

**Book Review:**  
**GENDER SENSITIVITY**  
**IN THE COURT SYSTEM**

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*Gender Sensitivity in the Court System* is a must read for those who are interested in gender issues involving the Philippine legal system from a practical, reform-oriented approach and an academic (theoretical and research based) approach.

The authors explained that their ultimate objective for producing a study on gender bias in the Philippine legal system is legal reform for a more gender sensitive legal order. In the opinion of the reviewer, who is a lawyer teaching the sociology of law, one way of evaluating the text based on such objective is to examine the definitions of “gender bias” and “the court system”, “legal system” or “justice system” used in the study as well as methodologies employed by the authors in investigating the research problem. Reflections and discussions about the operational definitions and research methods used in the study are important not only for those studying and teaching academic subjects or those doing research; these have practical consequences for legal practice and legal reform.

One major contribution of the study to the growing literature on gender issues in the Philippine legal system is the definition of gender bias utilized in the research.

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What then constitutes gender bias in the justice system?

The Judicial Council of California Advisory Committee on Gender Bias in the Courts defines gender bias as “behavior or decision making of participants in the justice system that is based on or reveals (1) stereotypical attitudes about the nature and roles of women and men; (2) cultural perceptions of their relative worth; or (3) myths and misconceptions about the social and economic realities encountered by both sexes”... In other words, it is action based on stereotypical ideas of masculinity and femininity that result in the privileging of male experiences, explanations and points of view at the expense of the welfare and status of women...

x x x (Feliciano et al: 12)

It is to the credit of the authors and Chief Justice Hilario G. Davide, Jr. that they identified the invisibility or non-recognition of gender bias in the legal system as the main form of gender bias. In the foreword (vii-viii), he noted that:

It is... disconcerting when the courts that are expected to be the paradigms of equality, themselves display gender insensitivity or gender bias. The effect is the same when the insensitive act is made not by a judge or a court employee but by a lawyer appearing in the court but who, nevertheless, receives no chastisement for the insensitivity. *Often the offensive acts are unconsciously committed*, but there are times when gender slurs are deliberately made. *Culture may be the culprit in both instances.* (emphasis supplied).

They explained the invisibility or non-recognition of gender bias in terms of what sociologists refer to as the taken-for-granted reality concerning the sexes — culturally constructed ideas about women and men which are unconsciously considered by people as “natural” and impervious to change.

A survey of lawyers conducted by the Social Weather Stations in 1996 showed that most respondents believe that judges treat women who are parties to the case and women lawyers fairly

(Mangahas et al: 59) and that the law provides adequate redress for violation of women's rights (62). Based on the definition utilized in the study such research findings would be interpreted, not as evidence of the absence of gender bias but as an indication that many members of the legal profession do not recognize gender bias as an issue because gender stereotypes and myths are taken-for-granted as being "natural".

The participation of members of the legal profession and the judiciary in the production of this study is a victory for those who had been arguing through their respective research and advocacy activities that gender issues are important public issues that ought to be the subject of research, dissemination of information and dialogue for the ultimate purpose of generating a more just and equitable world for women and men.

The study is a resource which can be drawn upon by "insiders" of the legal system who seek to reform it from within (e.g. through litigation for practitioners, decision making by judges and the formulation of rules by the Supreme Court in the exercise of its power of supervision over the lower courts) as well as those who are interested in reforming the system from outside of the legal system by engaging in research and advocacy work.

The examples of gender bias discussed by the text can help legal "insiders" reflect upon and question taken-for-granted realities concerning gender that they and other players in the legal system use for their respective practices.

There are however, interesting problems which can be discussed from the perspective of theory, research methodology and legal reform involving the definitions of "gender bias" and the "court system", "legal system" or "justice system" used in the study.

The definition of gender bias utilized in the study logically implies that a necessary precondition for the questioning of myths, stereotypes and taken-for-granted realities about gender

is knowledge about women and men's actual conditions in Philippine society as well as their attitudes and perspectives. However, the portion of the text on the review of literature on gender bias focused more on studies involving the legal system of the United States rather than studies in the Philippine setting.

Some could argue that there might be some merit in using such materials because a researcher could conduct a study using the theoretical perspectives, methodologies and problems contained in such foreign studies. The underlying presumption for such approach is that women belonging to different societies and who have different backgrounds suffer from the same disadvantages and problems such that generalizations based on data gathered from a study of women in a particular society can be applied to women in other societies.

However, from a research and reform-oriented perspective such materials are of limited value because they do not deal with the concrete issues, problems and experiences of women and men in the Philippine setting. Furthermore, alternative theories that question the notion of essentialism emphasize that differences between and among women because of socio-economic status, educational attainment, ethnic membership, religious membership, etc. would mean substantial differences in the realities, problems and constraints experienced by them. Mangahas et al in a Social Weather Stations survey of attitudes of members of various ethnic groups in the Cordillera region, for example, showed that differences in ethnic membership, age and educational attainment were correlated with differences in the perception of women of what acts constitute sexual harassment (121-126).

There are certain aspects of gender bias in the legal system not covered by the study because it did not include the findings of studies in the Philippine setting.

For example, studies by the Social Weather Stations and a non-governmental organization indicate that many survivors of domestic violence and rape especially those from the lower socio-economic strata sought the assistance and intervention of the barangay (SWS: 48, 118, *Arugaan ng Kalakasan*:76). What this data suggests for further research is the investigation of gender bias in barangay proceedings.

The definition of gender bias utilized in the study presents a challenge as well as an opportunity for those who are in different knowledge fields to do more research on gender in the Philippine setting and to bring the results of these studies to the attention of the players in the legal system. On the other hand, “insiders” of the legal system can provide researchers with inputs about possible areas of study. Aside from research, therefore, another precondition for legal reform is the establishment of communication linkages as well as cooperative endeavors between researchers and those who are players in the legal system so that new insights about the realities faced by women and men in the Philippines can be used to inform legal practices.

A database on existing gender studies in the Philippines would be helpful to both the “insiders” and “outsiders” of the legal system. For those who are engaged in research, such data base would provide them with resources for determining new areas for research as well as for theory building which could generate further studies on gender. On the other hand, such data base would be useful for those who want to question the taken-for-granted realities on gender of the different players in the legal system e.g. by using such data in pleadings, by calling researchers as expert witnesses, using these studies for the socialization of barangay officials, police personnel, law students, the legal profession and the judiciary.

For example, the authors noted that in some rape cases, the Supreme Court held that “the delay in filing a case is an indicator that the rape charge is fabricated” (171). Aside from invoking past judicial decisions to the contrary, the players in the legal system could make use of empirical data from various studies which show that most rape survivors, especially in the case of incestuous rapes do not immediately report the abuse or file complaints. “The closer the relation between victim and offender, the younger the victim, the more repeated the rape, the longer the rape is repeated to the police...” (Candaliza:308) Guerrero et al noted that in almost 40% of sexual abuse cases and almost all cases of physical abuse referred to the Child Protection Unit of the Philippine General Hospital, there was a significant time lag (months to years) between the reporting of the abuse and the initial occurrence of abuse. All the cases that had a significant delay in the reporting of the abuse involved multiple episodes of abuse whether sexual or physical in nature; the perpetrator in these cases were almost always a relative within the household... (97). In the text, the authors also discussed the so-called “utmost resistance rule” in rape cases. The players in the legal system could question the assumptions behind the “utmost resistance rule” not just by citing the amendment introduced by R.A. 8505 but also by using the findings contained in various empirical studies like those of Candaliza (1995) and Guerrero et al that ... most victims do not fight back (27). “...(A) victim is least likely to fight back when the offender is armed. Moreover, the victim’s reaction to the assault is influenced by her relation to the offender. Stranger rape cases do not usually elicit resistance. Fighting back is more common when the victim knows the offender” (27). Since the standard relied upon by the courts is what could be reasonably expected of a person placed in the same situation, these studies show that contrary to taken-for-

granted assumptions about human behavior, in most cases there are delays in the reporting of rape incidents and that most victims do not resist their attackers.

Aside from the definition of gender bias quoted earlier, the study included the following definition of gender bias in the court system:

In view of the difficulty in defining the effects of gender bias, the South Dakota Gender Fairness Task Force came up with five guide questions for gender bias analysis. These are:

What roles do women and men play in the (office)? What is the (gender) composition of the judiciary and of the bar? What data are available about the intersections of gender, race and ethnicity?

What role, if any, does gender play in the appointments made by the judiciary, and in the hiring and promotion processes of the private and public sectors of the bar?

Does gender play (sic) affect professional interactions, either in the courtroom or in the increasingly important and more informal settings of chambers, conferences and lawyers negotiations?

How do members of the judiciary and the bar view the relationship between their work and their family life?

What role, if any does gender play in legal decision making in specific areas of law? (13-14)

On the other hand, the main objectives of the study were:

To identify forms of gender bias at different levels of the court system and at different stages of criminal and civil actions;

To determine the extent of gender bias in the court system and its effects in the resolution/outcome of cases; and

To formulate recommendations in aid of judicial reform.(6)

Reference in the objectives to the stages of criminal and civil actions as well as the resolution or outcome of cases indicate

that what the researchers intended to investigate in the first place was how gender bias affected decision making processes in the court system with respect to litigation (criminal and civil actions) so as to provide justice to the party litigants.

This can be even more clearly seen in the excerpt from the introduction to the study:

A very serious gap in the efforts of the government to promote the welfare and status of Filipino women and children, particularly those who belong to the poorest of the poor, is in the eradication of gender bias in the court system. Women's groups, here and abroad, have repeatedly decried the difficulty of getting justice for female victims of sexual and related crimes. All stages of criminal action— from preliminary investigation, to trial and judgment, are replete with practices that discourage women victims from filing complaints and pursuing their cases in court. The lack of sensitivity of some law enforcers, social workers, lawyers and judges to the predicament of female victims — adult women and girls— due to the lack of understanding of the unequal power relations between spouses, parents and children, employer and employee, is a major factor behind the low rate of success in the resolution of many gender related crimes in the country. And because rape, sexual assault, battering and incest are traumatic experiences that often leave the victims numbed and shamed for days, months and even years, these are the most under-reported crimes.

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*...If gender discrimination exists, it can negatively affect judicial decision making and ultimately, the outcome of litigation...*

This is why it is extremely important to advocate a gender sensitive and gender-responsive judiciary... (emphasis supplied) (4-5).

The problem of how taken-for-granted gender biases contribute to decision making in litigation is conceptually separable from the problem of how gender biases affect the court



as a bureaucracy in terms of the appointment and promotion of its officials and personnel which is covered by the questions included by the South Dakota Task Force.

Another set of questions included by the South Dakota Task Force dealt with the sex composition of the judiciary and the legal profession as well as the opportunities that are made available to male and female members of the legal profession. These problems are likewise conceptually separable from the main problem of decision making in litigation since the text did not refer to any studies indicating that women litigants tend to be represented by female lawyers such that biases against female lawyers have an impact on the outcome of litigation. Neither is there any indication for instance that an increase in the number of female judges would necessarily mean that the problem of gender bias in litigation would be minimized. The study cited by the authors show that when female members of the Supreme Court were asked if there is a gender perspective in deciding cases... "two directly said there was none at all", while "one was equally certain that there [is] a gender perspective in deciding cases." (29-30).

The reviewer is not suggesting that problems faced by women lawyers in the private and public sectors are not important areas for research and advocacy. There is a pressing need, for example, to update the survey conducted by the National Commission on the Role of Filipino Women in 1981 entitled "Roles of and Attitudes Toward Women Lawyers" as well as the Social Weather Stations survey on perceived attitudes of judges towards female lawyers, and to supplement the survey method with other types of research methodologies. However, such problems fall outside of the scope of the objectives of the study.

Furthermore, while there was a discussion of the operational definition of "gender bias", the study did not have an operational

definition of the “court system”, “legal system” or the “justice system”. One can say that this is part of the taken-for-granted-reality of the researchers, majority of whom are lawyers and who perhaps assume that they and their readers share the same definition of the “court system”, “legal system” or “justice system”. Successful research and advocacy for legal reform requires the dissemination of information regarding the legal system to all sectors in society. Various non-governmental organizations and individual researchers both inside and outside the academe would benefit from a study which would include a discussion of the legal system in lay terms so that they could take these into account in conducting their respective research projects and programs for advocacy.

Since the definition of gender bias has reference to the *“behavior or decision making of participants in the justice system ... the study should have identified who would be considered as participants in the justice system as well as the relations between and among these participants in terms of their respective roles, capacities and resources as participants of such system.*

It would appear that the authors recognized that the justice system includes more than the courts and that the participants of the system are the members of the judiciary and the legal profession as well as police personnel. There is, however, no explicit conceptualization of the relations between and among these participants. Neither is there any explicit conceptualization of the decision making processes that are the objects of the study.

It would seem that the study is premised partly on the legal positivist notion that judges decide cases on the basis of rules in the form of the provisions contained in the Constitution, statutes and the Rules of Court. This is why review and content analysis of the Rules of Court, for example, was resorted to in the study. Many of the early studies on gender bias in the legal system in

the Philippines cited in the text were content analyses of various pieces of legislation, perhaps because of the assumption that judicial decision making only involved the mechanical application of legal provisions to the facts of the case.

The study represents an improvement over studies based on content analysis of legislation in the sense that the authors recognized that a review of provisions alone would not be a sufficient method for investigating gender bias. The researchers utilized arguments advanced by the schools of legal realism and critical legal studies that the meaning of rules can only be seen when rules are actually applied to concrete cases and that in interpreting such rules judges draw upon resources other than the legal provisions for attaching meaning to them.

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... A cursory analysis of Philippine procedural law will not reveal any bias in favor of any party. In theory, these rules are technicalities designed to ensure a fair trial. The application, however, of these rules can create bias based on gender.

Women in particular have found difficulty in pressing their claims in court, not because the rules are designed to favor the other party, rather, because, judges tend to apply the rules by complementing them with notions of how women should act.

x x x (121)

The authors conducted content analyses of transcripts of stenographic notes and published decisions of the Supreme Court to investigate and prove that gender bias in the form of taken-for-granted definitions of what women are like and what they ought to do are utilized in the presentation of evidence in terms of the questions that are asked during the examination of witnesses as well as in the decisions made by the courts. However, the discussion regarding the results of the content analyses of

the transcript of stenographic notes and the decisions rendered by the Supreme Court show that methodologies other than content analysis must be resorted to in order to further investigate the problem of gender bias. The authors noted that:

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Interviews with legal practitioners from whom the TSNs were gathered reveal that not everything that was said by the judge and litigants during the hearing are reflected in the TSNs. The stenographers often edit out the unsavory remarks made by the judge especially when they feel that the judge could be charged with an administrative offense. Many female lawyers who complain of verbal harassment by judges are surprised that the TSNs do not reflect their experiences in court.

The study also reveals that the stenographer most of the time fails to catch what a witness says. Most TSNs are also grammatically incorrect.

But what is certain, however, is the loss of meaning in translation. Witnesses who are not conversant in the English language do not fully understand the questions of lawyers. Hence the answers are not responsive to the questions.

x x x (163)

It is also interesting to note that while the authors could not specifically refer to any provision of the Rules of Court which is gender biased during the research validation forum, Atty. Carolina S. Ruiz-Austria of Womenlead Foundation opined that based on her experience as a practitioner, witnesses narrating their experiences would be reprimanded by the judge for giving an unresponsive answer when "...narration or incoherent rambling is consistent with traumatic stress disorders common to survivors of violence" (165).

These show that perhaps additional research methods could be employed for the subsequent phase of the research on gender bias in the court system aside from "an interdisciplinary survey

of gender related attitudes, beliefs and behaviors of court officials and personnel, direct observation of court hearings and a more comprehensive gender assessment of court transcripts, rules and procedures”(170). Respondents in a survey cannot volunteer insights which they may have but which are not covered by questions. Furthermore, a survey will disclose what people claim they do and not actually what they do in practice. The observation of the conduct of court proceedings would deal partly with this problem as well as the problem identified by the researchers that transcripts are not accurate accounts of the proceedings. However, formal proceedings only constitute one aspect of the decision making process in the court system. Other forms of interaction take place outside of these formal proceedings. Perhaps intensive interviews of judges, lawyers, police personnel and barangay officials would yield richer data regarding the problem.

In the section on the Unwritten Rules of Court the authors emphasized that the judiciary's interpretation of the rules, especially the interpretations made by the Supreme Court and the taken-for-granted reality definition of what women and men are like are authoritative definitions which are binding upon the other players of the system.

While the authors recognized the power of the Supreme Court to define reality for the other players of the legal system they tended to depict the behavior and decisions of police personnel, prosecutors and defense counsel as though their acts were due to personal gender bias.

In the Philippines, the failure to pursue and successfully resolve gender related crimes is partly caused by the sexist attitudes and beliefs of local government officials, law enforcers and even prosecution lawyers.

... police officers handling a case of incestuous rape... would gather every “prurient detail of the crime and after much interrogation, decide to drop the case because the victim did not immediately report or did not conform with the subsequent reaction of a stereotyped victim of rape (22).

Decisions made by these participants in the legal system can be understood partly as an application of the Supreme Court’s interpretation of the law. In their recommendations, the authors noted that:

x x x

There is a need to take note of the inconsistencies in Supreme Court decisions... Some examples of decisions that have to be reviewed are:

x x x

*The delay in filing a case is an indicator that the rape charge is fabricated.*

*The conduct of both parties after the alleged rape or even during the trial should be used to determine the guilt of the defendant;*  
(emphasis supplied)...(171)

The point is that judicial pronouncements that are gender biased may be used as standards by police personnel and prosecutors in making decisions about whether they should investigate and prosecute cases. Stereotypes resorted to by the Supreme Court in rendering decisions are relied upon as resources by lawyers for protecting the respective interests of their clients as well as by the lower courts for their decisions. Past decisions of the Supreme Court serve as constraints on the interpretations and actions of lawyers and police personnel.

What this suggests for legal reform is the need for more adequate dissemination of information regarding the recent amendments to legislation and Supreme Court decisions which

are gender fair as well as data from studies in the Philippine setting which can be used by the participants of the legal system to reflect upon their practices and to challenge gender stereotypes. One cannot simply assume that all players in the legal system have equal access to information for establishing a more gender fair legal system. Empirical studies of Mangahas et al (98) and Ma. Glenda Lopez (1999) on the legal profession and the judiciary show that very few members of the legal profession or courts have complete sets of SCRA or have access to libraries with extensive collections. There are also empirical studies indicating that police personnel lack the most basic resources and facilities for the performance of their functions. Quite a number of policewomen who are tasked with assisting women victims, for example, have had no gender sensitivity training, no formal investigation skills, no access to an office where they can speak with women victims so as to assure their privacy aside from other resource constraints (*Arugaan ng Kalakasan*: 141-147).

Another issue which may be raised with respect to the definition of the participants of the legal system is why women complainants in civil and criminal cases are not considered by the study as participants of the legal system when their decision to file or not to file complaints or cases is the very precondition for the decision making of the "officials" of the legal system such as police personnel, prosecutors and judges.

While the perspectives of members of the legal profession and the judiciary are important for addressing the issue of gender bias in the court system because they have knowledge of the law and the legal system, it is equally important to listen to the accounts given by women survivors of their experiences as complainants and witnesses, which accounts may contain aspects of reality that may be overlooked and taken for granted by legal "insiders". A study that investigates gender bias in the legal system

from the perspective of women litigants and witnesses and which makes use of a research methodology that allows them to be heard empowers them to participate in the process of creating a more gender sensitive legal order.

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