate rehabilitation policies. The court again opted for a binary view of justice leaving the marginalised more marginalised than ever!

The above narration is sustained by Deborah L. Rhode. She advances the proposition that the existing legal education regime should change for good. She raises three interrelated concerns. First, the text books entail bundles of cases which make little efforts to explain the circumstances of factual scenario, legal choices that could have been availed and the disposition of the court. Second, the doctrines are just elicited without a methodology of application in concrete cases. Third, there is a complete miss-out of how life operates in a given society. Law students are expected to absorb these given legal abstractions. They study law without animating people.[12] This is

[10] Lavanya Rajamani, Public Interest Environmental Litigation In India: Exploring Issues of Access, Participation, Equity, Effectiveness And Sustainability, 19 (3) Jo Env. Law 293, 298-319 (2007).

[11] Anuj Bhuwania, Courting the People: Public Interest Litigation in Post-Emergency India 80-111 (2017).

[12] See Debroh L. Rhode, Feminist Perspectives on Legal Education, 45(6) Stan. L. Rev. 1547.

problematic to a large extent since law is not "science" but "*Social* science" which can ill afford to skip ground reality. These students in turn, *man* the legal market including authors, academicians etc. who perpetuates this cycle of 'binaries' and 'abstractions'. Can we say that some of the PILs are lacking 'publicness' in their outcomes?

## C. THE SOCRATIC DOESN'T HAVE ALL THE ANSWERS

Not only the contents but the Socratic method of content deliverance adds fuel to the fire. The Socratic or quasi-socratic methods are used for imparting legal education. It involves skilful questioning leading the student to answer his own question. The teacher asks a series of questions on an individual basis chaining it to the conclusion, backward reasoning or assumptions.[13]This method has inherent flaws which unconsciously operate in the legal profession. First, it often creates an intimidating environment in the classroom. Students are pleasured if they are not questioned, "they are off the hook". Second, this "fearful" questioning discourages the questioning from the students.[14] Third, the Socratic Method decides the scaling of questions. Should the teacher cross-question and explain on the lower level by factual scenario of a particular case considering the status of litigants, or on the middle level, posing questions on the bouquets of legal regulations or at the higher level of social, political philosophy etc.? A teacher typically chooses the middle scale of law since it has the maximum "law" engagement *per se*.[15]Just knowing the rules would fall short of equipping the budding lawyer with dealing with real life situations. The BCI mooted content oriented reforms nurture middle level discussions. Middle level discussions tend to widen the gap between theory and practice (as applied).[16]

Another issue with the Socratic Method is 'unilateral control' of the discussion. It reinforces hierarchies where teacher is the authority steering all the questioning, and discussions. The teachers' answer is always right is a long drawn reality; Socrates just furthered it. Relationships and equations

[13] Carrie Menkel-Meadow, Feminist Legal Theory, Critical Legal Studies, and Legal Education or "The Fem-Crits Go to Law School", 38(1/2), J. Legal Educ. 61, 67 (1988).
[14] Id. at 68.
[15] Id.
[16] Id.

between lawyer-client, lawyer-associates and the lawyers- support staff heavily mirror the classroom model, and leads to advocacy of the right that the superior states. As a consequence, binaries are legitimized in the entire dynamics.

Students get little say in implying conditions or varying circumstances or practice 'lateral thinking', and cannot support their theses without the teacher's validation. The traditionalists believe in unidirectional character of knowledge. Susan Williams observes the traditional legal education format underlining the fact that the teacher lectures knowledge around which reasoned discussions are made with the students and the students are expected to replay the same in the end semester examinations.[17]

A loose yet convincing argument may be made that the BCI has provided for the professional ethics course a mandatory clinical course.[18] Even though a clinical course, it expects of the students to undertake a study of the statutory and other regulatory norms relating to intra-bar and bar-bench relations. There are a few practical exercises prescribed which again offer little help to understand the sociology, anthropology and economics of law and the environment in which a legal practitioner has to work. Again, a single course cannot change the attitude crusted over the years.

The Socratic Method posits several other wide-ranging concerns starting from boredom in class induced by the monologue of a single student with the teacher. Ninety-nine percent of the times the students are listening to what the other student is responding to the instructor. It is insufficient to deliver a deluge of information especially in courses like Civil Procedure, Law of Crimes, and Constitutional Law etc.[19]

## D. DISCOMMODING DIVERSITIES

As stated earlier, the four walls are in support of each other and mutually supportive. The Socratic Method has leads to 'discommoding diversities'

[17] See Susan H. Williams, Legal Education, Feminist Epistemology, and the Socratic Method, 45 STAN. L. REV. 1571 (1993).
[18] Rule 4, Legal Education Rules, 2008.
[19] David D. Garner, Socratic Misogyny? Analyzing Feminist Criticisms of Socratic Teaching in Legal Education, 2000 (4) BYU L. Rev. 1597, 1609-1613 (2000).

without relevant teaching mechanisms to accommodate and celebrate the differences. There are absolutely no empirical studies which verify experience of students in law schools, perhaps the authorities assume whatever they decide is right and the best. The blame for the absence of such studies is not entirely on their shoulders but on all the actors that further this discommoding system.

Tanisha Baliley affirms the disparate impact of legal education on women at the hands of the Socratic Method. She demonstrates this by comparing GPAs and SAT scores.[20] David D. Garner's analysis of multiple law school case studies promises the genuineness of the research. The hypothesis of the Socrates Method disadvantaging women was tested positive in the case studies stated by him. He begins by stating an earlier research study conducted in Yale Law School in 1988. The study revealed a sorry state of class affairs, women students reluctant in engaging in class discussions out of 'showmanship fear', unwelcoming classroom atmosphere etc. The women who intended to speak felt the pressure of speaking on behalf of all other women students.[21] Results were replicable in another study in 1988 at Stanford law school which depicted systemic classroom participatory discrepancies between male and female students. The Berkeley Law School study of 1989-90, Banks I and Banks II study in 1988 and 1990 respectively depict the same outcome with minor deviations. In a nutshell, women's participation is less.[22]

India has more than describable diversity, considering this fact, can we be dispositive of the fact there is no impact based discrimination (indirect discrimination) within the classrooms? Don't the Public and State Universities have any duty to remedy the situation, if there is any? Doesn't it violate the equal protection doctrine?[23]

BCI never considers since this situations are presumed to be favourable and no empirical assessment is done. The BCI batted reforms are within these

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[20] Tanisha MakebaBaliley, The Master's Tools: Deconstructing the Socratic Method and its Disparate Impact on Women Through the Prism of the Equal Protection Doctrine, 3(1) U. Md LJ Race, Religion, Gender & Class 125, 139 (2003).

[21] Garner, supra, at 1615.

[22] Garner, supra, at 1616-19.

four walls of traditionalists. The reforms which may appear to be radically benevolent and standard raising would do little in maximising 'good professional conduct' and the legal landscape operates in status quo with all the key market runners going under same type of *'walled'* education. The reforms in the truer sense are nothing new in my opinion but a gloss over already existing structures. In what follows, I propose feminist pedagogy as a mitigation mechanism to these concerns.

## III. FEMINIST PEDAGOGY AND CONNECTED KNOWING

'Feminism' as a legal, social, cultural, anthropological and economical idea is a broad concept. For the purposes of this article, I advocate use of feminism as a pedagogy or method to improve the legal landscape. Feminism, for the purposes of this article means the characteristics that are culturally attributable to women. Men associate with *Separate Knowing* and women with *Connected Knowing*. Our legal education system and reforms are marked by Separate Knowing. It conceptualises knowing and learning of a concept in a depersonalised manner. The orientation is towards "impersonal rules".[24] The students are expected to "the way They (academicians) want you to think", a line they must travel to get 'good grades'. The separate knowers operating on 'doubting' the thesis or argument of the person speaking and they are only willing to expand the existing body of knowledge when all their doubts are clarified at a 'depersonalized' level.

Connected knowing values individualised personal experiences. Accordingly, connected knowers intend to seek access to other person's knowledge by exhibiting sympathy. This art of *knowing things* is premised on the basis that all knowledge is a by-product of experiences. This knowing is closer to the feminist understanding of knowing. The art of knowing influences the approach to teaching.

Paulo Freire's observation on traditionalist view deserves quoting in full here:

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[23] See generally Baliley, supra, at 147-59.
[24] Mary Field Belenkyet.al., Women's Way of Knowing, 103 (1996).

> *"The banking concept distinguishes two stages in the action of the educator. During the first, he cognizes a cognizable object while he prepares his lessons in his study or his laboratory; during the second, he expounds to his students about that object. The students are not called upon to know, but to memorize the contents narrated by the teacher. Nor do the students practice any act of cognition, since the object towards which that act should be directed is the property of the teacher"*[25]

His remarks aptly capture of what we see in India, especially in law where the students are expected to mug-up the law.

Once this understanding begins to make its presence in the legal minds, the curriculum may change or not but the teaching methodology would change leading to broader and encompassing changes. Speaking of teaching methods, the Socratic Method should be changed along the "ethics of care"[26]. For this purpose, first, the method should be trimmed and counter-questioning by teacher should be replaced by a student-teacher parley form of discussions. Second, more handouts bearing varying perspectives should be provided to the students in advance to have meaningful and deliberative discussions induced by polycentric thinking process. Third, giving more practical exercises that mirror real life situations, the exercises of re-drafting of specific laws is another engaging exercise that would benefit the students as well as the teacher by knowing different angles which the law under consideration has missed out or suggestions by incorporation of which the objectives of the law could be better served.

Additionally, 'ethics of care'has the potential of altering the student-teacher relationship into a more collaborative one dismantling the hierarchical ladder created by the 'Socratic Kung-fu'.[27]

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[25] Belenky, supra, at 214.

[26] According of Carol Gilligan ethics of care which resonates with the idea of being woman should be given equal importance as justice. Justice is viewed as a male concept comprising of independence, separation and a part of morality that places importance on autonomy and rights. See *generally* Carol Gilligan, In a Different Voice (1982). See Also Judith A Baer, Our Lives Before The Law 52 (1999).

[27] Garner, supra, at 1597.

Carol Gilligan's work depicts the approach adopted by the teacher changes the way of reasoning to legal problems. Gilligan uses "Heinz Dilemma" to put across her point. The dilemma was should Heinz steal a drug to save his dying wife, if the druggist refuses to sell it at a price that Heinz can afford. Jake, a male respondent, compared life and property, placed more importance on life and opted for pro-stealing option. He used 'ethics of justice'. Amy, the female respondent, requested for more details and devised a solution of 'credit transaction' so that the husband gets medicine for the wife and the druggist receives his payment. This is what she calls, 'ethics of care'.

To give contextualised examples, pointing to polycentric disputes, Lavnaya Rajmani[28] places the Institutional failure of the Supreme Court to deliver justice since it was seen as one, in binary terms. Taking an 'ethics of care' approach facilitates one to empathise on most of the stakeholders. For say, in Delhi Vehicular Pollution case, the Court could have had regard to the societal impact, government's capacity to shoulder a wholesale expenditure. In achieving clean environment for all, the right of locomotion for the majority of the population was put in peril. Again, in Solid Waste Management case, the court didn't worry about the livelihoods of the poor which were lost in the adjudicatory process. They were afforded with nil representation. Waste was still not managed but lives of the economically marginalised were in limbo. Anuj Bhuwania's[29] constitutional ethnography of slum demolition cases of the Delhi High Court was again a 'binary justice' view, where slum dwellers were cut high and dry without any rehabilitation policy. If and only if the court would have neared to the boundary of 'ethics of care', the Court would have come up with some rehabilitation policy instead of going in the denial mode.

Using this feminist pedagogy has to start from a two point injection system. The first injection point is to initiate reform in the current system, to the faculty, BCI (including lawyers) and the Bench. This could be in the form of refresher training programme, legal advocacy training, judicial training

[28] Supra note 10.
[29] Supra note 11.

modules, faculty development programmes depending on the target audience. The second and more crucial injection of feminist pedagogy should be in teaching, equipping students with better problem solving skills.

A salvo of external regulation cannot achieve what an ounce of internal reform can galvanize. This pedagogy if implemented in the right spirit has the potential to alter the status quo and bring about that the change that is desired by all. Advocates may seek fewer adjournments caring about the justice and societal impact, advocacy would be more multifaceted and consequently the binaries of the justice would conceivably alter.

The four walls as proposed above that haunt the current legal education would be changed by new four walls of *careful* assessment ground reality in mooting education reforms, polycentric view of law, feminist pedagogy as teaching methodology as the "gold charm" and heed to diversified students' experiences.

## IV. FINAL REMARKS

Legal education sculpts legal practitioners, make and set the legal market dynamics. A 'good' education ensures 'good' professionals. To place everything in perspective, I began by highlighting the problems associated with legal education reforms in India and put forth the argument that desired changes and desirable changes are hindered because the entire exercise of legal education reforms in undertaken within the traditionalist view. Thereafter, I argued the role of feminist pedagogy to cater to and radicalise the legal education reforms which can bring about a radical change in legal industry. If the BCI places emphasis on teaching pedagogy, there will be change in classroom teaching leading to change in perspectives and problem solving skills. These skills in turn would shape the behaviour of the legal practitioners.

Also, there is a dire need to conduct an empirical research on students' experience in legal education. They may express another set of inconceivable concerns yet those require an action ranging from disparate impact owing to gender, caste, creed to issues in internships, quality content etc. The

differential student experience provides a good starting point in reflecting on from which part to begin and what all additional needs to be reformed. The praxis need to be reduced but not by changing the theory entirely but also reforming the behavior substantially.